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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JOAQUIN YBARRA,	)	No. CV-F-05-1013 OWW/SMS P
)	
	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR RECONSIDERATION
Plaintiff,	)	(Doc. 18), VACATING ORDER
	)	AND JUDGMENT OF DISMISSAL
vs.	)	(Docs. 14 & 15) AND
	)	DIRECTING CLERK OF COURT TO
	)	RE-SERVE ORDER DISMISSING
LAMARQUE, et al.,	)	COMPLAINT WITH LEAVE TO
	)	AMEND AND ORDER DIRECTING
	)	CLERK TO SEND PLAINTIFF
Defendant.	)	BLANK CIVIL RIGHTS FORM
	)	(Doc. 8)

By Order filed on February 8, 2007, this action was dismissed upon the findings and recommendation of the Magistrate Judge because of Plaintiff's failure to file an amended complaint within the time set forth in the Magistrate Judge's Order filed on November 2, 2006. Judgment for Defendants was entered on February 8, 2007.

On April 16, 2007, Plaintiff filed a motion for

1 reconsideration, contending that the mailroom staff at Kern
2 Valley State Prison returned the service of the Findings and
3 Recommendation on January 5, 2007 "as a common retaliatory
4 tactic".

5 By Order filed on November 2, 2006, Plaintiff's complaint
6 was dismissed with leave to file an amended complaint within 30
7 days of service of the Order. The Order was served on Plaintiff
8 at his address at Salinas Valley State Prison, Soledad,
9 California. Service of the Order was returned to the Court on
10 November 9, 2006 with the notation, "no longer @ this
11 institution". The Findings and Recommendation filed on December
12 18, 2006 were served on Plaintiff at his address at Salinas
13 Valley State Prison. On December 21, 2006, Plaintiff filed a
14 Notice of Change of Address, listing his address at Kern Valley
15 State Prison, Delano, California. On January 5, 2007, the
16 Findings and Recommendation served on Plaintiff at Salinas Valley
17 State Prison was returned to the Court with the notation, "no
18 longer at institution." On January 24, 2007, the Findings and
19 Recommendation was reserved on Plaintiff at Kern Valley State
20 Prison. Because of the reservice of the Findings and
21 Recommendation, Plaintiff's time to file objections to the
22 recommendation of dismissal for failure to timely comply with the
23 court order was extended to February 16, 2007. However, as
24 noted, this action was dismissed for failure to prosecute on
25 February 8, 2007.

26 This record establishes that Plaintiff's contention that the

1 mailroom staff at Kern Valley State Prison returned the Order
2 served on November 11, 2006 and the Findings and Recommendation
3 served on December 18, 2006 is false. Service was made on to
4 Plaintiff at Salinas Valley State Prison because, on the dates of
5 service, Plaintiff had not filed the Notice of Change of Address.
6 The mail was returned by the Salinas Valley State Prison.

7 However, because it appears that Plaintiff's transfer from
8 Salinas Valley State Prison to Kern Valley State Prison occurred
9 during the time that he was ordered to file an amended complaint
10 and because Plaintiff did file a Notice of Change of Address,
11 Plaintiff will be allowed the opportunity to comply with the
12 Order directing Plaintiff to file an amended complaint, although
13 as set forth below, Plaintiff shall file the amended complaint
14 within 26 days instead of 30 days of service of this Order.

15 ACCORDINGLY:

- 16 1. Plaintiff's motion for reconsideration is GRANTED;
- 17 2. The Order and Judgment of dismissal are VACATED;
- 18 3. The Clerk of the Court is directed to reserve the Order
19 Dismissing Complaint with Leave to Amend and Order Directing
20 Clerk of Court to Send Plaintiff Blank Civil Rights Form (Doc.
21 8).
- 22 4. Plaintiff is ordered to file the amended complaint
23 within 26 days following service of this Order. Failure to
24 timely comply will result in the dismissal of this action.

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1 IT IS SO ORDERED.

2 **Dated:** April 19, 2007

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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