UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MR. HENRY A. WHITFIELD,	)	2:10-CV-00099-ECR-PAL
	)	
Plaintiff,	)	
	)	MINUTES OF THE COURT
vs.	)	
	)	DATE: February 23, 2011
PICK UP STIX, INC., a California corporation, et al.,	)	
	)	
Defendants.	)	

PRESENT: EDWARD C. REED, JR.   U. S. DISTRICT JUDGE

Deputy Clerk: COLLEEN LARSEN   Reporter: NONE APPEARING

Counsel for Plaintiff(s)   NONE APPEARING

Counsel for Defendant(s)   NONE APPEARING

MINUTE ORDER IN CHAMBERS

   IT IS HEREBY ORDERED that Plaintiff's motion (#40) for clarification of the Court's January 31, 2011 minute order (#38) is **GRANTED**.

   IT IS HEREBY FURTHER ORDERED that our order (#38), to the extent that it directs the Clerk to enter judgment, is **VACATED**.

   The Court's January 31, 2011 minute order (#38) indicated that Plaintiff's amended complaint (#34) and memorandum (#36) in opposition to Defendants' motion to dismiss (#35) have not sufficiently shown that the applicable statute of limitations should be equitably tolled. As such, the statute of limitations will not be tolled and Plaintiff's claims for intentional and negligent infliction of emotional distress are barred as a matter of law.

   Our January 31, 2011 order (#38), however, did not address the viability of Plaintiff's racial discrimination claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. As stated in our

December 10, 2010 order (#33), Plaintiff states a claim for racial discrimination claim under Title VII. In our January 31, 2011 minute order (#38), we erroneously instructed the Clerk to enter judgment in the case. The Clerk then entered judgment (#39) and closed the case. We should not have entered judgment while a claim remained pending in the case. The judgment (#39), therefore, should be vacated, and the case should proceed with respect to Plaintiff's racial discrimination claim under Title VII of the Civil Rights Act of 1964.

     This matter is referred to the Magistrate Judge for the purpose of establishing a Scheduling Order.

LANCE S. WILSON, CLERK

By _____/s/_____
          Deputy Clerk