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

GEORGE H. ROBINSON,

Plaintiff,

v.

D.G. ADAMS, et al.,

Defendants.

1:08-CV-1380 AWI GSA PC

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(Document #22)

_____/

Plaintiff George H. Robinson (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action was referred to a United States Magistrate Judge pursuant to Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

On February 11, 2009, the Magistrate Judge screened the complaint pursuant to 28 U.S.C. § 1915A and ordered Plaintiff to either file an amended complaint or notify the court of his willingness to proceed only on the claims found to be cognizable. On March 5, 2009, Plaintiff filed a motion for reconsideration. Plaintiff contends that the Magistrate Judge lacked jurisdiction to issue a screening order because Plaintiff did not consent.

Motions to reconsider are committed to the discretion of the trial court. Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc); Combs v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C.Cir. 1987). To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of

1 Judge cannot do, it is still forbidden because it is dispositive. The list of excepted pretrial
2 matters in Section 636(b)(1)(A) is not exhaustive, and a Magistrate Judge also may not issue
3 final orders that can be characterized as dispositive. U.S. v. Rivera-Guerrero, 377 F.3d 1064,
4 1068 (9th Cir. 2004). The court must “look to the effect of the motion, in order to determine
5 whether it is properly characterized as dispositive or non-dispositive of a claim or defense of a
6 party.” Id. If a motion is a final order, dispositive of a claim or defense, it is outside of the
7 Magistrate Judge’s statutorily granted jurisdiction. Id. at 1069. Here, the Magistrate Judge did
8 not issue a dispositive order because no claims have been dismissed without leave to amend and
9 with prejudice. At this juncture, the Magistrate Judge is merely inquiring into how Petitioner
10 wishes to proceed. Plaintiff can still amend the complaint. The claims the Magistrate Judge
11 found did not state a claim will not be dismissed without leave to amend and with prejudice
12 absent Findings and Recommendations and a final order by the undersigned. Thus, the
13 Magistrate Judge’s February 11, 2009 order did not exceed his authority.

14 Finally, Plaintiff contends that the Magistrate Judge used a heightened pleading standard
15 in screening his case. The court does not agree. Although in order to state a claim a complaint
16 “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of
17 his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of
18 the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a
19 right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
20 (2007) (citations omitted). “[A] complaint must contain sufficient factual matter, accepted as
21 true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, – U.S. –, 129 S.Ct.
22 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570)).

23 Determining whether a complaint states a plausible claim for relief will, as the
24 Court of Appeals observed, be a context-specific task that requires the reviewing
25 court to draw on its judicial experience and common sense. But where the
26 well-pleaded facts do not permit the court to infer more than the mere possibility
27 of misconduct, the complaint has alleged--but it has not shown – that the pleader
28 is entitled to relief.

1 Iqbal, 129 S.Ct. at 1950 (internal quotes and cites omitted). The court finds the Magistrate
2 Judge followed this standard.

3 Accordingly, the court ORDERS that Plaintiff's motion for reconsideration is DENIED.
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5 IT IS SO ORDERED.

6 **Dated: July 6, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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