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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT P. SMITH, III,

CASE NO. 1:11-cv-317-LJO-MJS

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION

v.

(ECF No. 13)

STATE OF CALIFORNIA, et. al.,

Defendants.

_____ /

Plaintiff Robert P. Smith, III (“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 initiated this action in the Northern District of California on July 6, 2010. (ECF No. 1.) On February 23, 2011, the Northern District ordered that the case be transferred to this district because most of the events at issue in the case occurred in the Eastern District and most of the Defendants reside in the Eastern District. (ECF No. 3.) On April 12, 2011, Plaintiff filed a motion to re-transfer the action back to the Northern District. (ECF No. 9.) The Court granted Plaintiff’s motion, and the case was transferred to the Northern District. (ECF No. 10.) It was there assigned its original docket number, 3:10-cv-2959-CRB, Smith v. State of California.

Plaintiff’s said Northern District action, 3:10-cv-2959-CRB, Smith v. State of California, was screened. (3:10-cv-2959-CRB, Smith v. State of California at ECF No. 5.) Plaintiff was found to have stated a cognizable claim with regard to claims that arose at Salinas Valley State Prison. (Id.)

1 Claims arising out of at California State Prison, Corcoran, were dismissed without prejudice. (Id.)

2 The Northern District informed Plaintiff he could bring these claims in a separate suit. (Id.)

3 After the Northern District screened Plaintiff's action, Plaintiff filed a motion in this case
4 to reinstate the action in the Eastern District. (ECF No. 11.) The Court denied Plaintiff's motion.
5 (ECF No. 12.) Plaintiff has since filed a motion for reconsideration, asking the District Judge
6 assigned to the matter to review the Magistrate Judge's decision refusing to reinstate the action in
7 this district. (ECF No. 13.)

8 **I. LEGAL STANDARDS**

9 Federal Rule of Civil Procedure 72(a) provides:

10 Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or
11 defense is referred to a magistrate judge to hear and decide, the magistrate judge
12 must promptly conduct the required proceedings and, when appropriate, issue a
13 written order stating the decision. A party may serve and file objections to the order
14 within 14 days after being served with a copy. A party may not assign as error a
15 defect in the order not timely objected to. The district judge in the case must consider
16 timely objections and modify or set aside any part of the order that is clearly
17 erroneous or is contrary to law.

18 "A judge of the court may reconsider [pretrial matters determined by a magistrate judge]
19 where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."
20 28 U.S.C. 636(b)(1)(A).

21 **II. ANALYSIS**

22 The Magistrate Judge reviewing Plaintiff's motion to reinstate the action in the Eastern
23 District found that this Court had no jurisdiction over Plaintiff's case as it was then pending in the
24 Northern District. The Magistrate Judge informed Plaintiff that he could pursue the dismissed
25 claims and parties in a new action in the Eastern District.

26 Plaintiff now argues that he did not request the Court to rule on the action pending in the
27 Northern District, that he cannot initiate a new action because of the age of his claims, and that he
28 should not be required to pay another filing fee. (ECF No. 13.)

Plaintiff's papers reflect his desire to pursue two different actions in two different courts
while paying only one filing fee. After paying his filing fee in this action (ECF No. 6), Plaintiff was
allowed to pursue his claims in the Northern District. If Plaintiff wishes to initiate a new action for

