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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA ,  
Plaintiff,  
v.  
ROUCH,  
Defendant.

CASE NO. 1:13-cv-00289-LJO-MJS (PC)  
**ORDER DENYING MOTION FOR RECONSIDERATION**  
**(ECF No. 114)**  
**ORDER DENYING MOTION TO AMEND/SUPPLEMENT MOTION FOR RECONSIDERATION**  
**(ECF No. 115)**

**I. PROCEDURAL HISTORY**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. (ECF Nos. 7 & 17.) The action proceeds against Defendant Rouch on Plaintiff's Eighth Amendment inadequate medical care claim. (ECF No. 18.) Specifically, Plaintiff alleges that he suffers from chronic pain in his leg that worsens in cold weather, and that Defendant Rouch was deliberately indifferent to this serious medical need by refusing to provide thermal underwear. (ECF No. 17.)

On August 19, 2014, Defendant filed a motion for summary judgment on the ground Plaintiff failed to exhaust his administrative remedies. (ECF No. 81.) The motion

1 advised Plaintiff of his obligation to file an opposition within twenty-one days. (Id.) On  
2 August 27, 2014, Plaintiff filed a motion for the appointment of an expert to oppose  
3 Defendant's summary judgment motion and a motion for appointment of counsel. (ECF  
4 No. 84.) He did not timely file an opposition to Defendant's motion or seek an extension  
5 of time to do so.

6 On December 11, 2014, the Court denied Plaintiff's motion for the appointment of  
7 counsel and motion for appointment of an expert. (ECF No. 103.) The Court ordered  
8 Plaintiff to file an opposition to the motion for summary judgment within twenty-one days.  
9 (Id.) Plaintiff failed to do so. Accordingly, on January 15, 2015, the undersigned issued  
10 findings and a recommendation to dismiss Plaintiff's action for failure to obey a court  
11 order and failure to prosecute. (ECF No. 104.)

12 On January 29, 2015, Plaintiff filed a motion for reconsideration of the findings  
13 and recommendation. (ECF No. 105.) On February 3, 2015, the undersigned took  
14 Plaintiff's motion under advisement and afforded Plaintiff an opportunity to show cause  
15 why his time to oppose the summary judgment motion should be extended. Plaintiff filed  
16 his response on February 19, 2015. (ECF No. 109.) The motion for reconsideration was  
17 denied on February 24, 2015. (ECF No. 110). Thereafter, on March 6, 2015, the District  
18 Judge assigned to the case adopted the findings and recommendation in part and  
19 dismissed the action for failure to obey a Court order and failure to prosecute. (ECF No.  
20 112).

21 Before the Court is Plaintiff's March 12, 2015 motion for reconsideration of the  
22 order denying his January 29, 2015 motion for reconsideration of the findings and  
23 recommendations. (ECF No. 114.) Also before the Court is Plaintiff's March 16, 2015  
24 motion to amend/supplement the January 29, 2015 motion for reconsideration. (ECF No.  
25 115.)

26 Plaintiff seeks further reconsideration of the undersigned's findings and  
27 recommendation. However, the findings and recommendation have been adopted by the  
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1 District Judge. (ECF No. 112.) The undersigned cannot provide further relief in relation to  
2 the findings and recommendation. Accordingly, Plaintiff's motions for further review of his  
3 prior motion for reconsideration and to supplement that motion are moot. The Court  
4 notes that Plaintiff has filed a separate motion for reconsideration of the District Judge's  
5 order adopting the findings and recommendation. (ECF No. 118.) That motion will be  
6 addressed by the District Judge

7 Accordingly, based on the foregoing, Plaintiff's motion for reconsideration (ECF  
8 No. 114) and motion to amend/supplement (ECF No. 115) are HEREBY DENIED as  
9 moot.

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11 IT IS SO ORDERED.

12 Dated: April 26, 2015

1st Michael J. Seng  
13 UNITED STATES MAGISTRATE JUDGE

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