

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AURELIO MARTIN SEPULVEDA,
Plaintiff,
v.
SHU-PIN WU, et al.,
Defendants.

CASE NO. 1:05-cv-01143-AWI-DLB PC
ORDER GRANTING PLAINTIFF’S MOTION
FOR RECONSIDERATION (ECF No. 78)
ORDER VACATING ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS
AND JUDGMENT (ECF Nos. 76, 77)
ORDER REOPENING CASE

_____/

Plaintiff Aurelio Martin Sepulveda (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation, proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. This action proceeded against Defendant Shu-Pin Wu for retaliation in violation of the First Amendment and deliberate indifference to a serious medical need in violation of the Eighth Amendment. On September 22, 2011, Defendant filed his motion for summary judgment. On May 16, 2012, the Magistrate Judge assigned to this action issued Findings and Recommendations, recommending that Defendant’s motion for summary judgment be granted. On August 3, 2012, the undersigned adopted the Findings and Recommendations and directed the Clerk of the Court to enter judgment. Pending before the Court is Plaintiff’s motion for reconsideration, filed August 27, 2012. ECF No. 78. Because the motion was filed within twenty-eight days after the issuance of the judgment, the motion is properly construed as pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

1 In general, there are four basic grounds upon which a Rule 59(e) motion may be
2 granted: (1) if such motion is necessary to correct manifest errors of law or fact
3 upon which the judgment rests; (2) if such motion is necessary to present newly
4 discovered or previously unavailable evidence; (3) if such motion is necessary to
prevent manifest injustice; or (4) if the amendment is justified by an intervening
change in controlling law.

5 *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). “Since specific grounds for a
6 motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion
7 in granting or denying the motion.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir.
8 1999) (en banc) (per curiam) (internal quotation marks omitted). Amending a judgment after its
9 entry remains “an extraordinary remedy which should be used sparingly.” *Id.* (internal quotation
10 marks omitted). This Court's Local Rule 230(j) requires a party seeking reconsideration to
11 demonstrate “what new or different facts or circumstances are claimed to exist which did not
12 exist or were not shown upon such prior motion, or what other grounds exist for the motion . . .
13 and . . . why the facts or circumstances were not shown at the time of the prior motion.”

14 Plaintiff contends that he would be greatly prejudice if Plaintiff is not permitted to file
15 objections the Findings and Recommendations. Plaintiff declares that he was never served with
16 the Findings and Recommendations, and thus had no opportunity to file objections.

17 A review of the Court’s docket indicates that Plaintiff did not receive service by mail of
18 the Findings and Recommendations. This appears to be clerical error. Accordingly, to prevent
19 manifest injustice, the Court will grant Plaintiff’s motion for reconsideration and vacate the order
20 adopting the Findings and Recommendations and the judgment.

21 Based on the foregoing, it is HEREBY ORDERED that:

- 22 1. Plaintiff’s motion for reconsideration, filed August 27, 2012, is granted;
- 23 2. The Order adopting the Findings and Recommendations, and the judgment,
24 docketed on August 3, 2012, are vacated;
- 25 3. The Clerk of the Court is directed to re-open this action and to re-serve Plaintiff
26 with a copy of the May 16, 2012 Findings and Recommendations; and
- 27 4. Within **fourteen (14) days** after being served with the Findings and
28 Recommendations, the parties may file written objections with the Court. The

1 document should be captioned “Objections to Magistrate Judge’s Findings and
2 Recommendations.” A party may respond to another party’s objections by filing a
3 response within **fourteen (14) days** after being served with a copy of that party’s
4 objections. The parties are advised that failure to file objections within the
5 specified time may waive the right to appeal the District Court’s order. *Martinez*
6 *v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

7 IT IS SO ORDERED.

8 Dated: September 7, 2012

9 
CHIEF UNITED STATES DISTRICT JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28