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

JOSEPH RAYMOND MCCOY,)	Case No.: 1:12-cv-000983-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER ADOPTING FINDINGS AND
v.)	RECOMMENDATIONS, DENYING PLAINTIFF’S
)	MOTION FOR PRELIMINARY INJUNCTION,
STRONACH, et al.,)	AND DENYING PLAINTIFF’S MOTION FOR
)	RECONSIDERATION
Defendants.)	
)	[ECF Nos. 133, 134, 135]
)	

Plaintiff Joseph Raymond McCoy is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On May 16, 2019, the Magistrate Judge issued Findings and Recommendations recommending that Plaintiff’s motion for a preliminary injunction be denied. The Findings and Recommendation was served on Plaintiff and contained notice that objections were to be filed within fourteen days.

On May 22, 2019, Plaintiff filed a motion for reconsideration of the May 16, 2019, Findings and Recommendations.

On June 5, 2019, Plaintiff filed objections to the Findings and Recommendation.

In his motion for reconsideration, Plaintiff argues that the Magistrate Judge erred by issuing the Findings and Recommendations without a response by Defendants pursuant to Local Rule 230(1). Local Rule 230(1) provides, in pertinent part, that an opposition to the granting of a motion shall be served and filed by the responding party not more than twenty-one (21) days after the date of service

1 of the motion. If the responding party has no opposition, then he shall serve and file a statement to
2 that effect. Local Rule 230(1). Here, Plaintiff has failed to demonstrate any prejudice as a result of the
3 failure to await an opposition or statement of non-opposition by Defendants. Nor has Plaintiff
4 presented any viable argument that an opposition or statement of non-opposition would have changed
5 the analysis set forth in the May 16, 2019 Findings and Recommendations. Rather, the Magistrate
6 Judge recommended that Plaintiff's motion for preliminary injunction failed as a matter of law.
7 Accordingly, Plaintiff's motion for reconsideration will be denied.

8 In recommending the denial of Plaintiff's motion for preliminary injunction, the Magistrate
9 Judge determined that the Court lacked jurisdiction over Shu Sherman who is not a Defendant in this
10 action. In his objections, Plaintiff contends that Stu Sherman is a Defendant in this action because he
11 is the successor of former Warden Ken Clark. Although Plaintiff may have named Ken Clark in the
12 original and amended complaints, this action is not proceeding against Ken Clark as he was dismissed
13 from the action on March 21, 2014, when the Court ordered that this action proceed against
14 Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann. Thus, Ken Clark has never
15 been served with process or made an appearance in this action.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de*
17 *novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's objections, the
18 Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

19 Based on the foregoing, it is HEREBY ORDERED that:

- 20 1. The Findings and Recommendation filed on May 16, 2019 (Doc. No. 134) is adopted in full;
21 2. Plaintiff's motion for a preliminary injunction (Doc. No. 133) is denied; and
22 3. Plaintiff's motion for reconsideration (Doc. No. 135) is denied.

23
24 IT IS SO ORDERED.

25 Dated: July 11, 2019

26 
27 SENIOR DISTRICT JUDGE
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