UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,

Plaintiff,

v.

NANCY GRANNIS, et al.,

Defendants.

CASE NO. 1:12-cv-01739-LJO-MJS (PC)

FINDINGS AND RECOMMENDATION TO DISMISS ACTION WITHOUT PREJUDICE FOR REFUSAL TO AMEND

(ECF No. 35)

FOURTEEN (14) DAY OBJECTION DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on October 25, 2012. (ECF No. 1.) The undersigned screened the complaint on December 27, 2012, dismissed it for failure to comply Federal Rule of Civil Procedure 8(a), and gave Plaintiff leave to amend. (ECF No. 9.) Plaintiff since has challenged the screening order in various ways. His motion for reconsideration (ECF No. 10) was denied by the undersigned (ECF No. 11). His motion for reconsideration by a District Judge (ECF No. 12) was denied by the District Judge assigned to the case (ECF No. 31). Most recently, Plaintiff sought reconsideration of the denial of his motion for reconsideration (ECF No. 32), and that too was denied by the District Judge (ECF No. 33).

On April 15, 2015, the District Judge ordered Plaintiff to file an amended complaint within thirty days. (ECF No. 31.) When Plaintiff failed to comply, the

¹ Plaintiff also appealed the screening order and the revocation of his IFP status. (ECF No. 19.) Although the Ninth Circuit vacated the ruling revoking Plaintiff's IFP status, it declined to address whether Plaintiff's complaint properly was dismissed under Rule 8(a). (ECF No. 26.)

undersigned ordered Plaintiff to show cause why the action should not be dismissed. (ECF No. 34.) Plaintiff responded to the order to show cause by continuing to contest aspects of the initial screening order. (ECF No. 35.)

The Court has awaited Plaintiff's amended pleading for two and a half years. Plaintiff does not presently seek further reconsideration nor indicate his intent to amend the complaint. Accordingly, the Court construes Plaintiff's response to the order to show cause as notice of his intent not to amend as required by the screening order. Plaintiff has exercised his right to stand on his pleading by notifying the Court that he believes he is not required to file an amended complaint. See Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004). In such a situation, the Court is constrained to accept Plaintiff's election and dismiss the action. Id. at 1064.

Accordingly, it is HEREBY RECOMMENDED that the action be DISMISSED, without prejudice, for failure to comply with Rule 8(a).

These findings and recommendation are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with the findings and recommendation, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: June 29, 2015 /s/ Michael J. Seng

JNITED STATES MAGISTRATE JUDGE