

1 cautioned that plaintiff must choose which set of claims he wishes to pursue in this action,
2 because plaintiff could not be allowed to maintain both in one action. (*See id.* at 4.) The court
3 then directed plaintiff to either file an amended complaint or notify the court of his intent to
4 proceed only on his excessive use of force claim. (*Id.* 6–8.) In response to a subsequent
5 ambiguous filing by plaintiff, the assigned magistrate again ordered the plaintiff either file an
6 amended complaint or notify the court of his intent to proceed solely on the cognizable claims.
7 (Doc. No. 12.)

8 On May 1, 2017, plaintiff filed objections to the court’s April 5, 2017 order, requesting
9 that this court reconsider the magistrate judge’s order. (Doc. No. 13.)

10 LEGAL STANDARD

11 Federal Rule of Civil Procedure 72(a) provides that non-dispositive pretrial matters may
12 be referred to and decided by a magistrate judge, subject to review by the assigned district judge.
13 *See also* Local Rule 303(c). The district judge shall modify or set aside any part of the magistrate
14 judge’s order which is “found to be clearly erroneous or contrary to law.” Local Rule 303(f). *See*
15 *also* 28 U.S.C. § 636(b)(1)(A). On a motion to reconsider a magistrate judge’s non-dispositive
16 order, the magistrate judge’s factual determinations are reviewed for clear error, and the
17 magistrate judge’s legal conclusions are reviewed to determine whether they are contrary to law.
18 *United States v. McConney*, 728 F.2d 1195, 1200–01 (9th Cir. 1984), *overruled on other grounds*
19 *by Estate of Merchant v. CIR*, 947 F.2d 1390 (9th Cir. 1991). “A magistrate judge’s decision is
20 ‘contrary to law’ if it applies an incorrect legal standard, fails to consider an element of applicable
21 standard, or fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Martin*
22 *v. Loadholt*, No. 1:10-cv-00156-LJO-MJS, 2014 WL 3563312, at *1 (E.D. Cal. July 18, 2014)
23 (internal quotations and citations omitted).

24 DISCUSSION

25 Here, plaintiff objects to the court’s determination that certain claims are not related.
26 Specifically, plaintiff “admits, and denies no unrelated claims” (Doc. No. 13 at 2.) Having
27 reviewed plaintiff’s complaint, this court finds that the magistrate judge’s prior orders are neither
28 clearly erroneous nor contrary to law. In his complaint, plaintiffs allege two separate set of facts

1 giving rise to two sets of claims against two sets of defendants. The court finds no error in the
2 magistrate judge's conclusions that plaintiff has stated cognizable claims for excessive force and
3 failure to intervene; and that plaintiff has failed to state facts giving rise to a claim of denial of
4 access to the courts. Moreover, this court agrees that even if plaintiff alleged facts sufficient to
5 support all his claims against all named defendants, he cannot proceed on both sets of claims in
6 this action; he must file two separate actions. Accordingly, plaintiff's request for reconsideration
7 of the April 5, 2017 screening order will be denied.

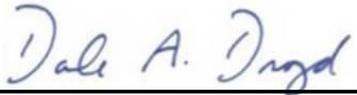
8 CONCLUSION

9 For the reasons set forth above,

- 10 1. Plaintiff's motion for reconsideration of the April 5, 2017 screening order (Doc.
11 No. 13) is denied;
- 12 2. Within **thirty (30) days** from the date of service of this order, plaintiff shall either
13 (a) file a written notice with the court indicating that he wishes to proceed only
14 on his excessive force and failure to intervene claims, recognized as
15 cognizable by the magistrate judge's prior screening order (*see* Doc. No.
16 10);¹
17 (b) file an amended complaint alleging either:
18 (i) plaintiff's excessive use of force and failure to intervene claims; or
19 (ii) plaintiff's denial of access to the courts claim; and
- 20 3. Failure to comply with this order may result in dismissal of this action for failure to
21 obey a court order.

22 IT IS SO ORDERED.

23 Dated: July 6, 2017

24 
25 _____
26 UNITED STATES DISTRICT JUDGE

27 _____
28 ¹ Plaintiff is advised that if he chooses to proceed only on his excessive force and failure to
intervene claims, he may still file a separate action presenting his access to the courts claim.