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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREG GALLEGOS,
Plaintiff,
v.
DUNNION LAW FIRM,
Defendant.

No. 1:19-cv-01168-LJO-EPG
ORDER VACATING ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS;
DIRECTING CLERK OF COURT TO
REOPEN CASE AND SEND PLAINTIFF A
COPY OF THE FINDINGS AND
RECOMMENDATIONS; AND PROVIDING
PLAINTIFF WITH ADDITIONAL TIME TO
FILE OBJECTIONS TO THE FINDINGS
AND RECOMMENDATIONS

(ECF Nos. 6, 7, 8, 10)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff, Greg Gallegos, is proceeding *pro se* in this action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 23, 2016, the assigned Magistrate Judge entered findings and recommendations recommending that this action be dismissed without prejudice and without leave to amend for lack of subject-matter jurisdiction. (ECF No. 6.) The findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within twenty-one days. (*Id.*) On November 1, 2019, Plaintiff filed a document titled “Certificate of Service #11504.” (ECF No. 7.) Although the document did not indicate that it was intended to be objections to the Magistrate Judge’s findings and recommendations, out of an

1 abundance of caution, the Court construed the document as objections and gave those objections
2 full consideration.

3 On November 7, 2019, after conducting a *de novo* review of the case, including Plaintiff's
4 filing, the Court entered an order adopting the findings and recommendations; dismissing the
5 action, without prejudice, for lack of subject matter jurisdiction; and directing the clerk of the
6 court to close the case. (ECF No. 8.)

7 On November 25, 2019, Plaintiff filed another document titled "Certificate of Service
8 11504." (ECF No. 10.) The Court construes the document as a motion for reconsideration of the
9 Court's order adopting the findings and recommendations.

10 In his motion for reconsideration, Plaintiff indicates that his previous filing was not
11 intended to be an objection, but instead only as a notice to the Court that Plaintiff had a heart
12 attack and that this entitled him to increased damages. (*See* ECF No. 10.) Plaintiff also contends
13 that "no one ever gave any 21 day to reply, that was later only in L. ONeill letter of 11-6-
14 2019. . . ." (*Id.*) The Court construes this language as indicating that Plaintiff was not given
15 timely notice that he had twenty-one days to file objections to the findings and recommendations.
16 The Court will also assume that Plaintiff did not receive a copy of the findings and
17 recommendations, which contains notice that Plaintiff had twenty-one days to file objections.
18 (*See* ECF No. 6.) Based this assumption and Plaintiff's representations, the Court will vacate its
19 order adopting the findings and recommendations, provide Plaintiff with a copy of the findings
20 and recommendations, and provide Plaintiff with an opportunity to file, with twenty-one days of
21 the date this order is entered, objections to the findings and recommendations.

22 IT IS ORDERED:

- 23 1. Plaintiff's motion for reconsideration (ECF No. 10) is GRANTED to the extent
24 Plaintiff seeks an opportunity to file objections to the findings and recommendations.
25 Such objections shall be filed within **twenty-one (21) days** of the date this order is
26 entered.
- 27 2. The order adopting the findings and recommendations of the Magistrate Judge,
28 entered November 7, 2019 (ECF No. 8), is VACATED. The Clerk of the Court is

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directed to REOPEN this case.

3. The Clerk of the Court is directed to SEND Plaintiff a copy of the Magistrate Judge’s findings and recommendations, entered on September 23, 2019 (ECF No. 6).

4. Within **twenty-one (21) days** from the date this order is entered, Plaintiff may file written objections to the findings and recommendations. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”

Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **November 27, 2019**

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE