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

LEO CIENFUEGOS,  
  
                    Plaintiff,  
  
v.  
  
GIPSON, et al.,  
  
                    Defendants.

Case No. 1:14-cv-00215 AWI DLB PC  
  
ORDER DENYING PLAINTIFF’S MOTION  
FOR RECONSIDERATION  
(Document 14)  
  
ORDER GRANTING PLAINTIFF LEAVE TO  
FILE AN AMENDED COMPLAINT

Plaintiff Leo Cienfuegos (“Plaintiff”) is a California state prisoner proceeding pro se in this action pursuant to 42 U.S.C. § 1983.<sup>1</sup> Plaintiff filed his complaint on February 18, 2014.

On July 18, 2014, the Court screened Plaintiff’s complaint and dismissed it with leave to amend. The Court allowed Plaintiff to amend his due process challenge to his initial gang validation, but found that the remaining claims could not be cured by amendment.

On August 21, 2014, Plaintiff filed his First Amended Complaint. He filed a motion for reconsideration of the screening order on September 18, 2014.

Plaintiff’s First Amended Complaint is awaiting screening.

**LEGAL STANDARD**

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

<sup>1</sup> Plaintiff paid the filing fee and is not proceeding in forma pauperis.

1 (D.C. Cir. 1987). A party seeking reconsideration must set forth facts or law of a strongly  
2 convincing nature to induce the court to reverse a prior decision. *See e.g., Kern-Tulare Water Dist.*  
3 *v. City of Bakersfield*, 634 F.Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part and rev'd in part on other*  
4 *grounds*, 828 F.2d 514 (9th Cir. 1987).

5 This Court reviews a motion to reconsider a Magistrate Judge's ruling under the "clearly  
6 erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed.R.Civ.P. 72(a).  
7 As such, the court may only set aside those portions of a Magistrate Judge's order that are either  
8 clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); *see also Grimes v. City and County of*  
9 *San Francisco*, 951 F.2d 236, 240 (9th Cir.1991) (discovery sanctions are non-dispositive pretrial  
10 matters that are reviewed for clear error under Fed. R. Civ. P. 72(a)).

11 A magistrate judge's factual findings are "clearly erroneous" when the district court is left  
12 with the definite and firm conviction that a mistake has been committed. *Security Farms v.*  
13 *International Bhd. of Teamsters*, 124 F.3d 999, 1014 (9th Cir. 1997); *Green v. Baca*, 219 F.R.D.  
14 485, 489 (C.D. Cal. 2003). The "'clearly erroneous' standard is significantly deferential." *Concrete*  
15 *Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern*  
16 *California*, 508 U.S. 602, 623, 113 S.Ct. 2264 (1993).

17 The "contrary to law" standard allows independent, plenary review of purely legal  
18 determinations by the magistrate judge. *See Haines v. Liggett Group, Inc.*, 975 F.2d 81, 91 (3rd  
19 Cir.1992); *Green*, 219 F.R.D. at 489; *see also Osband v. Woodford*, 290 F.3d 1036, 1041 (9th Cir.  
20 2002). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law,  
21 or rules of procedure." *Knutson v. Blue Cross & Blue Shield of Minn.*, 254 F.R.D. 553, 556 (D.  
22 Minn. 2008); *Rathgaber v. Town of Oyster Bay*, 492 F.Supp.2d 130, 137 (E.D.N.Y. 2007); *Surles v.*  
23 *Air France*, 210 F.Supp.2d 501, 502 (S.D.N.Y. 2001); *see Adolph Coors Co. v. Wallace*, 570  
24 F.Supp. 202, 205 (N.D. Cal. 1983).

25 "Pretrial orders of a magistrate under § 636(b)(1)(A) . . . are not subject to a de novo  
26 determination. . . ." *Merritt v. International Bro. of Boilermakers*, 649 F.2d 1013, 1017 (5th Cir.  
27 1981). "The reviewing court may not simply substitute its judgment for that of the deciding court."  
28 *Grimes*, 951 F.2d at 241; *see Phoenix Engineering & Supply v. Universal Elec.*, 104 F.3d 1137, 1141

1 (9th Cir. 1997) (“the clearly erroneous standard allows [for] great deference”). A district court is  
2 able to overturn a magistrate judge’s ruling “‘only if the district court is left with the definite and  
3 firm conviction that a mistake has been made.’” *Computer Economics, Inc. v. Gartner Group, Inc.*,  
4 50 F.Supp.2d 980, 983 (S.D. Cal. 1999) (quoting *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126  
5 F.3d 926, 943 (7th Cir. 1997)). Nonetheless, “[m]otions for reconsideration are disfavored,  
6 however, and are not the place for parties to make new arguments not raised in their original briefs.”  
7 *Hendon v. Baroya*, 2012 WL 995757, at \*1 (E.D. Cal. 2012) (citing *Zimmerman v. City of Oakland*,  
8 255 F.3d 734, 740 (9th Cir. 2001); *Northwest Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d  
9 918, 925–26 (9th Cir. 1988)).

## 10 DISCUSSION

11 Plaintiff seeks reconsideration of two rulings in the screening order: the dismissal of his  
12 claim alleging denial of meaningful periodic reviews, and the Court’s finding that Plaintiff could not  
13 state an access to courts claim based on Defendants’ alleged refusal to file his inmate appeals.

### 14 A. Denial of Meaningful Periodic Reviews

15 Plaintiff alleged that Defendants’ refusal to review his gang validation once he had been  
16 placed in Ad-Seg violated the Due Process Clause. The Magistrate Judge found, however, that  
17 Plaintiff could not state a claim and explained as follows:

18  
19 Insofar as Plaintiff contends that his reviews were meaningless because  
20 Defendants refused to review his gang validation, he does not state a claim. The Ninth  
21 Circuit has determined that California’s periodic review procedure comports with due  
22 process. See *Torres v. Cate*, 501 Fed. Appx. 662, 662–663 (9th Cir. 2012). Plaintiff alleges  
23 that he was validated on September 26, 2011, and that received hearings on March 5, 2012,  
24 August 9, 2012, March 22, 2013 and September 17, 2013.

25 Even though Plaintiff alleges that Defendants refused to review his gang validation at  
26 these hearings, such a review is not required by due process. Instead, Plaintiff’s periodic  
27 reviews are simply to determine whether his continued housing assignment is proper given  
28 the administrative needs of the prison. *Toussaint v. McCarthy*, 801 F.2d 1080, 1101 (9th  
Cir.1986) (while periodic review of inmate’s segregated confinement is necessary, prison  
officials are not required to allow additional evidence or statements), abrogated in part on  
other grounds in *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).  
Accordingly, Plaintiff fails to state a claim against Defendants Gipson, Lambert, Sexton,  
Campbell, Mayo, Cano, Banks-Graves, Matta, Nickel, and Pina based upon their  
involvement in Plaintiff’s periodic review hearings.

1 In moving for reconsideration, Plaintiff contends that this finding is contrary to law. He  
2 contends that he was consistently told that his gang status would not be reviewed until 2017, making  
3 his periodic reviews meaningless.

4 Plaintiff relies on *Tapia v. Alameida*, 2006 WL 842470, \*10-11 (E.D.Cal. 2006). In *Tapia*,  
5 the court determined on summary judgment that Plaintiff set forth evidence that neither the UCC nor  
6 the ICC, the committees conducting the periodic reviews, had the authority to consider releasing  
7 Plaintiff from the SHU, and that he did not receive a review before an IGI. This was sufficient to  
8 raise a triable issue of fact as to whether plaintiff's periodic reviews were more than "meaningless  
9 gestures." Id.

10 Plaintiff submits in the pending motion, for the first time, classification chronos showing that  
11 his periodic reviews were conducted by the ICC. Although he states in his motion that he is making  
12 the same argument as the *Tapia* plaintiff, such allegations were not included in his complaint. The  
13 Magistrate Judge did not err, therefore, because the correct law was applied based on Plaintiff's  
14 allegations.

15 However, given Plaintiff's allegations that he did not receive required due process when he  
16 was initially validated, the Court questions whether, in such instances, subsequent periodic review of  
17 the initial decision can be meaningful. *See eg. Lopez v. Cook*, 2008 WL 4489898, \*26 (E.D.Cal.  
18 2008). Thus, while the Magistrate Judge's decision was correct, the Court will permit Plaintiff to  
19 file an amended complaint on the periodic review issue.

20 B. Inmate Grievances

21 Finally, Plaintiff argues that his claim relating to the refusal to process inmate grievances is  
22 sufficient to state a denial of access to courts claim. In finding that he did not state a claim, the  
23 Magistrate Judge explained:

24  
25 To the extent Plaintiff believes that the refusal to process his appeals gives rise to a  
26 viable claim for denial of access to the courts, Plaintiff is incorrect. Such a claim accrues  
27 only when an inmate suffers an actual injury, and speculation that the inability to pursue an  
28 appeal will lead to a future litigation injury is insufficient. *Christopher v. Harbury*, 536 U.S.  
403, 415, 122 S.Ct. 2179, 2185-87 (2002); *Lewis v. Casey*, 518 U.S. 343, 351 (1996);  
*Phillips v. Hust*, 588 F.3d 652, 655 (9th Cir. 2009).

1 In support, he cites *Knight v. Nimrod*, 14 Fed.Appx. 921, 922-923 (9th Cir. 2001), an  
2 unpublished decision where the Ninth Circuit determined that allegations that defendant refused to  
3 file a grievance stated a claim for denial of access to courts. However, as this Court has previously  
4 noted, *Knight* is an unpublished opinion and does not constitute authority upon which this Court  
5 must, or even may, rely. *Juarez v. Alameda*, 2006 WL 403839, \*(E.D.Cal. 2006). Second, while  
6 there is a First Amendment right to petition the government for redress of grievances, it is not a  
7 freestanding right. The Magistrate Judge was correct in finding that such claims brought under the  
8 First Amendment require a showing of a resulting actual injury concerning a legal action.

9 Accordingly, Plaintiff's motion for reconsideration on this issue is denied.

10 **ORDER**

11 For these reasons, Plaintiff's motion for reconsideration is DENIED. However, as noted  
12 above, the Court will GRANT Plaintiff an opportunity to file an amended complaint. Plaintiff's  
13 amended complaint SHALL be due thirty (30) days from the date of service of this order.

14 Plaintiff is reminded that an amended complaint supersedes the original complaint, *Lacey v.*  
15 *Maricopa County*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself  
16 without reference to the prior or superseded pleading," Local Rule 220.

17 If Plaintiff does not file an amended complaint within this time, his First Amended  
18 Complaint will be the operative complaint and will be screened in due course.

19  
20 IT IS SO ORDERED.

21 Dated: October 29, 2014

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24 SENIOR DISTRICT JUDGE