

# UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MYRON A. PAYNE, ) 1:13-cv-01214-LJO-BAM (PC)  
Plaintiff, )  
v. ) ORDER DENYING PLAINTIFF'S  
MATTHEW CATE, et al., ) REQUEST FOR JUDICIAL NOTICE  
Defendants. )  
 ) ORDER DENYING PLAINTIFF'S MOTION  
 ) FOR RECONSIDERATION  
 )  
 ) ORDER DISMISSING ACTION WITHOUT  
 ) PREJUDICE  
 ) (ECF Nos. 13, 14)  
)

## I. Background

Plaintiff Myron A. Payne (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on August 5, 2013. On December 12, 2014, the Magistrate Judge dismissed Plaintiff’s complaint for failure to comply with Federal Rules of Civil Procedure 8 and 18. In the dismissal order, the Magistrate Judge provided Plaintiff with instructions regarding compliance with Rules 8 and 18, along with the legal standards that appeared applicable to his claims. Plaintiff was granted thirty days within which to amend his complaint and was advised that if he failed to comply with the Magistrate Judge’s order, then the action would be dismissed for failure to obey a court order. (ECF No. 8.)

(ECCF No. 8)

1       On January 16, 2015, the Magistrate Judge granted Plaintiff's first request for an  
2 extension of time to file his amended complaint. (ECF No. 10.) On February 20, 2015, the  
3 Magistrate Judge granted Plaintiff's second request for an extension of time to file his amended  
4 complaint. Plaintiff's amended complaint was due on or before March 25, 2015. (ECF No. 12.)

5       On March 30, 2015, Plaintiff filed the instant motion for reconsideration of the  
6 Magistrate Judge's order dismissing his complaint with leave to amend. In his moving papers,  
7 Plaintiff expresses his wish "to stand on his complaint." (ECF No. 13, pp. 1, 2.) Plaintiff also  
8 filed a request for judicial notice. (ECF No. 14.)

9       **II. Request for Judicial Notice**

10      Plaintiff requests that the Court take judicial notice of the following cases: (1) Anske v.  
11 Brown, Case No. 09-5796-CW; (2) Castillo v. Alameida, Case No. C-94-2847 MJJ-JCS; (3) In  
12 re James Crawford, Case No. A131276; and (4) Harrison v. I.G.I., Case No. 3:07-cv-03824-SI.

13       The Court may take judicial notice of court records in other cases. United States v.  
14 Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004). In this instance, however, it is unnecessary to  
15 consider other court records in reviewing the Magistrate Judge's screening order and the Court  
16 has not relied on any such records in addressing Plaintiff's motion for reconsideration.  
17 Accordingly, Plaintiff's request for judicial notice shall be denied.

18       **III. Request for Reconsideration**

19      This Court reviews a motion to reconsider a magistrate judge's ruling under the "clearly  
20 erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P.  
21 72(a). As such, the court may only set aside those portions of a Magistrate Judge's order that are  
22 either clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); see also Grimes v. City and  
23 County of San Francisco, 951 F.2d 236, 240 (9th Cir. 1991) (discovery sanctions are non-  
24 dispositive pretrial matters reviewed for clear error under Fed. R. Civ. P. 72(a)).

25       A magistrate judge's factual findings are "clearly erroneous" when the district court is  
26 left with the definite and firm conviction that a mistake has been committed. Security Farms v.  
27 International Bhd. of Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997); Green v. Baca, 219 F.R.D.  
28 485, 489 (C.D. Cal. 2003). The "'clearly erroneous' standard is significantly deferential."

1       Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for  
2       Southern California, 508 U.S. 602, 623, 113 S.Ct. 2264 (1993).

3       The “contrary to law” standard allows independent, plenary review of purely legal  
4 determinations by the magistrate judge. See Haines v. Liggett Group, Inc., 975 F.2d 81, 91 (3rd  
5 Cir. 1992); Green, 219 F.R.D. at 489. An order is “contrary to law when it fails to apply or

6 misapplies relevant statutes, case law, or rules of procedure.” Knutson v. Blue Cross & Blue  
7 Shield of Minn., 254 F.R.D. 553, 556 (D. Minn. 2008) (internal quotations omitted); Rathgaber  
8 v. Town of Oyster Bay, 492 F.Supp.2d 130, 137 (E.D.N.Y. 2007); Surles v. Air France, 210  
9 F.Supp.2d 501, 502 (S.D.N.Y. 2001); see Adolph Coors Co. v. Wallace, 570 F.Supp. 202, 205  
10 (N.D. Cal. 1983).

11       In this instance, the Magistrate Judge dismissed Plaintiff’s complaint, with leave to  
12 amend, for failure to comply with the pleading requirements of Federal Rules of Civil Procedure  
13 8 and 18. (ECF No. 8, pp. 19-20.) With respect to these pleading requirements, Plaintiff first  
14 argues that the Magistrate Judge’s screening order requires him to comply with a heightened  
15 pleading standard. (ECF No. 13, p. 14.) Plaintiff is incorrect. The Magistrate Judge’s screening  
16 order merely requires Plaintiff to comply with the dictate of Rule 8; that is, his complaint must  
17 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”  
18 Fed. R. Civ. P. 8(a). The Magistrate Judge found that Plaintiff’s complaint was not a short and  
19 plain statement of his claims. (ECF No 8, p. 13.) Plaintiff does not contend that his complaint is  
20 short and plain, nor can he, as the complaint exceeds 85 pages, details events occurring at two  
21 different institutions and spans a period of time between 2008 and 2012. Plaintiff also does not  
22 object to the Magistrate Judge’s finding that his complaint is repetitive and lumps all defendants  
23 together in the majority of his claims. (Id.)

24       Plaintiff next argues that his claims are properly joined pursuant to Federal Rules of Civil  
25 Procedure 18 and 20. While Plaintiff references Rules 18 and 20, he makes no showing that the  
26 Magistrate Judge’s order is clearly erroneous or contrary to law. Indeed, he does not identify any  
27 specific error in the Magistrate Judge’s screening order related to improper joinder of claims.  
28 (ECF No. 13, p. 58.) The Court finds that the Magistrate Judge properly determined Plaintiff’s

1 complaint was an improper attempt to pursue unrelated claims against unrelated defendants in a  
2 single action. The Magistrate Judge appropriately allowed Plaintiff an opportunity to amend his  
3 complaint and choose those claims he wished to pursue in this action before the Court either  
4 severed the action or dismissed improperly joined defendants. See Fed. R. Civ. P. 21; see also  
5 Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011) (unrelated claims against different  
6 defendants belong in separate suits and complaints violating that principle should be rejected by  
7 severing the action or by dismissing improperly joined defendants). Furthermore, Plaintiff does  
8 not dispute that his claims involve discrete events against multiple defendants at different  
9 institutions at different times over a period of years.

10 Plaintiff's remaining arguments are unrelated to the Magistrate Judge's reasons for  
11 dismissing Plaintiff's complaint with leave to amend and therefore will not be addressed.

12 The Magistrate Judge's determination that Plaintiff's complaint fails to comply with  
13 Rules 8 and 18 is not clearly erroneous or contrary to law. Accordingly, Plaintiff's motion for  
14 reconsideration shall be denied.

15 **IV. Request to Stand on Complaint**

16 In his moving papers, Plaintiff asserts that he "wishes to stand on his complaint." (ECF  
17 No. 13, pp. 1, 2.) The Court construes Plaintiff's stated desire to stand on his complaint as notice  
18 to the Court that he does not intend to file an amended complaint. Edwards v. Marin Park, Inc.,  
19 356 F.3d 1058, 1064-65 (9th Cir. 2004). In such a situation, the Court is constrained to accept  
20 Plaintiff's election at face value and dismiss the action. Id. at 1064. Accordingly, the Court  
21 shall order that this action be dismissed, without prejudice, for failure to comply with Federal  
22 Rules of Civil Procedure 8 and 18.

23 **V. Conclusion and Order**

24 For the reasons stated above, it is HEREBY ORDERED that:

25 1. Plaintiff's request for judicial notice, filed on March 30, 2015, is DENIED;  
26 2. Plaintiff's motion for reconsideration, filed on March 20, 2015, is DENIED; and

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1           3. This action is DISMISSED, without prejudice, for failure to comply with Rules 8 and  
2           18, and the Clerk of the Court shall enter judgment.

3 **IT IS SO ORDERED**

4 **Dated: April 29, 2015**

5           /s/ **Lawrence J. O'Neill**  
6           United States District Judge  
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