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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 CHARLES A. MILLER,

9 Plaintiff,

10 vs.

11 CALIFORNIA DEPARTMENT OF
12 CORRECTIONS AND
REHABILITATION, et al.,

13 Defendants.
14

1:12-cv-00353-LJO-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION OF MAGISTRATE
JUDGE'S ORDER
(ECF No. 47.)

ORDER FOR PLAINTIFF TO COMPLY
WITH MAGISTRATE JUDGE'S ORDER
OF JUNE 29, 2015 WITHIN THIRTY
DAYS

15 **I. BACKGROUND**

16 Charles A. Miller ("Plaintiff") is a state prisoner proceeding pro se with this civil rights
17 action pursuant to 42 U.S.C. § 1983. This action was initiated by civil complaint filed by
18 Plaintiff in the Fresno County Superior Court on June 15, 2010 (Case #10CECG02100). On
19 March 8, 2012, defendants Adonis, Griffith, Gutierrez, Igbinsosa, Medina, and Mendez
20 ("Removing Defendants") removed the case to federal court and requested the court to screen
21 the complaint under 28 U.S.C. § 1915A. (ECF Nos. 1, 2.) On March 8, 2012, defendants
22 California Department of Corrections and Rehabilitation ("CDCR"), Ahmed, Anderson, Chudy,
23 Duenas, Eddings, Pascual, and Walker ("Consenting Defendants") joined in the Notice of
24 Removal of Action. (ECF No. 4.)

25 On October 17, 2013, the court dismissed the Complaint for violation of Rule 8(a) of
26 the Federal Rules of Civil Procedure, with leave to amend. (ECF No. 32.) On December 2,
27 2013, Plaintiff filed the First Amended Complaint. (ECF No. 35.) On June 19, 2014, the court
28 issued an order striking the First Amended Complaint for Plaintiff's failure to comply with the

1 court's order of October 17, 2013. (ECF No. 40.) Plaintiff was granted leave to file a Second
2 Amended Complaint. (Id.) On August 13, 2014, Plaintiff filed the Second Amended
3 Complaint. (ECF No. 44.)

4 The court screened the Second Amended Complaint pursuant to 28 U.S.C. § 1915A and
5 issued an order on June 29, 2015, requiring Plaintiff to either file a Third Amended Complaint
6 or notify the court of his willingness to proceed on the claims found cognizable by the court.
7 (ECF No. 46.) On July 10, 2015, Plaintiff filed a motion for reconsideration by the District
8 Judge of the Magistrate Judge's screening order of June 29, 2015. (ECF No. 47.)

9 **II. MOTION FOR RECONSIDERATION BY DISTRICT JUDGE**

10 **A. Legal Standard**

11 Local Rule 303 provides that "[a] party seeking reconsideration of the Magistrate
12 Judge's ruling shall file a request for reconsideration by a Judge . . . specifically designat[ing]
13 the ruling, or party thereof, objected to and the basis for that objection. This request shall be
14 captioned 'Request for Reconsideration by the District Court of Magistrate Judge's Ruling.'
15 Local Rule 303(c). "The standard that the assigned Judge shall use in all such requests is the
16 'clearly erroneous or contrary to law' standard set forth in 28 U.S.C. § 636(b)(1)(A)." Local
17 Rule 303(f).

18 **B. Plaintiff's Motion**

19 Plaintiff argues that the Magistrate Judge's screening order is "clearly erroneous"
20 and/or "contrary to law" under 28 U.S.C. § 636(b)(1)(A) and Local Rule 303(f). Plaintiff
21 disagrees with the Magistrate Judge's assessment that the Second Amended Complaint fails to
22 allege facts showing that any of the defendants, except defendant Medina, acted with deliberate
23 indifference to his serious medical needs under the Eighth Amendment. Plaintiff also argues
24 that the Magistrate Judge erroneously found that Plaintiff failed to state a claim for retaliation.
25 Plaintiff also argues that the Magistrate Judge seemed to disregard well-established Ninth
26 Circuit case law and legal authority applicable to a PLRA screening process on a Prisoner's
27 Eighth Amendment medical claims. Plaintiff requests that the District Judge vacate the
28 Magistrate Judge's screening order, and that the District Court make independent findings and

1 conclusions as to the sufficiency of the Second Amended Complaint, with consideration of
2 Plaintiff's arguments.

3 **C. Discussion**

4 The court has reviewed the Magistrate Judge's screening order of June 29, 2015, and
5 does not find it to be clearly erroneous or contrary to law. Therefore, Plaintiff's motion for
6 reconsideration shall be denied.

7 At this stage of the proceedings, if Plaintiff disagrees with the Magistrate Judge's
8 screening order, his remedy is to file a Third Amended Complaint clearly and succinctly stating
9 the allegations and claims upon which he wishes to proceed. Plaintiff was forewarned in the
10 screening order that if he does not comply with the screening order, this action will be
11 dismissed. (ECF No. 46 at 20 ¶5.).

12 Plaintiff shall be granted additional time to comply with the screening order.

13 **III. CONCLUSION**

14 Based on the foregoing, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion for reconsideration, filed on July 10, 2015, is DENIED;
- 16 2. Plaintiff is required to comply with the Magistrate Judge's screening order of
17 June 29, 2015;
- 18 3. Within thirty days from the date of service of this order, Plaintiff shall either file
19 a Third Amended Complaint or notify the court that he is willing to proceed
20 only on the claims found cognizable by the court, pursuant to the Magistrate
21 Judge's screening order of June 29, 2015; and
- 22 4. If Plaintiff fails to comply with this order, this action will be dismissed.

23 IT IS SO ORDERED.
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25 Dated: July 16, 2015

/s/ Lawrence J. O'Neill
26 UNITED STATES DISTRICT JUDGE
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