

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DARNELLE PIERCE.

Plaintiff.

V.

STONE.

### Defendant

Case No. 1:17-cv-01614-DAD-BAM (PC)

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 9)

**ORDER DIRECTING CLERK OF COURT TO  
RE-SERVE PLAINTIFF WITH ORDER RE  
CONSENT OR REQUEST FOR  
REASSIGNMENT**

## **THIRTY (30) DAY DEADLINE**

Plaintiff Darnelle Pierce (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On December 5, 2017, the Court ordered Plaintiff to either consent to or decline Magistrate Judge jurisdiction. (ECF No. 3.) On January 18, 2018, the Court issued a second order requiring Plaintiff to either consent to or decline Magistrate Judge jurisdiction within thirty (30) days. (ECF No. 8.) Plaintiff failed to consent to or decline Magistrate Judge jurisdiction within the relevant time periods. Thus, on March 1, 2018, the Court issued findings and recommendations to dismiss this action, without prejudice, for failure to obey court orders and failure to prosecute. (ECF No. 9.) Those findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (Id. at 3.)

On March 28, 2018, Plaintiff filed objections to the findings and recommendations in the form of a letter to the Court. (ECF No. 10.) Plaintiff states that he has responded to every letter received from the Court as soon as he has received them, and has followed all of the requests given to him. In addition, he states that once mail leaves his hands, it is out of his control. (Id.)

As it appears that Plaintiff did not receive the Court's prior orders regarding his consent or request for reassignment, the Court finds good cause to vacate the pending findings and recommendations and permit Plaintiff a **final** opportunity to respond to the Court's orders. Plaintiff should not be penalized for failure to obey court orders that he did not receive.

Accordingly, IT IS HEREBY ORDERED as follows:

1. The findings and recommendations issued on March 1, 2018, (ECF No. 9), are VACATED;
2. The Clerk of the Court is directed to re-serve Plaintiff with a new order re consent or request for reassignment;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall complete and return the order re consent or request for reassignment to the Court; and
4. **If Plaintiff fails to comply with this order, this action will be dismissed, without prejudice, for failure to obey court orders and failure to prosecute.**

IT IS SO ORDERED.

Dated: **April 2, 2018**

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