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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY D. WAFER,) Case No.: 1:07-cv-00865-AWI-BAM PC
)
Plaintiff,) ORDER DENYING PLAINTIFF’S MOTION FOR
) RECONSIDERATION OF ORDER ADOPTING
v.) THE FINDINGS AND RECOMMENDATIONS OF
) MAGISTRATE JUDGE
W. SUESBERRY, et al.,) (ECF No. 106)
)
Defendants.)
)
)
)

I. Introduction

Plaintiff Anthony D. Wafer (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 18, 2007.

On November 20, 2013, the Clerk of the Court entered default against Defendant Suesberry. (ECF No. 58.)

On January 9, 2014, Plaintiff filed a motion for default judgment against Defendant Suesberry. (ECF No. 59.) On April 1, 2014, the Magistrate Judge issued Findings and Recommendations that Plaintiff’s motion for default judgment against Defendant Suesberry be denied without prejudice. (ECF No. 64.)

On April 24, 2014, Defendant Suesberry filed a motion to set aside entry of default. (ECF No. 69.)

1 On May 8, 2014, Plaintiff filed objections to the Findings and Recommendations regarding
2 denial of Plaintiff's motion for default judgment without prejudice. (ECF No. 79.) On June 4, 2014,
3 following consideration of the objections, the undersigned adopted the Findings and
4 Recommendations in full. (ECF No. 87.)

5 On June 9, 2014, the Magistrate Judge granted Defendant Suesberry's motion to set aside the
6 default. (ECF No. 89.) Defendant Suesberry answered the complaint on July 23, 2014. (ECF No.
7 101.)

8 On August 25, 2014, Plaintiff filed the instant motion seeking reconsideration of the
9 Magistrate Judge's June 9, 2014 order setting aside default. (ECF No. 106.)

10 **II. Reconsideration**

11 Pursuant to Local Rule 303(b), rulings by Magistrate Judges are final if no reconsideration is
12 sought within 14 days of service of the order. Here, Plaintiff filed the instant request for
13 reconsideration on August 25, 2014, more than two months after service of the Magistrate Judge's
14 June 9, 2014 order granting Defendant Suesberry's motion to set aside default. (ECF Nos. 89, 106.)
15 Plaintiff's motion is untimely, and may be denied on that basis.

16 Even if Plaintiff's motion for reconsideration were timely, he has failed to present sufficient
17 grounds for reconsideration. In seeking reconsideration of an order, Local Rule 230(j) requires
18 Plaintiff to show "what new or different facts or circumstances are claimed to exist which did not exist
19 or were not shown upon such prior motion, or what other grounds exist for the motion." Plaintiff has
20 not presented any newly discovered evidence, demonstrated that the Magistrate Judge committed clear
21 error, or identified any intervening change in the controlling law. Cf. Kona Enters. v. Estate of
22 Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

23 Plaintiff appears to contend that the Magistrate Judge failed to consider whether Defendant
24 Suesberry established the "excusable neglect" necessary to set aside entry of default. Pursuant to
25 Federal Rule of Civil Procedure 55(c), a district court "may set aside the entry of default upon a
26 showing of good cause." Fed. R. Civ. P. 55(c). When determining "good cause" under Rule 55(c),
27 courts consider whether the plaintiff will be prejudiced, whether the defendant has a meritorious
28 defense, and whether culpable conduct of the defendant led to the default. United States v. Signed

1 Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010). In this instance,
2 the Magistrate Judge expressly considered the culpability of Defendant, the existence of a meritorious
3 defense and any prejudice to Plaintiff. (ECF No. 89, pp. 2-3.) Contrary to Plaintiff's contention that
4 the Magistrate Judge did not consider prejudice to Plaintiff, the Magistrate Judge expressly considered
5 this factor and found no discernable prejudice. (ECF No. 89, p. 3.) To the extent Plaintiff merely
6 disagrees with the Magistrate Judge's decision, this is not a sufficient basis for reconsideration.
7 United States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

8
9 **III. Conclusion and Order**

10 Based on the foregoing, Plaintiff's motion for reconsideration, filed on August 25, 2014, is
11 DENIED with prejudice.

12
13 IT IS SO ORDERED.

14 Dated: February 12, 2015


15 SENIOR DISTRICT JUDGE