

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY THOMAS HARDIN, JR.,

Plaintiff,

v.

WARDEN OF HIGH DESERT STATE
PRISON, et al.,

Defendants.

1:17-cv-01314-DAD-JDP

ORDER GRANTING PLAINTIFF’S
REQUEST TO
1. EXTEND THE TIME TO RESPOND
TO THE COURT’S SCREENING
ORDER
2. RECEIVE COPIES OF HIS
ORIGINAL COMPLAINT AND THE
COURT’S SCREENING ORDER

(Doc. Nos. 13, 19.)

ORDER DENYING PLAINTIFF’S MOTION
TO RECONSIDER APPOINTMENT OF
COUNSEL

(Doc. No. 14.)

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought under 42 U.S.C. § 1983. On October 2, 2017, plaintiff filed a complaint initiating this action. (Doc. No. 1.) On April 10, 2018, the court screened plaintiff’s complaint and found that it failed to state a claim. (Doc. No. 11.) The court gave plaintiff thirty days from the date of service of the order to file an amended complaint or to notify the court that he wished to stand on his complaint, subject to findings and recommendations to the district judge consistent with the screening order. (Id.) Plaintiff made a series of filings and in response to the court’s order; each will be discussed in turn.

1 **I. LETTER RE: DECLINED CONSENT AND CURRENT ORDER**

2 On May 3, 2018, plaintiff filed a letter (Doc. No. 13) addressed to U.S. District Judge
3 Dale A. Drozd, the district judge assigned to this case, in response to the court’s screening
4 order. (See Doc. No. 11.) Plaintiff appears to believe that the screening order issued by Judge
5 Seng¹ (id.) is unlawful because plaintiff declined to proceed before a magistrate judge.

6 Where the parties have elected not to consent to the jurisdiction of a magistrate judge, a
7 district judge will remain as the presiding judge on the case and a magistrate judge will remain
8 on the case as the referral judge. Local Rule 302 outlines the division of labor between district
9 judges and magistrate judges in this district. See E.D. Cal. Local Rule 302(a). That Rule
10 provides that a magistrate judge shall perform all duties permitted by statute or other law. Id.
11 Title 28, United States Code, Section 636 provides that a district judge may designate a
12 magistrate judge to “hear and determine any pretrial matter pending before the court, except
13 [certain enumerated motions].” 28 U.S.C. § 636(b)(1)(A). In a civil case such as this one,
14 Local Rule 302(c) lists the duties to be performed by a magistrate judge. See E.D. Cal. Local
15 Rule 302(c). Thus, the magistrate judge, as referral judge, is designated to handle pretrial
16 duties as described in Local Rule 302(c), while the district judge, as presiding judge, will have
17 final say on all dispositive motions and will preside over any trial. See 28 U.S.C. §
18 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b); E.D. Cal. Local Rule 304.

19 Plaintiff complains about Judges Seng’s screening order, which was a non-dispositive
20 order. A party objecting to a non-dispositive order of a magistrate judge may serve and file
21 objections to the order within 14 days after being served with a copy. See 28 U.S.C.
22 § 636(b)(1)(A); Fed. R. Civ. P. 72(a); E.D. Cal. Local Rule 303(b). Failure to file the objection
23 within 14 days results in the order being deemed final. Id. The district judge in the case must
24 consider timely objections and modify or set aside any part of the order that is clearly erroneous
25 or is contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); E.D. Cal. Local Rule

26
27 ¹ On April 30, 2018, this action was reassigned from Magistrate Judge Michael J. Seng to
28 Magistrate Judge Jeremy D. Peterson for all further proceedings. (Doc. No. 12.)

1 303(f.). Plaintiff's letter, which could be construed as objections to Judge Seng's order, was
2 submitted after the 14-day deadline; as such, it was not considered by the assigned district
3 judge. Furthermore, the undersigned judge finds no basis to reconsider the screening order.

4 **II. REQUEST FOR EXTENSION**

5 Plaintiff requested a thirty-day extension to the court's April 10, 2018, screening order
6 because he is "in administrative segregation [and he does] not have any of [his] handwritten
7 logs of past physicians and facilities." (Doc. No. 13.) Good cause appearing, the court grants
8 an extension to the deadline from May 11, 2018, to thirty (30) days from the date of this order.

9 **III. OBJECTION TO AND MOTION TO RECONSIDER ORDER DENYING
10 MOTION TO APPOINT COUNSEL**

11 Plaintiff objects to the court's order denying plaintiff's motion to appoint counsel (Doc.
12 No. 11) and moves for the court to reconsider its conclusion. (Doc. No. 14.) Plaintiff has not
13 asserted substantiated grounds for his motion, and the court denies his request.

14 **A. Legal Standard**

15 Rule 60(b)(6) allows the court to relieve a party from an order on a prior motion for any
16 reason that justifies relief. Under Local Rule 230(j), a party seeking reconsideration must
17 demonstrate "what new or different facts or circumstances are claimed to exist which did not
18 exist or were not shown upon such prior motion, or what other grounds exist for the motion."

19 "A motion for reconsideration should not be granted, absent highly unusual
20 circumstances, unless the district court is presented with newly discovered evidence, committed
21 clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals,*
22 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). "A party seeking
23 reconsideration must show more than a disagreement with the [c]ourt's decision, and
24 recapitulation of the cases and arguments considered by the court before rendering its original
25 decision fails to carry the moving party's burden." *U.S. v. Westlands Water Dist.*, 134 F. Supp.
26 2d 1111, 1131 (E.D. Cal. 2001) (internal quotations omitted). To succeed, a party must set
27 forth facts or law of a strongly convincing nature to induce the court to reverse its prior order.

1 See Kern-Tulare Water Dist. v. City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
2 affirmed in part and reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

3 **B. Analysis**

4 Plaintiff's motion for reconsideration does not present any newly discovered evidence,
5 demonstrate clear error, or set forth any change in the controlling law. Rather, plaintiff argues
6 that an attorney should be appointed to represent him because "irreparable harm, disability,
7 premature death . . . is at hand [and] likely to occur." (Doc. No. 14, at 1.) Plaintiff's assertion
8 is vague and unsubstantiated by any evidence. Accordingly, the court stands by its earlier
9 ruling and denies plaintiff's motion for reconsideration.

10 **IV. DECLARATION**

11 On August 1, 2018, plaintiff filed a document he designated as a "declaration" with the
12 court. (Doc. No. 19.) In it, plaintiff alleges that he has been "stuck in transit and [has] been
13 unable to get any of [his] legal material regarding [his] deliberate indifference medical
14 complaint." (Id.) He requests copies of his original complaint (Doc. No. 1) and the screening
15 order (Doc. No. 11). The court grants plaintiff's request.

16 **V. ORDER**

17 IT IS HEREBY ORDERED that plaintiff's

- 18 1. motion for reconsideration (Doc. No. 14) is DENIED.
19 2. motion requesting copies of court documents (Doc. No. 19) is GRANTED. The clerk
20 of court is instructed to send plaintiff a copy of his original complaint (Doc. No. 1) and
21 the screening order (Doc. No. 11).
22 3. motion for an extension of time to respond to the screening order (Doc. No. 13) is
23 GRANTED. Plaintiff must respond to the court's screening order thirty (30) days from
24 the date of this order.

25
26 IT IS SO ORDERED.

27 Dated: August 15, 2018

28 
UNITED STATES MAGISTRATE JUDGE