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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE AUGUSTINE MAYORGA,
Plaintiff,
v.
ESLICK, et al.,
Defendants.

Case No. 1:14-cv-00099-LJO-SKO (PC)
ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 13)

Plaintiff Jose Augustine Mayorga, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 23, 2014. On February 27, 2014, Plaintiff filed a motion seeking reconsideration of the Magistrate Judge’s order denying his motion for the appointment of counsel.

Reconsideration motions are committed to the discretion of the trial court. *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (en banc); *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). A party seeking reconsideration must set forth facts or law of a strongly convincing nature to induce the court to reverse a prior decision. *See e.g., Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F.Supp. 656, 665 (E.D. Cal. 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

This Court reviews a motion to reconsider a Magistrate Judge’s ruling under the “clearly erroneous or contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P.

1 72(a). As such, the court may only set aside those portions of a Magistrate Judge’s order that are
2 either clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); *see also Grimes v. City and*
3 *County of San Francisco*, 951 F.2d 236, 240 (9th Cir.1991) (discovery sanctions are non-
4 dispositive pretrial matters that are reviewed for clear error under Fed. R. Civ. P. 72(a)).

5 A magistrate judge’s factual findings are “clearly erroneous” when the district court is left
6 with the definite and firm conviction that a mistake has been committed. *Security Farms v.*
7 *International Bhd. of Teamsters*, 124 F.3d 999, 1014 (9th Cir. 1997); *Green v. Baca*, 219 F.R.D.
8 485, 489 (C.D. Cal. 2003). The “‘clearly erroneous’ standard is significantly deferential.”
9 *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for*
10 *Southern California*, 508 U.S. 602, 623, 113 S.Ct. 2264 (1993).

11 The “contrary to law” standard allows independent, plenary review of purely legal
12 determinations by the magistrate judge. *See Haines v. Liggett Group, Inc.*, 975 F.2d 81, 91 (3rd
13 Cir.1992); *Green*, 219 F.R.D. at 489; *see also Osband v. Woodford*, 290 F.3d 1036, 1041 (9th Cir.
14 2002). “An order is contrary to law when it fails to apply or misapplies relevant statutes, case law,
15 or rules of procedure.” *Knutson v. Blue Cross & Blue Shield of Minn.*, 254 F.R.D. 553, 556 (D.
16 Minn. 2008); *Rathgaber v. Town of Oyster Bay*, 492 F.Supp.2d 130, 137 (E.D.N.Y. 2007); *Surles*
17 *v. Air France*, 210 F.Supp.2d 501, 502 (S.D.N.Y. 2001); *see Adolph Coors Co. v. Wallace*, 570
18 F.Supp. 202, 205 (N.D. Cal. 1983).

19 “Pretrial orders of a magistrate under § 636(b)(1)(A) . . . are not subject to a de novo
20 determination. . . .” *Merritt v. International Bro. of Boilermakers*, 649 F.2d 1013, 1017 (5th Cir.
21 1981). “The reviewing court may not simply substitute its judgment for that of the deciding court.”
22 *Grimes*, 951 F.2d at 241; *see Phoenix Engineering & Supply v. Universal Elec.*, 104 F.3d 1137,
23 1141 (9th Cir. 1997) (“the clearly erroneous standard allows [for] great deference”). A district
24 court is able to overturn a magistrate judge’s ruling “‘only if the district court is left with the
25 definite and firm conviction that a mistake has been made.’” *Computer Economics, Inc. v.*
26 *Gartner Group, Inc.*, 50 F.Supp.2d 980, 983 (S.D. Cal. 1999) (quoting *Weeks v. Samsung Heavy*
27 *Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997)). Nonetheless, “[m]otions for reconsideration
28 are disfavored, however, and are not the place for parties to make new arguments not raised in

1 their original briefs.” *Hendon v. Baroya*, 2012 WL 995757, at *1 (E.D. Cal. 2012) (citing
2 *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001); *Northwest Acceptance Corp. v.*
3 *Lynnwood Equip., Inc.*, 841 F.2d 918, 925–26 (9th Cir. 1988)).

4 The Magistrate Judge’s order denying Plaintiff’s motion for the appointment of counsel,
5 without prejudice, was neither clearly erroneous nor contrary to law. Plaintiff was informed that
6 the Court would consider whether counsel should be appointed in light of Plaintiff’s asserted
7 mental health issues when his complaint is reviewed on the merits, as the Court must evaluate the
8 likelihood of success on the merits and the ability of Plaintiff to articulate his claims *pro se* in light
9 of the complexity of the legal issues involved. 28 U.S.C. § 1915(e)(1); *Palmer v. Valdez*, 560
10 F.3d 965, 970 (9th Cir. 2009); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

11 To the extent Plaintiff’s motion is construed as seeking to have his complaint screened
12 immediately, his request is rejected. The Eastern District of California is laboring under one of the
13 heaviest caseloads per judge in the nation and a significant percentage of those cases are pro se
14 prisoner civil rights cases. Plaintiff may be assured that his complaint will be screened in due
15 course, but he lacks legal entitlement to demand that his case be moved to the front of line for
16 review. 28 U.S.C. § 1915A.

17 Plaintiff’s motion for reconsideration is HEREBY DENIED, with prejudice.
18 IT IS SO ORDERED.

19 Dated: February 28, 2014

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

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