UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

JAMES E. ROJO,

Plaintiff,

v.

DAVID BONNHEIM, et al.,

Defendant.

Case No. CV 09-2762-R (MLG)

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On July 6, 2009, the Court entered an Order and Judgment dismissing Plaintiff's complaint without leave to amend for failure to state a claim upon which relief may be granted under the Eighth Amendment. On July 22, 2009, Plaintiff filed a motion for reconsideration. The motion is DENIED.

Plaintiff has failed to demonstrate any of the requisite grounds which would warrant reconsideration under the local rules of this Court. C.D. Cal. R., 7-18. To the extent that the motion can be construed as a motion for relief from judgment under Fed.R.Civ.P. 60(b), Plaintiff has failed to demonstrate that the judgment entered in this case was erroneous within the meaning of that rule.

Pursuant to Rule 60(b), the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for a variety of reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied released or discharged; and (6) "any other reason justifying relief from the operation of the judgment". Hamilton v. Newland, 374 F.3d 822, 825 (9th Cir. 2004). Relief under Rule 60(b)(6) is only available only in extraordinary circumstances. Gonzalez v. Crosby, 125 S.Ct. 2641, 2649 (2005). It is used only "sparingly and as an equitable remedy to prevent manifest injustice." Hamilton, 374 F.3d at 825.

A review of the substance of the motion reveals that it simply reasserts the same arguments raised in Plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge, which were previously rejected by the Court. Neither reconsideration nor relief from judgment is warranted.

Manuel L.

United States District Judge

Dated: <u>July 29, 2009</u>

Marc L. Goldman 26 United States M

Presented by:

United States Magistrate Judge