

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

EASTERN DISTRICT OF CALIFORNIA

LARRY CRUZ,)	1:13-cv-01762-BAM (PC)
)	
Plaintiff,)	ORDER REGARDING PLAINTIFF’S
)	MOTION TO SUPPLEMENT RECORD
v.)	(ECF No. 11)
)	
M. ESPINOSA, et al.,)	
)	
Defendants.)	
)	

Plaintiff Larry Cruz (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 1, 2013. On October 28, 2014, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, and found that Plaintiff stated a cognizable claim for violation of the Eighth Amendment against Defendants Dunn, Hiracheta, Silva and Espinosa, but failed to state any other claims. The Court directed Plaintiff to either file a first amended complaint or notify the Court that he did not wish to file an amended complaint and was willing to proceed only on the cognizable Eighth Amendment claim within thirty days from the date of service. (ECF No. 6.)

On December 9, 2014, after more than thirty days had passed and Plaintiff failed to respond to the Court’s order, the Court dismissed the action for failure to obey a court order. (ECF No. 7.) Judgment was entered the same date. (ECF No. 8.)

On January 12, 2015, Plaintiff filed a motion for reconsideration of the order dismissing this action. Plaintiff asserted that he did not receive a copy of the Court’s October 28, 2014 screening order. (ECF No. 9.) On January 23, 2015, the Court granted Plaintiff’s motion for

1 reconsideration, vacated entry of judgment and reopened this action. The Court also directed the
2 Clerk of the Court to mail Plaintiff a copy of the Court's screening order issued on October 28,
3 2014. Additionally, the Court directed Plaintiff, within thirty days, to either (1) file a first
4 amended complaint curing the deficiencies identified by the Court or (2) notify the Court in
5 writing that he does not wish to file a first amended complaint and he is willing to proceed only
6 on the cognizable Eighth Amendment claim against Defendants Dunn, Hiracheta, Silva and
7 Espinosa. (ECF No. 10.)

8 On February 2, 2015, Plaintiff filed the instant motion to supplement the record to
9 demonstrate that he received this Court's October 28, 2014 screening order on January 22, 2015.
10 Plaintiff therefore asks the Court to reconsider its dismissal of this action. (ECF No. 11.) As the
11 Court has granted Plaintiff's request for reconsideration and reopened this action, Plaintiff's
12 request to supplement the record is unnecessary and is HEREBY DENIED.
13 IT IS SO ORDERED.

14 Dated: February 4, 2015

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE