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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CURTIS LEE HENDERSON,

12 Plaintiff,

13 vs.

14 SMITH, et al.,

15 Defendants.
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1:13-cv-00287-LJO-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION OF MAGISTRATE
JUDGE'S ORDER
(Doc. 21.)

ORDER FOR PLAINTIFF TO COMPLY
WITH MAGISTRATE JUDGE'S ORDER
OF MAY 8, 2014

19 **I. BACKGROUND**

20 Curtis Lee Henderson ("Plaintiff") is a state prisoner proceeding pro se and in forma
21 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
22 commencing this action on February 27, 2013. (Doc. 1.) The Magistrate Judge screened the
23 Complaint pursuant to 28 U.S.C. § 1915A and issued an order on May 8, 2014, dismissing the
24 Complaint for failure to state a claim, with leave to amend. (Doc. 20.) Plaintiff was granted
25 thirty days in which to file an amended complaint. (Id.)

26 On May 19, 2014, Plaintiff filed objections to the Magistrate Judge's order of May 8,
27 2014, directed to the District Judge. (Doc. 21.) The court construes Plaintiff's objections as a
28 motion for reconsideration by the District Judge.

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

2 **A. Legal Standard**

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

10 **B. Plaintiff's Objections**

11 Plaintiff argues that the Magistrate Judge lacked jurisdiction to issue the order
12 dismissing his complaint with leave to amend, because Plaintiff has not consented to the
13 jurisdiction of a Magistrate Judge in this case. Plaintiff argues that the Magistrate Judge should
14 have issued findings and recommendations for the consideration of the District Judge. Plaintiff
15 asserts that the "district court may resolve the case differently." (Objections, Doc. 21 at 1.)

16 **C. Discussion**

17 28 U.S.C. § 636(b)(1)(A),(B) provides that:

18 (A) a judge may designate a magistrate judge to hear and determine any pretrial
19 matter pending before the court, except a motion for injunctive relief, for
20 judgment on the pleadings, for summary judgment, to dismiss or quash an
21 indictment or information made by the defendant, to suppress evidence in a
22 criminal case, to dismiss or to permit maintenance of a class action, to dismiss
23 for failure to state a claim upon which relief may be granted, and to
24 involuntarily dismiss an action. A judge of the court may reconsider any pretrial
25 matter under this subparagraph (A) where it has been shown that the magistrate
26 judge's order is clearly erroneous or contrary to law.

27 (B) a judge may also designate a magistrate judge to conduct hearings, including
28 evidentiary hearings, and to submit to a judge of the court proposed findings of
fact and recommendations for the disposition, by a judge of the court, of any
motion, excepted in subparagraph (A), of applications for posttrial relief made
by individuals convicted of criminal offenses and of prisoner petitions
challenging conditions of confinement.

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1 Plaintiff was informed in the Magistrate Judge’s order that “[t]his proceeding was
2 referred to this Court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).” (Doc. 20 at 1:16-
3 17.) As a result of this referral, the Magistrate Judge was authorized to screen Plaintiff’s
4 Complaint under 28 U.S.C. § 1915A and dismiss the Complaint with leave to amend.
5 Plaintiff’s decision to consent to or decline Magistrate Judge jurisdiction does not affect the
6 referral of this case to the Magistrate Judge for pretrial, non-dispositive matters, and the order
7 of May 8, 2014, is not dispositive. Therefore, the court does not find that the Magistrate
8 Judge’s issuance of the order of May 8, 2014, was clearly erroneous or contrary to law under
9 28 U.S.C. § 636(b)(1)(A), and Plaintiff’s motion for reconsideration shall be denied.

10 **III. CONCLUSION**

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

- 12 1. Plaintiff’s motion for reconsideration of the Magistrate Judge’s order issued on
13 May 8, 2014, is DENIED; and
- 14 2. Plaintiff is required to comply with the Magistrate Judge’s order of May 8,
15 2014.

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17 IT IS SO ORDERED.

18 Dated: May 21, 2014

/s/ Lawrence J. O’Neill
UNITED STATES DISTRICT JUDGE