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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESUS SOSA,

Plaintiff,

v.

GERARDO MEJIA,

Defendant.

CASE NO. 1:10-cv-01454-OWW-MJS

ORDER NOT ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
MOTION TO SET ASIDE ENTRY OF
DEFAULT

(ECF No. 11)

Plaintiff Jesus Sosa, filed this action seeking relief from Defendant Gerardo Mejia, doing business as Mejia's Taco Shop, pursuant to the Americans with Disabilities Act and related California statutes. Defendant Mejia filed a Motion to Set Aside Entry of Default that was referred to the Magistrate Judge for the preparation of findings and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge issued his Findings and Recommendation on April 7, 2011. It was served on all parties and stated that any objections were to be filed within fourteen (14) days of service. (ECF No. 17.)

To date, neither party has filed objections to the Findings and Recommendation. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule 303, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations are not supported by the record and by proper analysis.

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1 A default has previously been set aside in a related case. The preference for resolution of
2 cases on the merits and the total absence of prejudice to Plaintiff justify setting aside the default
3 based on Defendant's counsel's misunderstanding that Plaintiff would amend the complaint by
4 agreement. Improper joinder of a deceased party, ownership issues, and misidentity of all parties
5 caused counsel to believe that Plaintiff would amend. The Magistrate Judge's Findings &
6 Recommendations to deny the motion to set aside default are NOT ADOPTED.

7 IT IS ORDERED that:

- 8 1. The Findings and Recommendation, filed April 7, 2011, are not adopted in full;
- 9 2. Defendant's Motion to Set Aside Entry of Default is GRANTED.IT IS SO
10 ORDERED.

11 **Dated: May 9, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE