UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH HARVEY,

Plaintiff,

v.

J. BARBOUR,

Defendant.

No. 2:12-cv-02029-KJM-AC

ORDER

This matter is before the court on defendant J. Barbour's request for reconsideration of the magistrate judge's April 25, 2016 order denying defendant's motion to dismiss for failure to state a claim and requiring defendant to answer the second amended complaint (ECF No. 36). Defendant contends the magistrate judge lacks jurisdiction to finally decide defendant's motion to dismiss under 28 U.S.C. § 636(b)(1)(A), because the parties did not consent to the jurisdiction of a United States magistrate judge. ECF No. 37 at 1, 4–5 (citing 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 73; *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993)). Defendant requests that the court vacate the April 25, 2016 order and direct the magistrate judge to instead submit proposed findings of fact and recommendations for disposition. *Id.* at 5. Alternatively, if the court construes the April 25, 2016 order as findings and recommendations,

defendant objects to the findings and recommendations and requests that the court conduct a *de novo* review of defendant's motion to dismiss. *Id.*

In the interest of judicial economy, the court construes the April 25, 2016 order as findings and recommendations and conducts a *de novo* review of defendant's motion to dismiss in accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f). Having carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The court construes the magistrate judge's April 25, 2016 order as findings and recommendations, which the court adopts in full; and

2. The court denies defendant's motion to dismiss (ECF No. 32). Defendant shall file an answer to the second amended complaint within fourteen (14) days of the date this order is filed.

IT IS SO ORDERED.

DATED: June 22, 2016

UNITED STATES DISTRICT JUDGE