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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES CATO, JR.,

Plaintiff,

v.

T. AVILA, et al.

Defendants.

CASE NO. 1:10-cv-793-AWI-MJS (PC)

FINDINGS AND RECOMMENDATION FOR  
DENIAL OF PLAINTIFF'S MOTION FOR  
RECONSIDERATION

(ECF No. 40)

OBJECTIONS DUE WITHIN FOURTEEN  
(14) DAYS

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Plaintiff James Cato, Jr. ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed his initial complaint on May 5, 2010, alleging violations of his Eighth Amendment right to be free from excessive force. (ECF No. 1.) The Court has screened Plaintiff's complaint, found that it stated a cognizable claim, and ordered service. (ECF Nos. 11, 14, & 15.) This action is proceeding against Defendants Avila, Kavanaugh, Dumont, Rodriguez, Patrick, England, Bueno, Patterson, and Johnson for excessive use of force in violation of the Eighth Amendment. (Id.)

On February 2, 2012, Plaintiff filed a motion for reconsideration (ECF No. 40) asking

1 that the District Judge review this Court's January 23, 2012 Order denying Plaintiff's  
2 motion for reconsideration. (ECF No. 39.)

3 In all of these motions for reconsideration, Plaintiff asks for essentially the same  
4 thing: Plaintiff would like the Court to reconsider its Order. (Order, ECF No. 12.) This  
5 series of requests for reconsideration began with Plaintiff's Motion to Return Adult Material  
6 (ECF No. 3) and Motion Requesting Return of Items Mistakenly Forwarded to Court (ECF  
7 No. 7). The Court granted Plaintiff's Motions (because Plaintiff's claims related to mail  
8 confiscation had been dismissed so that the material addressed in the Motions was not  
9 relevant to the action). (Order, ECF No. 12 at 2.) However, because of concern as to  
10 whether prison regulations permitted Plaintiff to possess the material, it was returned to the  
11 prison litigation coordinator to determine whether Plaintiff could keep it. (Id. at 3.) Plaintiff  
12 remains dissatisfied that the material was returned directly to him.

13 Plaintiff's ground for reconsideration is that "it [was] not the role of the Court to be  
14 concerned with the inner workings of the prison," and that "the Magistrate's giving Plaintiff's  
15 exhibits to a non-party is clear error." (Mot., ECF No. 40 at 3.) Plaintiff would also like the  
16 material returned to him because they are his legal exhibits. (Id.)

17 "A motion for reconsideration should not be granted, absent highly unusual  
18 circumstances, unless the . . . court is presented with newly discovered evidence,  
19 committed clear error, or if there is an intervening change in the controlling law," Marlyn  
20 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)  
21 (internal quotations marks and citations omitted), and "[a] party seeking reconsideration  
22 must show more than a disagreement with the Court 's decision, and recapitulation . . ."  
23 of that which was already considered by the Court in rendering its decision. U.S. v.

1 Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

2 Plaintiff again fails to meet the requisite standard for reconsideration. The only  
3 basis for Plaintiff's present motion is his continued disagreement with the Court's previous  
4 decision and action. (Mot., ECF No. 40.) He presents no new facts or evidence and cites  
5 to no legal authority for again challenging the Court's action or, for that matter, to any  
6 authority to the effect that the action was unlawful.  
7

8 Accordingly, the Court RECOMMENDS that Plaintiff's Motion for Reconsideration  
9 (ECF No. 40) be DENIED.

10 These Findings and Recommendation are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
12 Within fourteen days after being served with these findings and recommendations, any  
13 party may file written objections with the court and serve a copy on all parties. Such a  
14 document should be captioned "Objections to Magistrate Judge's Findings and  
15 Recommendations." Any reply to the objections shall be served and filed within ten days  
16 after service of the objections. The parties are advised that failure to file objections within  
17 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,  
18 951 F.2d 1153 (9th Cir. 1991).  
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23 IT IS SO ORDERED.

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25 Dated: April 20, 2012

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE