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

JOHN ZAPATA dba ZAPATA  
COLLECTION, SERVICE,  
an Individual,

Plaintiff,

No. CIV-S-09-3555-GEB-KJN-PS

v.

FLINTCO, INC., an Oklahoma  
corporation, et al.,

Defendants.

ORDER

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Presently before the court is plaintiff’s “Motion for Reconsideration Do [*sic*] To Clerk’s Error,” which was filed on September 13, 2011 (Dkt. No. 58). Plaintiff now requests that the court reconsider its dismissal of this case for lack of subject matter jurisdiction in light of objections to the magistrate judge’s findings and recommendations that are appended to the motion for reconsideration, and which plaintiff contends he timely filed but were not docketed by the Clerk of Court. After reviewing the magistrate judge’s findings and recommendations in light of plaintiff’s objections, as if those objections were timely filed, the court denies plaintiff’s motion for reconsideration.

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1 On August 12, 2011, the magistrate judge assigned to this case filed proposed findings  
2 and recommendations, which recommended that this action be dismissed for lack of subject  
3 matter jurisdiction (Dkt. No. 54). Those findings and recommendations were served on the  
4 parties and contained notice that any objections to the findings and recommendations were to be  
5 filed within fourteen days.

6 No timely objections to the findings and recommendations appeared on the court's  
7 docket. On September 7, 2011, after reviewing the magistrate judge's proposed disposition  
8 under the appropriate review standards, the court entered an order adopting the findings and  
9 recommendations and granting defendants' motion to dismiss for lack of subject matter  
10 jurisdiction. (Order, Sept. 7, 2011, Dkt. No. 56.) The court entered judgment that same day and  
11 closed this case. (Judgment In A Civ. Case, Dkt. No. 57.)

12 On September 13, 2011, plaintiff filed the pending motion for reconsideration. Plaintiff  
13 contends that he prepared objections to the magistrate judge's findings and recommendations  
14 and, on August 24, 2011, sent them to this court for filing via FedEx overnight delivery. Citing  
15 to what appears to be a FedEx tracking log, plaintiff contends that his objections should have  
16 been timely filed on August 25, 2011, but were not due to the error of a staff member in the  
17 Clerk's office.

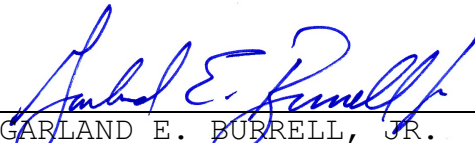
18 Whatever transpired in regards to the filing of plaintiff's objections on or around August  
19 25, 2011, the court has again reviewed the magistrate judge's proposed findings and  
20 recommendations in consideration of plaintiff's objections, assuming that those objections were  
21 timely filed. This court reviews de novo those portions of the proposed findings of fact to which  
22 an objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore  
23 Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982); see  
24 also Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed  
25 findings of fact to which no objection has been made, the court assumes its correctness and  
26 decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th

1 Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi  
2 Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,  
4 concludes again that it was appropriate to adopt the proposed findings and recommendations in  
5 full. This court lacks subject matter jurisdiction over plaintiff's claims, and this action was  
6 properly dismissed. Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for  
7 reconsideration (Dkt. No. 58) is denied.

8 IT IS SO ORDERED.

9 Dated: September 27, 2011

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GARLAND E. BURRELL, JR.  
United States District Judge