

1 **II. ANALYSIS**

2 The pending motion presents a straightforward factual dispute. Plaintiff sent a demand letter to
3 Defendants’ counsel offering to settle this case in exchange for dismissal of the notice of charges in this
4 case and \$1,000. Def. Ex. A (“Offer Letter”). That letter is dated November 22, 2016, postmarked
5 November 28, 2016, and has a received stamp from the Attorney General’s Office of November 30,
6 2016. *Id.* Defendants responded through their counsel with their own letter accepting the settlement.
7 Def. Ex. B (“Acceptance Letter”). That letter is dated December 13, 2016. Neither party disputes the
8 existence or authenticity of either of these letters.

9 The dispute before the Court turns primarily on whether Plaintiff amended his settlement offer
10 by sending an additional letter prior to Defendants’ acceptance. In particular, Plaintiff contends that he
11 amended the terms of the settlement offer as presented in the Offer Letter by sending another letter on
12 November 24, 2016.¹ *See* Pla. Ex. 2 (“Amendment Letter”). Defendants argue the Amendment Letter
13 was drafted after-the-fact and was never mailed. Based on the testimony and documentary evidence
14 presented, the undersigned concludes that Defendant did not in fact modify the terms of his initial
15 settlement offer as stated in the Offer Letter by mailing the Acceptance Letter or otherwise, and that
16 there was an offer and acceptance, and meeting of the minds, with respect to the initial settlement offer
17 made.

18 There are several considerations that support this finding. First, the evidence shows that the
19 Offer Letter was not mailed until November 28, 2016, despite being dated November 22, 2016. In
20 particular, the Offer Letter is postmarked November 28, 2016, which corresponds to the brass slip for
21 legal postage submitted by Plaintiff on that same date. *See* Def. Ex. A at 2; Def. Ex. G; *see also* Hearing
22 Rec. (June 13, 2017) at 10:32 - 10:41 a.m.² As such, Plaintiff’s timeline of events does not make sense;
23 he represents that he amended his settlement offer through the Amendment Letter on November 24,
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26 ¹ As discussed below, Plaintiff contends he mailed the letter on November 24, 2016, but it is dated
November 24, 2017.

27 ² As a transcript of the evidentiary hearing is not currently available, the undersigned will cite herein
28 to the audio recording of that hearing.

1 2016, which predates his actual mailing of the Offer Letter to Defendants’ counsel on November 28,
2 2016.

3 Second, upon receiving Defendants’ Acceptance Letter, Plaintiff did not indicate that it was
4 invalid because he had amended the terms of the settlement prior to acceptance. Instead, he provided
5 other reasons at that time for why an enforceable settlement agreement had not been reached. *See* Def.
6 Ex. D (letter postmarked December 20, 2016, indicating that the initial “offer is no longer on the table
7 because I’m no longer in desperate need of money”); Def. Ex. F (letter postmarked January 5, 2017,
8 indicating: “We only engaged in settlement negotiations. . . . We never reached any settlement
9 agreement. I never signed anything and you never signed anything”). Had Plaintiff amended the terms
10 of the settlement offer through the Amendment Letter prior to Defendants’ acceptance, one would expect
11 that he would have made that known at the time of these exchanges.

12 Third, Plaintiff contends that the Amendment Letter was sent on November 24, 2016, but it was
13 dated “11/24/17.” Pla. Ex. 2 (emphasis added). While Plaintiff contends that the wrong year is merely
14 a byproduct of a learning disability, *see, e.g.*, Hearing Rec. (June 13, 2017) at 11:02 - 11:03 a.m.,³ the
15 mistaken year designation seems more likely to be a byproduct of the letter actually being written after-
16 the-fact in 2017 and a failure to pre-date the letter to 2016. Although this incorrect date standing alone
17 would not carry the day for Defendants, it does add further support to the other evidence in the record
18 that the Amendment Letter was not drafted or sent in November 2016.

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20 ³ As ordered by the Court, Defendants filed Plaintiff’s medical file under seal. Docket No. 28. While
21 that record shows some mental health issues, the undersigned is not persuaded by Plaintiff’s argument that
22 he did not mean what he stated in writing. *See, e.g.*, Hearing Rec. (6/13/2017) at 10:47 a.m., 10:54 - 11:01
23 a.m. Especially given the evidence in record showing that Plaintiff is an able and successful litigant, *see,*
24 *e.g.*, Def. Ex. A; *see also* Hearing Rec. (6/13/2017) at 10:47 - 10:49 a.m., the undersigned also does not find
25 that the terms of the settlement were offered in mistake or that the settlement is otherwise unenforceable
26 based on any mental limitations. Lastly, Plaintiff argues that Defendants themselves believed the Offer
27 Letter was incomplete and/or based on mistake because one of their letters asks Plaintiff to sign the enclosed
28 settlement agreement “[a]ssuming the draft agreement accurately reflects the terms of your offer.” Hearing
Rec. (6/13/2017) at 11:10 - 11:11 a.m.; Def. Ex. C. The undersigned does not similarly infer from this
boilerplate language that Defendants did not believe they were entering an enforceable agreement. To the
contrary, Defendants’ Acceptance Letter clearly identified the two terms of the settlement offer and
expressed no doubt that a settlement had been reached, Def. Ex. B, and their consistent position during the
ensuing weeks was that a settlement agreement had been reached, *see* Def. Ex. E.

1 Taken together, the evidence establishes that Plaintiff did not amend the terms of the settlement
2 offer by sending the Amendment Letter as he alleges in responding to the pending motion. The parties
3 reached a settlement agreement when Plaintiff sent Defendants the Offer Letter and Defendants accepted
4 the terms of settlement through the Acceptance Letter. As such, there was an enforceable settlement
5 contract that this case be dismissed in exchange for dismissal of the notice of charges in this case and
6 \$1,000.

7 **III. CONCLUSION**

8 For the reasons discussed above, the undersigned **RECOMMENDS** that the motion to enforce
9 settlement be granted and that this case be closed.

10 DATED: June 28, 2017

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NANCY J. KOPPE
United States Magistrate Judge

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14 **NOTICE**

15 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must be**
16 **in writing and filed with the Clerk of the Court within 14 days of service of this document.** The
17 Supreme Court has held that the courts of appeal may determine that an appeal has been waived due
18 to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).
19 This circuit has also held that (1) failure to file objections within the specified time and (2) failure to
20 properly address and brief the objectionable issues waives the right to appeal the District Court's
21 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
22 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
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