

1 Having failed to receive the findings and recommendations recommending dismissal for
2 Petitioner's second ground for relief (Doc. 19), Petitioner requests that the Court set aside the order
3 adopting the findings and recommendations (Doc. 20) and reopen the time in which he may
4 comment on the findings and recommendations (Doc. 19). Rule 60(b)(1) permits relief from an
5 order such as the findings and recommendations (Doc. 19) for excusable neglect. Because
6 Petitioner never received a copy of the findings and recommendations (Doc. 19), his failure to file
7 comments within the permitted time period constitutes excusable neglect.
8

9 Accordingly, the Court hereby ORDERS that the October 28, 2014 Order Adopting
10 Findings and Recommendations be vacated and that comment period provided for the August 20,
11 2014 findings and recommendations recommending the dismissal of count two of the petition (Doc.
12 19) be reopened for thirty (30) days from the date of service of this order. The Clerk of Court is
13 directed to serve petitioner with both a copy of this Order and a copy of the August 20, 2014
14 findings and recommendations (Doc. 19) at his address as shown on the docket.
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16 Within thirty (30) days after being served with copies of the August 20, 2014 findings and
17 recommendations (Doc. 19), Petitioner may file written objections with the Court. Such a
18 document should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
19 The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C).
20 Petitioner is advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
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24 IT IS SO ORDERED.

25 Dated: November 26, 2014

/s/ Lawrence J. O'Neill
26 UNITED STATES DISTRICT JUDGE
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