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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,	CASE NO. 1:07-CV-00493-AWI-DLB PC
Plaintiff,	ORDER REGARDING MOTION FOR LIMITED DISCOVERY AND EXTENSION OF TIME
v.	
JOHN TILTON, et al.,	(DOC. 121)
Defendants.	ORDER REGARDING MOTION TO VACATE ORDER ADOPTING FINDINGS AND RECOMMENDATION, CONSTRUED AS MOTION FOR RECONSIDERATION
_____ /	(DOC. 122)

Order

Plaintiff Barry Louis Lamon (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is: 1) Plaintiff’s motion for limited discovery, filed September 23, 2010, and 2) Plaintiff’s motion for reconsideration of the Court’s September 15, 2010 Order Adopting the Findings and Recommendation, both filed on September 23, 2010. (Docs. [121](#), [122](#).)

Plaintiff requests that he be allowed to file objections to the Magistrate Judge’s Findings and Recommendation. However, when provided with the opportunity to file objections, Plaintiff instead filed a motion to vacate the Magistrate Judge’s Findings and Recommendation pursuant to Federal Rule of Civil Procedure 59(e). (Doc. 116.) However, that rule is inapplicable, as it concerns a motion to alter or amend a judgment. There has been no final judgment in this action.

1 Plaintiff further contends that the Magistrate Judge had yet to rule on Plaintiff's motion to
2 supplement his opposition with newly discovered evidence. A review of the record indicates that
3 Plaintiff filed this "motion" with his reply to Defendants' opposition to Plaintiff's motion to
4 compel. (Doc. 114.) Plaintiff labeled this as a "Notice of Newly Discovered Evidence," not as a
5 motion.

6 Additionally, the Court considered on the merits Plaintiff's arguments regarding the June
7 11, 2010 California Court of Appeal decision. Even though the Magistrate Judge did not
8 consider the Court of Appeal's order in his Findings and Recommendation, this Court did in the
9 Order Adopting the Magistrate Judge's Findings and Recommendation. *See* Fed. R. Civ. P.
10 72(b)(3) ("The district judge may accept, reject, or modify the recommended disposition; receive
11 further evidence; or return the matter to the magistrate judge with instruction."). The Court
12 found the additional evidence unpersuasive. Plaintiff does not explain what additional objections
13 he would have filed other than the California Court of Appeal's June 11, 2010 order. Thus, the
14 error in filing his objections would appear to lie with Plaintiff. Nonetheless, as Plaintiff is
15 proceeding pro se, the Court will err on the side of caution and grant Plaintiff leave to file
16 objections to the Magistrate Judge's July 30, 2010 Findings and Recommendation. Plaintiff will
17 be granted **thirty (30) days** from the date of service of this order in which to file his objections.
18 The Court declines to vacate its Order adopting at this time. The Court will issue an amended
19 order regarding the Findings and Recommendation after the objections are filed.

20 Plaintiff also requests that the Court grant a thirty-day extension of time to file an
21 opposition to Defendant Wilber's motion to dismiss. The Court will grant this request.

22 Plaintiff also requests that the Court send Plaintiff a copy of his opposition to Defendants'
23 motion to dismiss, filed May 5, 2010. (Doc. 109.) Plaintiff contends that he sent his only copy
24 to the Court because of difficulties accessing the law library. The Court will grant this request.

25 Based on the foregoing, it is HEREBY ORDERED that:

- 26 1. Plaintiff's motions, filed September 23, 2010, are GRANTED as stated herein;
- 27 2. Plaintiff's motion to file objections to the Magistrate Judge's July 30, 2010
28 Findings and Recommendation is GRANTED;

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- 3. Plaintiff's objections are due within thirty (30) days from the date of service of this order;
- 4. Plaintiff's motion for extension of time to file an opposition to Defendant Wilber's motion to dismiss, filed September 9, 2010, is GRANTED;
- 5. Plaintiff's opposition is due within thirty (30) days from the date of service of this order. Defendants are GRANTED ten days from the date of filing of Plaintiff's opposition to file their reply, if any;
- 6. Failure to file a timely objection or timely opposition will be construed as a waiver of objection or opposition; and
- 7. The Clerk of Court is DIRECTED to send to Plaintiff a copy of his opposition to Defendants' motion to dismiss, filed May 19, 2010 and docketed at Docket Number [109](#).

IT IS SO ORDERED.

Dated: November 13, 2010



CHIEF UNITED STATES DISTRICT JUDGE