

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

STEVEN J. HAYS

PLAINTIFF

v.

Civil No. 09-5121

CALIFORNIA HIGHWAY PATROL
and THE STATE OF CALIFORNIA

DEFENDANTS

O R D E R

Now on this 9th day of September, 2009, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #5), and plaintiff's **Objection** thereto (document #6), and the Court, having carefully reviewed said Report And Recommendation, finds and orders as follows:

1. Plaintiff's claims allege misconduct on the part of the California Highway Patrol. Because it appeared from his Complaint that venue might be proper in a United States District Court for California, rather than this district, on June 23, 2009, the Magistrate Judge sent plaintiff an Addendum to gather more information about his claim. Plaintiff was instructed to return the Addendum by July 16, 2009.

2. When plaintiff failed to return the Addendum, on July 27, 2009, the Magistrate Judge recommended that his Complaint be dismissed for failure to prosecute and failure to comply with court order. Plaintiff then filed an Objection stating that if the case were dismissed, it would "mean[] that this U.S. DISTRICT COURT is refusing to do it's [sic] job." (Capitalization in

original.)

3. Plaintiff's Objection is clearly without merit. However, another consideration obtains. Although plaintiff's Objection offers no explanation for why he failed to return the Addendum in a timely fashion, the Clerk of Court informs the Court that plaintiff did call with an address correction, and the Court considers that plaintiff's mail may have been delayed. The Court finds, therefore, that this matter should be remanded to the Magistrate Judge to consider the belated Addendum.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #5) is **not adopted**, and this matter is **remanded** to the Magistrate Judge for consideration of the Addendum filed by plaintiff on August 11, 2009.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE