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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Eric Weinstein,

Plaintiff,

vs.

Joseph M. Arpaio, et al.,

Defendants.

) No. CV 10-697-PHX-JAT (JRI)

) **ORDER**

On September 15, 2010, Plaintiff Eric Weinstein, who is confined in the Maricopa County Fourth Avenue Jail, filed a Motion to Alter or Amended Judgment and/or Motion for Leave to File an Amended Complaint (Doc. 20). Plaintiff’s Motion is brought pursuant to Federal Rules of Civil Procedure 15(a) and 59(e).

I. Motion to Alter or Amend Judgment

Plaintiff seeks to alter or amend the Court’s August 13, 2010 Order. In that Order, the Court dismissed without prejudice Counts One, Three through Ten, Twelve through Fourteen, Sixteen, Seventeen, Nineteen, Twenty, and Twenty One of Plaintiff’s Second Amended Complaint. The Court also dismissed without prejudice all fictitiously named defendants other than John Doe Supervisors III, IV, and VIII; Jane Doe Supervisor IV; John and Jane Doe Officers IV; John Doe VII; and Jane Doe X. The Court concluded that, liberally construed, Plaintiff had stated a claim in Count Two of the Second Amended Complaint against Defendants Arpaio and John Doe Supervisors III and IV; in Count Eleven

1 against Defendant Arpaio; in Count Fifteen against Defendants John Doe Supervisor VIII,
2 Jane Doe Supervisor IV, John and Jane Doe Officers IV, John Doe VII, and Jane Doe X; and
3 in Count Eighteen against Defendants Arpaio and Maricopa County. The Court required
4 Defendants Arpaio and Maricopa County to file an Amended Answer.

5 Plaintiff cannot bring his motion pursuant to Rule 59(e) because no judgment was
6 entered and the Court's August 13, 2010 Order is not an appealable interlocutory order. See
7 Balla v. Idaho State Bd. of Corrections, 869 F.2d 461, 466 (9th Cir. 1989) (noting that Rule
8 59(e) only applies to final judgments and appealable interlocutory orders). The Order is not
9 an interlocutory order generally appealable under 28 U.S.C. § 1292(a), and the Court did not
10 provide the statement necessary to make the Order an interlocutory order appealable under
11 28 U.S.C. § 1292(b). Cf. Anderson v. Allstate Ins. Co., 630 F.2d 677, 680 (9th Cir. 1980)
12 (“Because the orders appealed from dismiss the action as to only some of the defendants, it
13 is clear that they were not final orders pursuant to 28 U.S.C. § 1291 at the time they were
14 entered. Moreover, plaintiffs did not obtain the interlocutory certificate required by Fed. R.
15 Civ. P. 54(b). Under these circumstances [the appellate court is] ordinarily precluded from
16 assuming jurisdiction.”).

17 Moreover, the Court will not consider the Motion as a motion for reconsideration
18 pursuant to Local Rule of Civil Procedure 7.2(g). Local Rule of Civil Procedure 7.2(g)(2)
19 states that “[a]bsent good cause shown, any motion for reconsideration shall be filed no later
20 than fourteen (14) days after the date of the filing of the Order that is the subject of the
21 motion.” The Order was filed on August 13, 2010, and Plaintiff's Motion was filed, at the
22 earliest, on September 9, 2010.¹ Plaintiff's motion, therefore, is untimely under Local Rule
23 7.2(g)(2), and Plaintiff has not proffered any good cause for his untimely filing.

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26 ¹Under the “prison mailbox rule,” a document is deemed “filed” when delivered by
27 the prisoner to a prison official for mailing. See Houston v. Lack, 487 U.S. 266, 276 (1988);
28 Faile v. Upjohn Co., 988 F.2d 985, 988-89 (9th Cir. 1993), disapproved of on other grounds
in McDowell v. Calderon, 197 F.3d 1253 (9th Cir. 1999). Plaintiff signed his motion on
September 9, 2010, and, therefore, that is the earliest date he could have delivered the motion
to prison officials.

1 **II. Motion for Leave to Amend**

2 In the alternative, Plaintiff has sought leave to amend his Second Amended
3 Complaint. The Court will deny this request, without prejudice, because Plaintiff has failed
4 to comply with Local Rule of Civil Procedure 15.1. That Rule states, in relevant part, that

5 [a] party who moves for leave to amend a pleading, or who
6 seeks to amend a pleading by stipulation and order, must attach
7 a copy of the proposed amended pleading as an exhibit to the
8 motion or stipulation, which must indicate in what respect it
9 differs from the pleading which it amends, by bracketing or
striking through the text to be deleted and underlining the text
to be added. The proposed amended pleading is not to
incorporate by reference any part of the preceding pleading,
including exhibits.

10 Plaintiff is not precluded from filing a new motion pursuant to Rule 15 of the Federal Rules
11 of Civil Procedure, but he must comply with Local Rule of Civil Procedure 15.1.

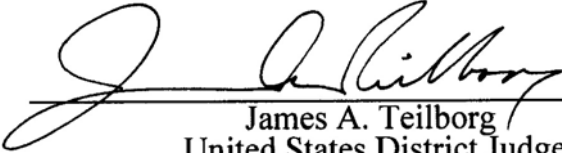
12 **IT IS ORDERED:**

13 (1) The reference to Magistrate Judge Jay R. Irwin is **withdrawn only** with respect
14 to Plaintiff's Motion to Alter or Amended Judgment and/or Motion for Leave to File an
15 Amended Complaint (Doc. 20).

16 (2) Plaintiff's Motion to Alter or Amended Judgment and/or Motion for Leave to
17 File an Amended Complaint (Doc. 20) is **denied**.

18 (3) All other matters **must remain** with Magistrate Judge Jay R. Irwin for
19 disposition as appropriate.

20 DATED this 21st day of September, 2010.

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24 James A. Teilborg
United States District Judge