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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOWARD YOUNG,

1:07-cv-01121-AWI-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION TO WITHDRAW CONSENT
TO JURISDICTION OF MAGISTRATE
JUDGE
(Doc 51.)

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
et al.,

ORDER FOR CLERK TO ASSIGN
THIS CASE TO MAGISTRATE
JUDGE GARY S. AUSTIN

Defendants.

I. RELEVANT PROCEDURAL HISTORY

Plaintiff, Howard Young ("Plaintiff"), is a prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 2, 2007. (Doc. 1.) On August 15, 2007, Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), and no other parties have made an appearance. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the Magistrate Judge conducted any and all proceedings in the case until such time as reassignment to a District Judge was required. Local Rule Appendix A(k)(3). On August 31, 2007, Plaintiff filed an amended complaint. (Doc. 9.) The court screened Plaintiff's amended complaint pursuant to 28 U.S.C. 1997 and on March 5, 2009, issued an order requiring Plaintiff to either file a second amended complaint or notify the court that he was willing to proceed with the claim found

1 cognizable by the court. (Doc. 19.) On August 31, 2009, Plaintiff filed a second amended
2 complaint, upon which this case now proceeds. (Doc. 42.)

3 On May 17, 2010, Plaintiff filed a motion to withdraw his consent to the jurisdiction of a
4 Magistrate Judge, and requested that a District Judge be assigned to this action. (Doc. 51.)
5 Plaintiff's motion is now before the court.

6 **II. CONSENT TO JURISDICTION OF A MAGISTRATE JUDGE**

7 A party to a federal civil case has, subject to some exceptions, a constitutional right to
8 proceed before an Article III judge. Dixon v. Ylst, 990 F.2d 478, 479 (9th Cir. 1993); Pacemaker
9 Diagnostic Clinic of America, Inc. v. Instromedix, Inc., 725 F.2d 537, 541 (9th Cir. 1984) (en banc),
10 cert. denied, 469 U.S. 824, 105 S.Ct. 100, 83 L.Ed.2d 45 (1984). This right can be waived, allowing
11 parties to consent to trial before a magistrate judge. Dixon, 990 F.2d at 479-480; Pacemaker, 725
12 F.2d at 542; 28 U.S.C. § 636(c)(1). Once a civil case is referred to a magistrate judge under section
13 636(c), the reference can be withdrawn only by the district court¹, and only “for good cause shown
14 on its own motion, or under extraordinary circumstances shown by any party.” Dixon, 990 F.2d at
15 480 (quoting Fellman v. Fireman's Fund Ins. Co., 735 F.2d 55, 58 (2d Cir.1984)); 28 U.S.C. §
16 636(c)(6); Fed.R.Civ.P. 73(b). There is no absolute right, in a civil case, to withdraw consent to trial
17 and other proceedings before a magistrate judge. Dixon, 990 F.2d at 480.

18 Plaintiff requests withdrawal of his consent on the ground that his case has not proceeded
19 past the initial stages, even though the court found the complaint states a cognizable claim for
20 retaliation. A review of the record shows that the court screened Plaintiff's first amended complaint
21 pursuant to 28 U.S.C. 1997 and found that it stated only one cognizable claim, for retaliation. On
22 March 5, 2009, the court issued an order requiring Plaintiff to either file a second amended
23 complaint or notify the court that he was willing to proceed with the one claim found cognizable by
24 the court, within thirty days. (Doc. 19.) On March 18, 2009, Plaintiff objected to the court's order
25 and refused to waive any of his claims. (Doc. 20.) Plaintiff also failed to comply with the court's
26 order before the thirty-day time period expired. On April 24, 2009, the court ordered Plaintiff to

27
28 ¹For this reason, the undersigned United States District Judge was assigned to this action for resolution of
Plaintiff's motion to withdraw consent.

1 comply with the court's order or suffer dismissal of the action in its entirety. (Doc. 26.) On May 4,
2 2009, Plaintiff again objected to the court's March 5, 2009 order, again refusing to waive any of his
3 claims. (Doc. 27.) On June 12, 2009, the court again ordered Plaintiff to comply with the court's
4 order or suffer dismissal of the entire action without further notice. (Doc. 33.) Plaintiff then
5 requested and was granted two extensions of time before filing a second amended complaint on
6 August 31, 2009. (Docs. 35, 36, 39, 40, 42.) During this same time period, the court also resolved
7 Plaintiff's five motions for preliminary injunction and for sanctions. (Docs. 27, 30, 32, 37, 38, 41.)
8 At this juncture, the second amended complaint has been scheduled by the court for mandatory
9 screening.

10 Plaintiff has not presented evidence of "extraordinary circumstances," and the court does
11 not find good cause at this time to vacate the reference to a Magistrate Judge. Based on the record
12 in this action, Plaintiff's case has not been substantially delayed. Moreover, the assignment of a
13 District Judge to this action may not accomplish Plaintiff's objective in bringing the instant motion;
14 such assignment does not remove the role of the Magistrate Judge in non-dispositive matters.
15 Therefore, Plaintiff's motion shall be denied.

16 **III. CONCLUSION**

17 In light of the foregoing, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion to withdraw his consent to the jurisdiction of a Magistrate Judge
19 is DENIED;
- 20 2. The Clerk of the Court is directed to assign this action in its entirety to United States
21 Magistrate Judge Gary S. Austin pursuant to Appendix A(k)(4) of the Local Rules,
22 for all purposes within the meaning of 28 U.S.C. § 636(c), until such time as
23 reassignment to a District Judge is required; and
- 24 3. The case number shall be 1:07-cv-01121-GSA-PC.

25 IT IS SO ORDERED.

26 **Dated: May 26, 2010**

27 **/s/ Anthony W. Ishii**
28 **CHIEF UNITED STATES DISTRICT JUDGE**