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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDDIE YARBROUGH,
Plaintiff,
v.
MARIN, et al.,
Defendants.

Case No. 1:17-cv-00185-BAM (PC)
**ORDER DIRECTING PLAINTIFF TO FILE
NOTICE CLARIFYING HIS INTENT**
(ECF Nos. 13, 14)
FOURTEEN (14) DAY DEADLINE

Plaintiff Eddie Yarbrough (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action.

On December 6, 2017, the Court issued a screening order granting Plaintiff leave to file an amended complaint within thirty (30) days. (ECF No. 12.) The Court expressly warned Plaintiff that the failure to file an amended complaint in compliance with the Court’s order would result in a recommendation for dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (Id. at 13.) Plaintiff’s second amended complaint was due on or before January 8, 2018. Plaintiff failed to file an amended complaint or otherwise communicate with the Court.

Accordingly, on January 19, 2018, the Court issued findings and recommendations that this action be dismissed, with prejudice, due to Plaintiff’s failure to state a claim, failure to obey a Court order, and failure to prosecute. (ECF No. 13.) Those findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within

1 fourteen (14) days after service. (Id. at 13.)

2 On February 1, 2018, Plaintiff filed the instant “Consent to Findings and Dismissal.”
3 (ECF No. 14.) Plaintiff does not explain his failure to file a second amended complaint in
4 response to the Court’s December 6, 2017, order. Rather, Plaintiff states that he consents to the
5 recommendations to dismiss this action, because after adding all of the true facts to the complaint,
6 the Court has stated that he has still failed to state a claim. Plaintiff states that he is therefore
7 “forced to consent to the dismissal of this action.” (Id.)

8 Based on this filing, it is unclear to the Court whether Plaintiff intends to voluntarily
9 dismiss this action, without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i),
10 or whether Plaintiff merely has no objection to the Court’s recommendation that this action be
11 dismissed, with prejudice, due to Plaintiff’s failure to state a claim, failure to obey a Court order,
12 and failure to prosecute.

13 Accordingly, within **fourteen (14) days** from the date of service of this order, Plaintiff
14 shall clarify, in writing, whether he intends to voluntarily dismiss this action, pursuant to Rule 41,
15 or whether he merely has no objection to the Court’s recommendation that this action be
16 dismissed, with prejudice.

17
18 IT IS SO ORDERED.

19 Dated: February 5, 2018

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