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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE POWE,  
Petitioner,  
v.  
MARTIN D BITER,  
Respondent.

No. 2:15-cv-2639 GEB GGH

FINDINGS AND RECOMMENDATION

Petitioner seeks reconsideration of the district judge’s order of dismissal with prejudice of the Petition (ECF No. 23), most probably a Fed.R.Civ.P.52(b) or 59(e) motion, based on the perception that the order of dismissal was issued not on the merits, but because petitioner did not timely file objections.

The undersigned need not engage in a discussion of the Rules’ standards, nor must it discuss the background of this case. Simply put, petitioner’s request for reconsideration is based on a misreading of the order of dismissal. The Order, ECF 23, commences with a brief procedural history of the extensions of time for objections, and concludes in a new paragraph:

The court has reviewed the file and finds that the findings and recommendations are supported by the record and by the Magistrate Judge’s analysis.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed February 21, 2017 are adopted in full;
- 2. Petitioner’s petition is dismissed with prejudice;

1 3. No Certificate of Appealability shall be issued; and

2 4. The Clerk of the Court shall close this file.

3 The only findings and recommendations existing at that the time were those on the merits  
4 of the statute of limitations based Motion to Dismiss, and those are the findings and  
5 recommendations adopted after full review. There was no finding that petitioner's objections  
6 were late. While it is possible that the procedural background recordation on the filing of  
7 objections in the Order gave the misimpression to petitioner that his objections were late, that is  
8 simply a misreading of the Order and its ultimate conclusion.

9 Petitioner's Motion for Reconsideration should be denied.

10 This findings and recommendation are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **FOURTEEN**  
12 days after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within **SEVEN** days after service of the objections. The parties are  
16 advised that failure to file objections within the specified time may waive the right to appeal the  
17 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: January 4, 2018

19 /s/ Gregory G. Hollows  
20 UNITED STATES MAGISTRATE JUDGE