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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Calvin Neuendorf, II,

10 Plaintiff,

11 vs.

12 Unknown Party, et al.,

13 Defendants.
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No. CV 10-124-PHX-RCB (DKD)

ORDER

15 Pending in this closed case are Plaintiff's "Motion to the Court" (Doc. 9) and lodged
16 Second Amended Complaint (Doc. 10). The Court will deny Plaintiff's Motion and direct
17 the Clerk of Court not to file Plaintiff's lodged Second Amended Complaint.

18 **I. Procedural Background**

19 On January 21, 2010, Plaintiff John Calvin Neuendorf, II, who is confined in the
20 Maricopa County Fourth Avenue Jail, filed a *pro se* civil rights Complaint pursuant to 42
21 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 3). On April
22 6, 2010, Plaintiff's First Amended Complaint (Doc. 5) (Amended Complaint) was filed in
23 this case *nunc pro tunc*.

24 By Order filed April 27, 2010 (Doc. 6), the Court granted Plaintiff's Application to
25 Proceed *In Forma Pauperis*, assessed a partial filing fee of \$3.06, dismissed Defendant Rivas
26 from this action, and dismissed Counts II and III of the Amended Complaint for failure to
27 state a claim upon which relief may be granted. Plaintiff was given 30 days from the filing
28 date of the Order to file a Response to the Order that included either (1) the name of

1 Defendant Unknown Members of the SAU or (2) an explanation of what Plaintiff had done
2 to try to learn his or her name, a description of what discovery he would undertake to learn
3 his or her name, and the identity of at least one person who could be served with discovery.
4 The Clerk of Court was directed to enter a judgment of dismissal of this action without
5 prejudice and without further notice to Plaintiff if he failed to file a Response within 30 days.

6 When Plaintiff failed to comply with the Court's April 27, 2010 Order (Doc. 6), the
7 Clerk of Court entered a Judgment of dismissal of this action on June 11, 2010 (Doc. 8).

8 **II. Motion to the Court**

9 On July 8, 2010, Plaintiff filed a "Motion to the Court" (Doc. 9), in which he asks for
10 "extensions & or the re[opening and new directives" for this and two other cases.¹ In the
11 present case, where Plaintiff submitted his Motion after entry of judgment, the only
12 appropriate procedural devices are: (1) a motion to alter or amend judgment pursuant to Rule
13 59(e), Federal Rules of Civil Procedure; or (2) a motion for relief from judgment pursuant
14 to Rule 60(b), Federal Rules of Civil Procedure. Here, Plaintiff served his Motion within the
15 28 days required by Rule 59(e). Accordingly, the Court will construe Plaintiff's Motion as
16 having been brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

17 "Reconsideration is appropriate if the district court (1) is presented with newly
18 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
19 or (3) if there is an intervening change in controlling law." School Dist. No. 1J, Multnomah
20 County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (citation omitted).

21 In support of his Motion, Plaintiff asserts that he has "tried to compile all information
22 needed for the Court but must ask the Court for leniency in l[ay]man terms." Plaintiff further
23 asserts that he is "in jail with no monies and need[s] to reopen all above cases."

24 Here, after having considered the foregoing standards, and liberally reviewing the
25 circumstances of Plaintiff's case, the Court's previous Order filed April 27, 2010 (Doc. 6),
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27 ¹The two other cases which Plaintiff included in his Motion were Neuendorf v.
28 Arizona, CV 10-607-PHX-RCB (DKD), and Neuendorf v. Steinhillber, CV 10-724-PHX-
RCB (DKD).

1 the record in this case, and Plaintiff's Motion, the Court declines to set aside the Judgment
2 of dismissal entered on June 11, 2010 (Doc. 8) and reopen this case. The Judgment of
3 dismissal was entered in this action for Plaintiff's failure to comply with the Court's April
4 27, 2010 Order. Plaintiff does not dispute that he failed to so comply. Accordingly, the
5 Court will deny Plaintiff's Motion.

6 **III. Lodged Second Amended Complaint**

7 On July 19, 2010, Plaintiff lodged a Second Amended Complaint (Doc. 10) in this
8 closed case. In light of the denial of Plaintiff's Motion (Doc. 9), the Court will direct the
9 Clerk of Court not to file Plaintiff's lodged Second Amended Complaint.

10 **IT IS ORDERED:**

11 (1) Plaintiff's "Motion to the Court" (Doc. 9), which the Court **construes** as being
12 brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, is **denied**.

13 (2) The Clerk of Court **must not file** Plaintiff's lodged Second Amended
14 Complaint (Doc. 10).

15 (3) This case **must remain closed**.

16 DATED this 14th day of September, 2010.

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20 Robert C. Broomfield
21 Senior United States District Judge
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