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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MYRON A. PAYNE,

Plaintiff,

vs.

FUJIOKA, et al.,

Defendants.

) 1:13cv02079 AWI DLB PC  
)  
) ORDER DIRECTING PLAINTIFF TO  
) CLARIFY WILLINGNESS TO PROCEED  
) ON COGNIZABLE CLAIMS  
)  
) **TWENTY-ONE DAY DEADLINE**  
)  
)  
)

Plaintiff Myron A. Payne (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed this action on December 23, 2013.

On April 23, 2014, the Court screened Plaintiff’s complaint and determined that it stated a procedural due process claim against Defendants Fujioka, Rodriguez and Gipson. Plaintiff was ordered to either amend his complaint, or notify the Court of his willingness to proceed only on the cognizable claim.

On October 14, 2014, after the Court denied Plaintiff’s motion for reconsideration of the screening order, Plaintiff filed a notice that he wished to proceed only on the cognizable claims.

Pursuant to Plaintiff’s notice, the Court issued Findings and Recommendations on October 17, 2014, recommending (1) that this action go forward against Defendants Fujioka,

1 Rodriguez and Gipson for violation of procedural due process; and (2) dismissing all other  
2 claims.

3 Also on October 17, 2014, the Court issued an order directing Plaintiff to return service  
4 documents so that the United States Marshal could begin the service process. Plaintiff returned  
5 the documents and they have been forwarded to the Marshal for service.

6 On November 24, 2014, despite his prior notification to proceed only on the cognizable  
7 claims, Plaintiff submitted objections to the Findings and Recommendations. Plaintiff's  
8 objections are inconsistent to his willingness to proceed only on the cognizable claims. The  
9 Court also notes that Plaintiff has already been heard on reconsideration of the screening order,  
10 and to the extent his objections raise the same arguments, the Court is bound the prior analysis.

11 Accordingly, within twenty-one (21) days, Plaintiff shall CLARIFY his intent. If  
12 Plaintiff is willing to proceed on the cognizable claims, he shall notify the Court and the  
13 Findings and Recommendations will be adopted and this action will move forward accordingly.  
14 If Plaintiff intends to file an amended complaint, he shall notify the Court and the Findings and  
15 Recommendations will be vacated. **If Plaintiff elects to amend, his amended complaint will**  
16 **be screened in due course and the November 25, 2014, order directing the United States**  
17 **Marshal to serve will be vacated.**

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20 IT IS SO ORDERED.

21 Dated: December 2, 2014

22 /s/ Dennis L. Beck  
23 UNITED STATES MAGISTRATE JUDGE  
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