UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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| BENJAMIN ROBERT GALLEGOS,<br>Plaintiff,<br>v.<br>CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, et al.,<br>Defendants. | No. 2:24-cv-1595 DJC AC<br><br>ORDER |

On January 20, 2026, Plaintiff filed a request for reconsideration of the undersigned order (ECF No. 14) adopting the Magistrate Judge's October 23, 2025, findings and recommendations, construing the Addendum (ECF No. 12) as a First Amended Complaint (FAC), dismissing the FAC without leave to amend for failure to state a claim, and closing the case. ECF No. 16. In support of his motion, Plaintiff states that he never received the October 23, 2025, findings and recommendations (ECF No. 13). *Id.*

Reconsideration of prior orders may be appropriate where the district court is presented with newly discovered evidence, has committed clear error, or there has been an intervening change in the controlling law. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). A party seeking reconsideration must do more than disagree with the court's decision or recapitulate



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that which the court has previously considered. *United States v. Westlands Water District*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). Nor can a reconsideration motion "be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals*, 571 F.3d at 880. Local Rule 230(j) requires that a motion for reconsideration state "what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion; and . . . why the facts or circumstances were not shown at the time of the prior motion." E.D. Cal. L.R. 230(j)(3)-(4).

Because it appears Plaintiff did not receive the court's findings and recommendations and was unable and continues to be unable to object, Plaintiff's motion will be granted, the case will be reopened, and Plaintiff will be afforded time to file objections, if any, to October 23, 2025, findings and recommendations.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for reconsideration (ECF No. 16) is GRANTED.

2. The Clerk of the Court is directed to re-open the case, and re-serve the October 23, 2025, findings and recommendations (ECF No. 13).

3. Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judges Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **February 13, 2026**

Daniel J. Calabretta

Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE