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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARL WARNER,

 Plaintiff,

 v.

MATTHEW L. CATE, et al.,

 Defendants.

CASE NO. 1:12-cv-01146-LJO-MJS (PC)

**ORDER DENYING MOTION FOR
SUBPOENAS (ECF No. 79) AND MOTION
FOR RECONSIDERATION (ECF No. 78)
AS MOOT**

Plaintiff is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Walker, Davis,¹ Prokop, Spralding, and Fellows on Plaintiff's Eighth Amendment failure to protect claim. Before the Court are Plaintiff's motion for subpoenas, filed August 19, 2015 (ECF No. 79) and his motion for reconsideration, filed August 26, 2015. (ECF No. 78).

In these motions, Plaintiff requests the court (1) subpoena unidentified individuals to testify at an evidentiary hearing scheduled for September 4, 2015, and 2) to reconsider the scope of the issues to be considered at the hearing. Aside from Plaintiff's failure to specify the individuals to be subpoenaed, Plaintiff filed his motion for subpoenas after the deadline to notify Defendants of the witnesses he planned to call at the hearing had passed. Neither the motion for subpoenas nor the motion for reconsideration was filed far enough in advance of the hearing to allow Defendants time to respond.

On September 4, 2015, the Court held an evidentiary hearing on the issue of

¹ Formerly Defendant D. McGaha.

1 exhaustion. (ECF No. 80.) Subpoenas did not issue for any witnesses for Plaintiff, and
2 evidence was taken. Accordingly, the Court finds both the motion for subpoenas and the
3 motion for reconsideration to be moot.

4 Based on the foregoing, the Court HEREBY ORDERS:

- 5 1. Plaintiff's motion for subpoenas (ECF No. 79) is DENIED as moot; and
- 6 2. Plaintiff's motion for reconsideration (ECF No. 78) is DENIED as moot.

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8 IT IS SO ORDERED.

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Dated: September 21, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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