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

MILES O. BONTY,)	No. CV-F-06-129 OWW/DLB
)	
)	ORDER GRANTING PLAINTIFF'S
)	MOTION FOR RECONSIDERATION
Plaintiff,)	(Doc. 18), VACATING ORDER
)	AND JUDGMENT OF DISMISSAL
vs.)	(Docs. 16 & 17), AND
)	REMANDING ACTION TO
R. INDERMILL, et al.,)	MAGISTRATE JUDGE FOR FURTHER
)	PROCEEDINGS
)	
Defendant.)	
)	
)	

On September 29, 2006, the United States Magistrate Judge recommended that this action be dismissed because of Plaintiff's admitted failure to exhaust administrative remedies prior to filing this action. Objections to the recommendation were due by November 6, 2006. Plaintiff did not file timely objections. By Order filed on December 4, 2006, the action was dismissed for failure to exhaust administrative remedies. Judgment was entered on December 4, 2006.

On December 15, 2006, Plaintiff filed a motion for reconsideration of the December 4, 2006 Order and Judgment. As

1 grounds therefor, Plaintiff contends that he did not receive a
2 copy of the Findings and Recommendation filed by the Magistrate
3 Judge.

4 There is nothing in the record substantiating Plaintiff's
5 claim of non-receipt. Service of the recommendation was not
6 returned to the Court as undeliverable. Nonetheless, an
7 intervening change in controlling authority requires
8 reconsideration of the dismissal of this action.

9 Coupled with Plaintiff's motion for reconsideration is
10 Plaintiff's objection to the recommendation of dismissal for
11 failure to exhaust administrative remedies.

12 Plaintiff filed an Amended Complaint on June 23, 2006 (Doc.
13 13). On September 25, 2006, Plaintiff filed a motion for leave
14 to complete all levels of administrative review, requesting that
15 the Court "postpone the decision to accept or reject Plaintiff's
16 claim, Case No. 1:06-CV-0129 OWW/DLB until his appeal, Log No.
17 KVSP-A-06-00582 regarding the issues before the Court now
18 complete all levels." Plaintiff asserted that his appeal was
19 sent to the "Director's Level (third level) of review on 8-20-
20 06." (Doc. 14). It was this motion that caused the Magistrate
21 Judge to recommend dismissal of the action. In his objection to
22 the recommendation, Plaintiff now asserts that he exhausted all
23 available administrative remedies prior to commencing this
24 action, referring to his administrative appeal, No. COR 03-3127,
25 which appeal involving dietary issues based on religious belief.
26 Review of Plaintiff's Complaint (Doc. 1), comprised of 149 pages,

1 and of Plaintiff's Amended Complaint (Doc. 13), comprised of 119
2 pages, establishes that Plaintiff's claims for relief are not
3 limited to the issues raised in the administrative appeal, No.
4 COR 03-3127. However, since the recommendation was filed, the
5 United States Supreme Court has held that an inmate's failure to
6 exhaust administrative remedies as to some, but not all, claims
7 does not warrant dismissal of the entire action. See *Jones v.*
8 *Bock*, ___ U.S. ___, 127 S.Ct. 910 (2007). This change in
9 controlling authority requires vacation of the Order and Judgment
10 dismissing the action and remand to the Magistrate Judge for
11 further proceedings, including the determination of those claims
12 alleged by Plaintiff which have been administratively exhausted
13 within the meaning of controlling law.

14 FOR THE REASONS STATED ABOVE,

15 1. Plaintiff's motion for reconsideration is GRANTED.

16 2. The Order dismissing the action filed on December 4,
17 2006 and the Judgment entered on December 4, 2006 are VACATED.

18 3. The action is remanded to the Magistrate Judge for
19 further proceedings.

20 IT IS SO ORDERED.

21 Dated: July 10, 2007

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE