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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER GIFFORD
Plaintiff,
v.
ROBERT PUCKETT, SR., et al.,
Defendants.

No. 2:16-cv-0955 KJM GGH

ORDER

Plaintiff seeks reconsideration of the magistrate judge’s order of April 7, 2017¹ which, *inter alia*, struck the Second Amended Complaint as being in violation of the previously assigned magistrate judge’s order that any Second Amended Complaint not exceed 25 pages. The chronology of court events leading to the April 7 order striking the complaint is as follows:

- 5/26/16 Previously assigned magistrate judge dismisses plaintiff’s original complaint with thirty days’ leave to amend and information regarding the filing of a proper complaint. ECF No. 3
- 6/15/16 Plaintiff files First Amended Complaint. ECF No. 5.
- 6/20/16 Previously assigned magistrate judge dismisses First Amended Complaint with leave to amend, requiring that any amended complaint not exceed 25 pages. ECF No. 6.

¹ Plaintiff captions his Request for Reconsideration as seeking review of the “April 7” order, but in the text references the “April 6” order. Because no order was entered on April 6, the court construes the request as directed to the April 7 order.

- 1 8/24/16 In addressing plaintiff’s “objection” to her June 20 order, previously
2 assigned magistrate judge once again grants leave to amend, requiring that
3 any amended complaint not exceed 25 pages. ECF No. 6.
- 4 12/5/16 Previously assigned magistrate judge issues order granting plaintiff’s
5 request that his in forma pauperis (IFP) status be withdrawn, and providing
6 another 30 days for filing an amended complaint; 25 page restriction not
7 modified by order. ECF Nos. 10, 11.
- 8 2/1/17 After an additional extension of time to do so, ECF No. 13, plaintiff files
9 his Second Amended Complaint, comprising 148 pages. ECF No. 14
- 10 3/29/17 The assigned district judge relates this case to the *Harrell* case, case no.
11 2:15-cv-1495, without consolidating the cases.
- 12 4/7/17 The assigned magistrate judge strikes the Second Amended Complaint as
13 not compliant with the court’s previously ordered page limitation.

14 In his request for reconsideration, plaintiff expresses his belief that the previously
15 assigned magistrate judge “accepted” the Second Amended Complaint because the Clerk of the
16 Court entered a Scheduling Order under Eastern District of California Local Rule 240, ECF No.
17 16, and issued Summons, ECF No. 17. The Clerk’s actions, however, are purely ministerial and
18 triggered by the filing of the complaint alone; they are not the equivalent of an order issued by a
19 magistrate judge of this court. The ministerial actions of the Clerk did not vacate the magistrate
20 judge’s orders of June 20 and August 24, 2016, modified on December 5, 2016 only as to the time
21 for filing of an amended complaint. Plaintiff did not comply with the substantive terms of the
22 June 20 and August 24 orders.

23 A magistrate judge’s order will be upheld unless it is clearly erroneous or contrary to law.
24 28 U.S.C. § 636 (b)(1)(A). The April 7 order is not clearly erroneous or contrary to law.

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In light of the foregoing, IT IS THEREFORE ORDERED that:

Plaintiff's Request for Reconsideration of the April 7, 2017 Order, ECF No. 61, is

DENIED.

DATED: May 19, 2017.



UNITED STATES DISTRICT JUDGE