UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTONIO CORTEZ BUCKLEY, CASE NO. 1:04-cv-5622-MJS (PC)

Plaintiff,

ORDER DENYING MOTION TO RECONSIDER

v. RECONSIDER

A.K. SCRIBNER, et al., (ECF No. 42)

Defendants.

Plaintiff Antonio Cortez Buckley ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 6, 2010, the Court screened Plaintiff's Amended Complaint and found that he stated a cognizable claim for violation of the First Amendment against some Defendants, but failed in his attempts to state other claims. (ECF No. 29.) He appealed this Court's denial of his motion to reconsider, but the Ninth Circuit dismissed his appeal for lack of jurisdiction.

The Court then ordered Plaintiff to notify it as to whether he wanted to file a second amended complaint and address the deficiencies noted in the prior screening order or whether he was willing to proceed only on the claims found cognizable. (ECF No. 37.) Plaintiff indicated that he wanted to file a second amended complaint and did so on February 16, 2011. (ECF No. 40.) The Court screened Plaintiff's Second Amended Complaint and found that the allegations related to Plaintiff's First Amendment claim—the only claim found cognizable by the Court—were identical to those in his First Amended Complaint. The Court therefore dismissed Plaintiff's Second Amended Complaint as

1 2

3 4 5

6 7 8

10 11

12

9

13 14

15 16

17 18

19 20

22

21

23

24

25

26

27

28

duplicative and ordered Plaintiff to complete service documents for the Defendants against whom Plaintiff stated a First Amendment claim. (ECF No. 41.)

Before the Court is Plaintiff's Motion to Reconsider asking the Court to reconsider its order screening Plaintiff's Second Amended Complaint. (ECF No. 17.) Plaintiff points out that his Second Amended Complaint was not duplicative of the First Amended Complaint in that he did not include his RLUIPA claim (which the Court dismissed for failure to state a claim). Plaintiff does not dispute the Court's finding that the allegations that make up Plaintiff's First Amendment claim are identical in both the First and Second Amended Complaints.

"A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the . . . court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law," Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted), and "[a] party seeking reconsideration must show more than a disagreement with the Court's decision, and recapitulation . . . " of that which was already considered by the Court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

The basis for Plaintiff's Motion for Reconsideration is his disagreement with the Court's Screening Order. Plaintiff argues that he stated a claim for retaliation and discrimination. The Court finds that Plaintiff has not shown clear error or other meritorious grounds for relief, and has therefore not met his burden as the party moving for reconsideration. Marlyn Nutraceuticals, Inc., 571 F.3d at 880. Plaintiff's disagreement with the Court's ruling is not sufficient grounds for relief from the order. Westlands Water Dist., 134 F.Supp.2d at 1131.

///

1	Accordingly, Plaintiff's Motion for Reconsideration is DENIED with prejudice.
2	Plaintiff is to complete and return the service materials by the date previously ordered or
3	risk dismissal of this case for failure to prosecute.
4	
5	
6	
7	IT IS SO ORDERED.
8	Dated: March 12, 2011 Isl Michael J. Seng UNITED STATES MAGISTRATE JUDGE
9	CINITED CITATES INFACIOTIVATE GODGE
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
2526	
27	
28	