

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

DERRICK HARRINGTON, ) No. CV-F-05-624 OWW/GSA PC  
 )  
 ) ORDER DENYING PLAINTIFF'S  
 Plaintiff, ) REQUEST FOR RECONSIDERATION  
 ) (Docs. 61 & 62)  
 )  
 vs. )  
 )  
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 A.K. SCRIBNER, et al., )  
 )  
 )  
 Defendants. )  
 )  
 )

By Order filed on March 30, 2009, the United States Magistrate Judge denied Plaintiff's motion for appointment of counsel.

On April 10, 2009, Plaintiff timely filed a Request for Reconsideration by District Court of Magistrate Judge's ruling.

Pursuant to Rule 72-303, Local Rules of Practice, a District Judge upholds a Magistrate Judge's ruling on a referred matter unless it is "clearly erroneous or contrary to law." See Rule 72(a), Federal Rules of Civil Procedure; 28 U.S.C. § 636(b)(1)(A). The "clearly erroneous" standard applies to a

1 Magistrate Judge's findings of fact. *Concrete Pipe & Prods. v.*  
2 *Constr. Laborers Pension Trust*, 508 U.S. 602, 623 (1993). "A  
3 findings is 'clearly erroneous' when although there is evidence  
4 to support it, the reviewing [body] on the entire evidence is  
5 left with the definite and firm conviction that a mistake has  
6 been committed." *Id.* at 622. The "contrary to law" standard  
7 allows independent, plenary review of purely legal determinations  
8 by the Magistrate Judge. *FDIC v. Fidelity & Deposit Co. of Md.*,  
9 196 F.R.D. 375, 378 (S.D.Cal.2000); *Haines v. Liggett Group,*  
10 *Inc.*, 975 F.2d 81, 91 (3<sup>rd</sup> Cir.1992). "An order is contrary to  
11 law when it fails to apply or misapplies relevant statutes, case  
12 law, or rules of procedure." *DeFazio v. Wallis*, 459 F.Supp.2d  
13 159, 163 (E.D.N.Y.2006).

14 Plaintiff's request for reconsideration is DENIED.

15 Plaintiff makes no showing that the Magistrate Judge  
16 utilized an incorrect legal standard or otherwise abused his  
17 discretion. As the Magistrate Judge concluded, Plaintiff's case  
18 is not exceptional. Plaintiff's claim that his head injury makes  
19 it difficult for him to prosecute this action is belied by the  
20 number of motions filed by Plaintiff in this action since his  
21 injury. Plaintiff's claim that prison officials are delaying the  
22 delivery of legal mail and restricting his access to the prison  
23 law library was not raised to the Magistrate Judge. Nonetheless,  
24 if any such restrictions result in Plaintiff be unable to timely  
25 comply with Court schedules, Plaintiff may request an extension  
26 of time or relief from those schedules.

1 IT IS SO ORDERED.

2 Dated: April 16, 2009

3 /s/ Oliver W. Wanger  
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UNITED STATES DISTRICT JUDGE