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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,
Plaintiff,
v.
EDMUND G. BROWN, et al.,
Defendants.

No. 2:14-cv-337-JAM-EFB P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On May 21, 2014, the court filed findings and recommendations recommending that this action be dismissed for failure to state a claim. ECF No. 13. After several extensions of time, plaintiff filed objections to the findings and recommendations, along with an amended complaint. ECF Nos. 22, 24. Paradoxically, he also filed a motion “to withdraw this Civil Rights Complaint.” ECF No. 23.

A plaintiff may voluntarily dismiss an action without a court order if he files a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a). Here, the timing is right for a Rule 41(a) notice of voluntary dismissal. However, the court cannot so construe plaintiff’s “motion to withdraw” in light of his contradictory filings -- objections to the recommendation of dismissal and an amended complaint.

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Accordingly, IT IS HEREBY ORDERED that within 21 days of the date of this order, plaintiff may file a Rule 41(a) notice of dismissal if his intention is to dismiss this action without prejudice and without a court order. If no such notice is filed, the findings and recommendations, along with plaintiff's objections thereto, will be submitted for resolution to the assigned district judge.

DATED: September 10, 2014.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE