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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BRANDON MEEKS,

Plaintiff,

vs.

A. NUNEZ, et al.,

Defendant.

CASE NO. 13cv973-GPC(BGS)

**ORDER OVERRULING
PLAINTIFF'S OBJECTIONS**

[Dkt. Nos. 157, 200.]

A. June 15, 2016 Objection

On June 15, 2016, Plaintiff Brandon Meeks, an inmate proceeding *pro se*, filed an objection to the Court's order filed on May 19, 2016, (Dkt. No. 151), directing Plaintiff to comply with the deposition notice as it is "misguided, contrary to law and clearly erroneous." (Dkt. No. 157 at 1-2.) Plaintiff also argues that, on May 8, 2016, he filed an objection to the Court's order filed on May 4, 2016, (Dkt. No. 145), which was never docketed and never addressed. He further claims that the Magistrate Judge's second amended scheduling order dated May 19, 2016, (Dkt. No. 152), was clearly erroneous and contrary to law.

Plaintiff repeats arguments addressed previously by the undersigned judge and the Court construes his Objections as a motion for reconsideration as there is no

1 provision to object to a district judge's order.¹

2 "Reconsideration is appropriate if the district court (1) is presented with newly
3 discovered evidence; (2) clear error or the initial decision was manifestly unjust, or (3)
4 if there is an intervening change in controlling law." Sch. Dist. No. 1J, Multnomah
5 County, Or. v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993); see Orange Street
6 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999) ("[A] motion for reconsideration
7 should not be granted, absent highly unusual circumstances, unless the district court
8 is presented with newly discovered evidence, committed clear error, or if there is an
9 intervening change in the controlling law.") "A motion for reconsideration cannot be
10 used to ask the Court to rethink what the Court has already thought through merely
11 because a party disagrees with the Court's decision. Collins v. D.R. Horton, Inc., 252
12 F. Supp. 2d 936, 938 (D. Az. 2003) (citing United States v. Rezzonico, 32 F. Supp. 2d
13 1112, 1116 (D. Az. 1998)).

14 The arguments presented in the Objection has already been raised and addressed
15 by the undersigned judge. (See Dkt. Nos. 145, 156.) As to his first objection to the
16 Court directing Plaintiff to comply with the deposition notice, the Court explained that
17 while Defendants initially failed to obtain leave of court to depose Plaintiff as required
18 by the Federal Rule of Civil Procedure ("Rule"), "it was not contrary to law for the
19 Magistrate Judge to construe the court's order as granting Defendants' leave of court
20 to depose Plaintiff." (Dkt. No. 145 at 5.) Therefore, the Court directed Plaintiff to
21 comply with the deposition notice. (Id. at 7.) Furthermore, while Plaintiff objects to
22 the Court's prior orders filed May 4, 2016 and May 16, 2016, the Court previously
23 noted that "there is no procedure for Plaintiff to file objections to rulings of the
24 undersigned judge, and Plaintiff provides no legal authority supporting his assertion."

25
26 ¹Plaintiff claims he is entitled to object to any court order under Federal Rule of
27 Civil Procedure 46. However, Rule 46 provides a procedure to object during trial, not
28 to court orders prior to trial. See Schissel v. Wells, No. 07-C-0722, 2007 WL 2116376,
at *7 (E.D. Wis. July 19, 2007) (Plaintiff's objection to court order construed as motion
for reconsideration since no trial has taken place); see e.g., Sprynczynatyk v. Gen.
Motors Corp., 771 F.2d 1112, 1118 (8 Cir. 1985) (applying Rule 46 in context of trial).

1 (Dkt. No. 156 at 2.)

2 As to the objection that the Court never docketed his objection sent on May 8,
3 2016, the Court noted that the docket does not reflect any objection or notice of appeal
4 filed after the Court's order entered on May 4, 2016. (Dkt. No. 156.) Even the
5 Magistrate Judge concluded that the Court is not in possession of any objection or
6 notice of appeal dated May 7, 2016. (Dkt. Nos. 174, 190 at 3.) The Magistrate Judge
7 responded to Plaintiff's concerns and provided him the two opportunities to re-file the
8 Objection he claims he mailed on May 8, 2016, but he has failed to resubmit it. (Dkt.
9 Nos. 174, 190.)

10 Next, Plaintiff objects to the second amended scheduling order of the Magistrate
11 Judge because the date of the case management conference was incorrect, stating
12 October 30, 2014 instead of October 29, 2015. In its prior order, the Court overruled
13 the objection noting that it appeared the error was a typographical mistake as the case
14 management conference was held on October 29, 2015 and there was no prejudice or
15 harm to Plaintiff. (Dkt. No. 156.)

16 Plaintiff has not presented any newly discovered evidence, demonstrated any
17 clear error or any intervening change in controlling law to justify reconsideration of the
18 Court's prior orders. Accordingly, the Court DENIES Plaintiff's motion for
19 reconsideration and OVERRULES his Objection filed on June 15, 2016.

20 **B. October 5, 2016 Objection**

21 On October 5, 2016, Plaintiff filed another Objection to the Magistrate Judge's
22 order, (Dkt. No. 190), denying Plaintiff's motion for reconsideration and ordering
23 Plaintiff to refile his allegedly missing objection dated May 7, 2016. (Dkt. No. 200.)
24 He argues the order was not entered in compliance with the Rules and is erroneous and
25 contrary to law. (Id. at 1.)

26 On July 5, 2016, Plaintiff filed a request for ruling asking that the court file his
27 objections dated May 7, 2016. (Dkt. No. 169.) He claims that after the Court issued
28 its order, dated May 4, 2016, overruling Plaintiff's Objections to Magistrate Judge's

1 discovery ruling and denying Defendants' motion for terminating sanctions, and
2 required that Plaintiff attend his deposition, Plaintiff filed an objection to the Court's
3 order, which was dated May 7, 2016 and mailed on May 8, 2016. (Id.) He claims that
4 Clerk's office has failed to exercise due diligence by not filing his objection. (Id.) On
5 July 14, 2016 the Magistrate Judge denied his request for ruling noting that an
6 objection dated May 7, 2016 was not found on the docket but granted Plaintiff
7 permission to refile his objections. (Dkt. No. 174.)

8 On August 29, 2016, Plaintiff filed an Objection to the Magistrate Judge's order
9 arguing that the Court had not specifically denied receipt of his objection and had
10 circumvented the issue; therefore, he claims the Magistrate Judge's order was
11 misguided and clearly erroneous. (Dkt. No. 185.)

12 On September 2, 2016, the Magistrate Judge construed Plaintiff's Objection as
13 a motion for reconsideration. (Dkt. No. 190.) The court again acknowledged that
14 Plaintiff's objection dated May 7, 2016 is not reflected on the docket and stated that
15 the Court is not in possession of the objection. (Id. at 3.) The Magistrate Judge again
16 granted Plaintiff permission to re-file his objection by September 30, 2016. (Id.)

17 In his instant Objection, it appears Plaintiff is arguing that the undersigned judge
18 should have ruled on his Request for Ruling, (Dkt. No. 169), and Objection to Pretrial
19 Order of the Magistrate Judge, (Dkt. No. 185), instead of the Magistrate Judge.

20 It was not erroneous or contrary to law for the Magistrate Judge to construe
21 Plaintiff's Objection to Magistrate Judge's order as a motion for reconsideration.
22 Plaintiff essentially sought the same relief as his request for ruling and the Magistrate
23 Judge provided him relief by allowing him to re-file his May 7, 2016 objection. To
24 date, Plaintiff has not re-filed that Objection. Moreover, on June 2, 2016, Plaintiff had
25 already raised this issue with the undersigned judge by filing an Objection that
26 included an argument that his May 8, 2016 Objection had not been addressed by the
27 Court. (Dkt. No. 155.) On June 15, 2016, the Court noted that the docket does not
28 reflect any objection or notice of appeal filed after the Court's order entered on May

1 4, 2016. (Dkt. No. 156.) On June 24, 2016, Plaintiff filed a notice of appeal to the
2 Court's order, (Dkt. No. 156), overruling his objections which the Ninth Circuit
3 dismissed for lack of jurisdiction on October 20, 2016. (Dkt. Nos. 165, 204.)

4 Plaintiff has provided no legal authority that the Magistrate Judge's order was
5 erroneous or contrary to law. Thus, the Court OVERRULES Plaintiff's Objection filed
6 On October 5, 2016.

7 **Conclusion**

8 Based on the above, the Court DENIES Plaintiff's motion for reconsideration
9 and OVERRULES Plaintiff's Objection filed on June 15, 2016 and OVERRULES
10 Plaintiff's Objection filed on October 5, 2016.

11 IT IS SO ORDERED.

12 DATED: January 19, 2017

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14 HON. GONZALO P. CURIEL
United States District Judge

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