

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEWIS DIXIE,  
Plaintiff,  
v.  
TIM VIRGA, et al.,  
Defendants.

No. 2:12-cv-2626 LKK DAD P

ORDER

I. Introduction

Plaintiff is a state prisoner proceeding pro se with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff paid the required filing fee. The action is proceeding on plaintiff’s original complaint (ECF No. 1) in which he presented federal constitutional and statutory claims premised on the alleged refusal of prison officials to permit him to attend Jumu’ah Prayer Services at California State Prison-Sacramento where he is incarcerated.

A settlement conference was held on June 20, 2014, and concluded without a settlement being reached. (See ECF No. 67.) The court now addresses those matters held in abeyance pending the convening of the settlement conference.

Plaintiff seeks reconsideration of this court’s order filed February 19, 2014 (ECF No. 43) adopting the assigned Magistrate Judge’s findings and recommendations and granting in part and denying in part defendants’ motion to dismiss. Plaintiff argues that he was not timely served with

1 a copy of the underlying findings and recommendations and was thereby denied notice of the  
2 deficiencies in his complaint and could not timely file objections to the findings and  
3 recommendations. For the reasons that follow, plaintiff's motion is denied. However, plaintiff  
4 will be accorded additional time to file an amended complaint.

## 5 II. Background

6 On February 19, 2014, the undersigned adopted the magistrate judge's findings and  
7 recommendations filed January 16, 2014, thereby granting in part and denying in part defendants'  
8 motion to dismiss. (See ECF Nos. 43, 39.) As a result, this action now proceeds against  
9 remaining defendants Fardan and Elia on plaintiff's claims under the Free Exercise Clauses of the  
10 United States and California Constitutions, and under the Religious Land Use and  
11 Institutionalized Persons Act (RLUIPA). Plaintiff was granted leave to file an amended  
12 complaint, within thirty days after the filing date of the court's order (or by March 21, 2014), that  
13 cured the noted deficiencies with respect to the dismissed claims. That thirty-day period expired  
14 without plaintiff filing an amended complaint. On April 4, 2014, defendants filed an answer to  
15 the complaint. (ECF No. 55.) Thereafter, on April 11, 2014, the magistrate judge issued a  
16 Scheduling Order (ECF No. 56), which is presently in effect.

17 Meanwhile, on March 3, 2014, plaintiff filed a "Motion for Relief from the District Court  
18 Order on Defendants' Motion to Dismiss." (ECF No. 49.) Plaintiff asserts therein that he was  
19 not timely served with a copy of the findings and recommendations, and therefore did not have  
20 the opportunity to file objections thereto. Plaintiff, however, does not identify the objections he  
21 wished to raise.

22 Review of plaintiff's memorandum and attached exhibits, and review of the court's  
23 docket, generally supports plaintiff's statement that he did not timely receive a copy of the  
24 magistrate judge's findings and recommendations. Despite a notation in the docket that a copy of  
25 the findings and recommendations were promptly served on plaintiff by mail on January 16,  
26 2014, plaintiff's prison mail log indicates that he thereafter received no mail from this court until  
27 February 10, February 14, and February 20, 2014. (See Pl.'s Incoming Mail Log (ECF No. 49 at  
28 16).) Under any of these scenarios, the time for filing objections (14 days after January 16, 2014,

1 or by January 30, 2014) had expired. Plaintiff avers, with supporting documentation and without  
2 any obvious inconsistencies reflected in the court’s docket, which he did not did not receive a  
3 copy of the findings and recommendations at issue until February 20, 2014.<sup>1</sup> As noted, the court  
4 adopted the findings and recommendations one day earlier, on February 19, 2014. (ECF No. 43.)

5 III. Applicable Legal Standards

6 Local Rule 230(j) requires that any motion for reconsideration set forth “the material facts  
7 and circumstances surrounding” the motion and, in pertinent part, “why the facts or circumstances  
8 were not shown at the time of the prior motion.” E.D. Cal. L.R. 230(j). Plaintiff’s motion  
9 satisfies these requirements.

10 The instant motion is properly construed as a motion for relief from judgment pursuant to  
11 Federal Rule of Civil Procedure 60(b). Although plaintiff relies on subsection (b)(1) (“mistake,  
12 inadvertence, surprise, or excusable neglect”), his motion is more appropriately considered under  
13 the broader umbrella of subsection (b)(6) (“any other reason that justifies relief”). Rule 60(b)(6)  
14 applies in extraordinary circumstances, not otherwise expressly addressed by Rule 60. Its  
15 purpose is to “vest[] power in courts adequate to enable them to vacate judgments whenever such  
16 action is appropriate to accomplish justice.” Klapprott v. United States, 335 U.S. 601, 614-15  
17 (1949).

18 As plaintiff emphasizes, when a district judge delegates to a magistrate judge the task of  
19 issuing findings and recommendations, the authority of the magistrate judge is provisional. See

20 ////

21 ////

---

22  
23 <sup>1</sup> Plaintiff explains that he submitted three requests for case status (filed February 5, 12, and 18,  
24 2014) before receiving a copy of the findings and recommendations. (See ECF Nos. 40-2; see  
25 also ECF No. 49 at 16.) Plaintiff states, and the docket reflects, that he was informed, in response  
26 to his first request for case status filed February 5, 2014, that findings and recommendations were  
27 issued on January 16, 2014, and remained pending. (ECF No. 40.) The docket indicates no  
28 response to plaintiff’s February 12, 2014 request for case status. (ECF No. 41.) On February 13,  
2014, plaintiff signed and mailed a letter requesting a copy of the findings and recommendations,  
on the ground that he had not yet been served with them; the letter was filed on February 18,  
2014. (ECF No. 42.) Plaintiff states that he did not receive a copy of the findings and  
recommendations until February 20, 2014.

1 28 U.S.C. § 636(b)(1).<sup>2</sup> If no objections to the findings and recommendations are filed, then the  
2 district judge may “accept, reject, or modify, in whole or in part, the findings or recommendations  
3 made by the magistrate judge,” without conducting a de novo review. Id. However, when  
4 objections are made, the district judge is required to undertake a de novo review. Id.; see also,  
5 Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de novo any part of the magistrate  
6 judge’s disposition that has been properly objected to.”); E.D. Cal. L.R. 304 (requiring adherence  
7 to 28 U.S.C. § 636(b)(1)(B) and (C), and Fed. R. Civ. P. 72(b)).

#### 8 IV. Analysis

9 In the instant case, no objections were filed by any party in response to the findings and  
10 recommendations. The court adopted the magistrate judge’s findings and recommendations after  
11 conducting a de novo review. (See ECF No. 43 at 2.) As this court explained (id. at 1):

12 \_\_\_\_\_  
13 <sup>2</sup> A magistrate judge may issue findings and recommendations for the district judge’s review  
pursuant to 28 U.S.C. § 636(b)(1), which provides in pertinent part:

14 § 636(b)(1) Notwithstanding any provision of law to the contrary--

15 (A) a judge may designate a magistrate judge to hear and determine  
16 any pretrial matter pending before the court, except a motion . . . to  
dismiss for failure to state a claim upon which relief can be granted  
17 . . . . A judge of the court may reconsider any pretrial matter under  
this subparagraph (A) where it has been shown that the magistrate  
18 judge’s order is clearly erroneous or contrary to law.

19 (B) a judge may also designate a magistrate judge to conduct  
hearings, including evidentiary hearings, and to submit to a judge of  
20 the court proposed findings of fact and recommendations for the  
disposition, by a judge of the court, of any motion excepted in  
21 subparagraph (A). . . .

22 (C) the magistrate judge shall file his proposed findings and  
recommendations under subparagraph (B) with the court and a copy  
23 shall forthwith be mailed to all parties.

24 Within fourteen days after being served with a copy, any party may  
serve and file written objections to such proposed findings and  
25 recommendations as provided by rules of court. A judge of the  
court shall make a de novo determination of those portions of the  
26 report or specified proposed findings or recommendations to which  
objection is made. A judge of the court may accept, reject, or  
27 modify, in whole or in part, the findings or recommendations made  
by the magistrate judge. The judge may also receive further  
28 evidence or recommit the matter to the magistrate judge with  
instructions.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and  
2 Local Rule 304, this court has conducted a de novo review of this  
3 case. Having carefully reviewed the entire file, the court finds the  
4 findings and recommendations to be supported by the record and by  
5 proper analysis.

6 Because the court applied this heightened standard of review in considering the magistrate  
7 judge's findings and recommendations, the court is persuaded that the result would be no  
8 different if the order was vacated and plaintiff were permitted additional time to submit his  
9 objections. The failure of plaintiff to identify his objections to the findings and recommendations  
10 underscores the appropriateness of this assessment.

11 For these reasons, plaintiff's motion for reconsideration (ECF No. 49), will be denied. As  
12 a result, plaintiff's motion to stay this action pending the court's ruling on this matter (ECF No.  
13 58), and motion to expedite the court's ruling (ECF No. 64), will both be denied as moot.

14 The court will, however, grant plaintiff's request (ECF No. 49 at 4) for additional time  
15 within which to respond to the court's February 19, 2014 order. Specifically, plaintiff will be  
16 granted thirty days from the filing date of this order to file and serve an amended complaint that  
17 conforms to the requirements set forth in the court's February 19, 2014 order, as explained more  
18 fully in the assigned magistrate judge's January 16, 2014 findings and recommendations.

19 In addition, because the deadlines established by the current Scheduling Order (ECF No.  
20 56) are now imminent (discovery due by August 1, 2014, dispositive motions due by October 24,  
21 2014), those deadlines are hereby extended as follows: the deadline for conducting discovery,  
22 including the deadline for filing motions to compel discovery,<sup>3</sup> is extended to December 5, 2014;  
23 the deadline for filing dispositive motions is extended to March 6, 2015.

24 ///

25 ///

26 ////

27

28 <sup>3</sup> The parties are reminded that it is their respective responsibility to request all discovery directly  
from the other parties in the first instance. Discovery requests between the parties are not to be  
filed with the court unless a party remains dissatisfied with a discovery response after attempting  
to resolve the matter informally. See Local Rule 251 (requirement of conferring and making a  
good faith effort to resolve differences).

1 V. Conclusion

2 For the foregoing reasons, IT IS HEREBY ORDERED that:

3 1. Plaintiff's motion for reconsideration (ECF No. 49), of this court's February 19, 2010  
4 order, is denied.

5 2. Plaintiff may, within thirty days after the filing date of this order, file and serve an  
6 amended complaint that conforms to the requirements set forth in the undersigned's February 19,  
7 2014 order, and the magistrate judge's January 16, 2014 findings and recommendations.

8 3. The Scheduling Order issued April 11, 2014 (ECF No. 56), is amended as follows:


9 a. The deadline for exchanging discovery, and for filing any motion to compel  
10 discovery, is extended to December 5, 2014.

11 b. The deadline for filing dispositive motions is extended to March 6, 2015.

12 4. Plaintiff's request to stay this action (ECF No. 58), and request to expedite the instant  
13 ruling (ECF No. 64), are denied as moot.

14 IT IS SO ORDERED.

15 DATED: July 23, 2014.

16  
17  
18  
19   
20 LAWRENCE K. KARLTON  
21 SENIOR JUDGE  
22 UNITED STATES DISTRICT COURT  
23  
24  
25  
26  
27  
28