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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALBERT HAYES,  
Plaintiff,  
v.  
SCOTT KERNAN, et al.,  
Defendants.

CASE NO. 1:16-cv-01235-AWI-MJS (PC)  
**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DENY  
PLAINTIFF'S MOTION FOR A  
PRELIMINARY INJUNCTION**  
**(ECF No. 16)**  
**ORDER DENYING REQUEST FOR  
RECONSIDERATION OF THE  
MAGISTRATE JUDGE'S SCREENING  
ORDER**  
**(ECF No. 19)**

Plaintiff is a prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff initiated this action on August 22, 2016. (ECF No. 1.) In a screening order issued on December 19, 2016, the Magistrate Judge dismissed Plaintiff's first amended complaint for failure to state a claim, but granted leave to amend. (ECF No. 16.) The Magistrate Judge also issued findings and recommendations to deny Plaintiff's request for a preliminary injunction directing prison officials to assist Plaintiff with his

1 grievances. (Id.) Plaintiff was directed to file his objections within fourteen days.  
2 Plaintiff's objections were filed on January 12, 2017. (ECF No. 19.) Therein, Plaintiff  
3 objects not only to the Magistrate Judge's refusal to enter a preliminary injunction, but  
4 also to the Magistrate Judge's finding that Plaintiff's complaint failed to state a claim.  
5 Plaintiff's objections regarding the Magistrate Judge's screening order are more  
6 appropriately construed as a motion for reconsideration under Rule 72(a) of the Federal  
7 Rules of Civil Procedure.

### 8 **I. Motion for Reconsideration**

9 A Magistrate Judge's screening order is not a final order dispositive of a claim or  
10 defense. Reid v. United States, No. 1:14-cv-01163-LJO-MJS, 2015 WL 2235127, at \*1  
11 (E.D. Cal. May 12, 2015). Under Rule 72(a), a party may object to any nondispositive  
12 orders entered by a magistrate judge. Rule 72(a) then requires the district judge to  
13 "consider timely objections and modify or set aside any part of the order that is clearly  
14 erroneous or is contrary to law." Likewise, Local Rule 303(c) states: "A party seeking  
15 reconsideration of the Magistrate judge's ruling shall file a request for reconsideration by  
16 a Judge and serve the Magistrate judge and all parties. Such request shall specifically  
17 designate the ruling, or part thereof, objected to and the basis for that objection."

18 "A motion for reconsideration should not be granted, absent highly unusual  
19 circumstances, unless the . . . court is presented with newly discovered evidence,  
20 committed clear error, or if there is an intervening change in the controlling law," Marlyn  
21 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).  
22 "A motion for reconsideration may not be used to raise arguments or present evidence  
23 for the first time when they could reasonably have been raised in earlier litigation." Id.  
24 Furthermore, "[a] party seeking reconsideration must show more than a disagreement  
25 with the Court's decision, and 'recapitulation . . .'" of that which was already considered  
26 by the court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d  
27 1111, 1131 (E.D. Cal. 2001) (*quoting* Birmingham v. Sony Corp. of Am., Inc., 820 F.  
28 Supp. 834, 856 (D. N.J. 1992)). Similarly, Local Rule 230(j) requires that a party seeking

1 reconsideration show that “new or different facts or circumstances are claimed to exist  
2 which did not exist or were not shown upon such prior motion, or what other grounds  
3 exist for the motion . . . .”

4 Plaintiff’s filing is difficult to understand. He essentially argues that the factual  
5 allegations contained within the first amended complaint are sufficient to state a cause of  
6 action under the Due Process Clause, the Americans with Disabilities Act, and the Equal  
7 Protection Clause. He points to no new or different facts or circumstances to support his  
8 motion, other than to point out that he “inadvertently” wrote in his complaint that he sued  
9 each Defendant in his individual capacity, when he in fact means to sue them in their  
10 official capacities only.

11 Plaintiff’s first amended complaint was properly dismissed for failure to link any  
12 named Defendant to an act or omission that resulted in the violation of Plaintiff’s rights.  
13 The Magistrate Judge also advised Plaintiff that any claims he wished to make against  
14 Defendants in their official capacities must allege the existence of a policy or practice  
15 that led to the violation of Plaintiff’s rights. To the extent Plaintiff wishes to clarify his  
16 claims, the Magistrate Judge granted him an opportunity to file an amended complaint.  
17 Plaintiff should heed this directive. Plaintiff’s motion for reconsideration will be denied.

18 **II. Findings and Recommendation to Deny Preliminary Injunctive Relief**

19 Plaintiff maintains that he has been and continues to be irreparably harmed by the  
20 conduct of the named Defendants, in that he suffers stress and anxiety, which affects his  
21 mental and physical well-being. Plaintiff argues that at the very least, he should be  
22 granted an opportunity to amend his request for injunctive relief to set forth more facts in  
23 support.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,  
25 the Court has conducted a de novo review of Plaintiff’s request. The Court finds the  
26 findings and recommendations to be supported by the record and by proper analysis.  
27 Plaintiff has made no showing that he is entitled to injunctive relief at this time; indeed,  
28 as Plaintiff has not yet stated a cognizable claim, the Court lacks jurisdiction to direct the

1 actions of Defendants. Zepeda v. United States Immigration Service, 753 F.2d 719, 727  
2 (9th Cir. 1985). The Court will deny his request, albeit without prejudice. If new  
3 circumstances arise in the future that warrant consideration, Plaintiff may renew his  
4 request at that time.

5 Accordingly, it is HEREBY ORDERED that:

- 6 1. The findings and recommendations filed on December 19, 2016 (ECF No.  
7 16) is adopted in full;
- 8 2. Plaintiff's motion for a preliminary injunction (ECF No. 9) is DENIED  
9 without prejudice; and
- 10 3. Plaintiff's motion for reconsideration of the Magistrate Judge's screening  
11 order (ECF No. 19) is DENIED.

12 IT IS SO ORDERED.

13 Dated: June 6, 2017

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15 SENIOR DISTRICT JUDGE

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