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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIC C. R. K’NAPP,

1:06-cv-01701-LJO-GSA-PC

Plaintiff,

ORDER GRANTING MOTION
FOR RECONSIDERATION
(Doc. 83.)

vs.

D. G. ADAMS, et al.,

ORDER GRANTING FINAL EXTENSION
OF TIME TO FILE SUPPLEMENTAL
OBJECTIONS

Defendants.

THIRTY DAY DEADLINE

_____ /

I. BACKGROUND

Plaintiff is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 22, 2006. (Doc. 1.) This action now proceeds on the Second Amended Complaint filed on November 13, 2008, on Plaintiff’s claims for retaliation and interference with his right to send mail, in violation of the First Amendment. (Doc. 16.)

On July 25, 2011, the Magistrate Judge denied Plaintiff’s motion for extension of time to file supplemental objections, with prejudice. (Doc. 82.) On July 29, 2011, Plaintiff filed a motion for reconsideration by the District Judge. (Doc. 83.)

II. MOTION FOR RECONSIDERATION

Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest injustice

1 and is to be utilized only where extraordinary circumstances . . .” exist. Harvest v. Castro, 531 F.3d
2 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The moving party “must
3 demonstrate both injury and circumstances beyond his control” Id. (internal quotation marks
4 and citation omitted). In seeking reconsideration of an order, Local Rule 230(k) requires Plaintiff
5 to show “what new or different facts or circumstances are claimed to exist which did not exist or
6 were not shown upon such prior motion, or what other grounds exist for the motion.” “A party
7 seeking reconsideration must show more than a disagreement with the Court’s decision, and
8 recapitulation” of that which was already considered by the Court in rendering its decision,”
9 U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

10 Plaintiff requests reconsideration of the Magistrate Judge’s order denying Plaintiff’s motion
11 for extension of time, on the ground that the order incorrectly asserted that “Plaintiff waited more
12 than thirty days after the supplemental objections were due to request an extension of time, and he
13 has not shown excusable neglect for the delay.” (Order, Document 82 at 3:16-17.) Plaintiff
14 maintains that his motion for extension of time was not filed untimely, because the supplemental
15 objections were due on July 19, 2011, and the motion was filed on July 20, 2011. Plaintiff’s
16 argument has merit. The Court’s order of June 16, 2011, established a thirty day deadline for
17 Plaintiff to file supplemental objections. (Doc. 77.) Thus, the supplemental objections were due on
18 or before July 19, 2011.¹ Although Plaintiff’s motion for extension of time was filed one day after
19 the July 19, 2011 deadline, the Court deems the motion to be timely under the mailbox rule. Douglas
20 v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009).

21 Under Rule 60(b), the court may relieve a party from an order for mistake. Fed. R. Civ. P.
22 60(b). Plaintiff has shown clear error and has therefore met his burden as the party moving for
23 reconsideration. Therefore, Plaintiff’s motion for reconsideration shall be granted, and Plaintiff shall
24 be granted an extension of time to file supplemental objections. However, in light of the fact that
25 the Magistrate Judge’s Findings and Recommendations have been pending for nearly one year, and
26 Plaintiff has had ample opportunity to file objections and supplemental objections, Plaintiff shall not

27
28 ¹Under Rule 6(d), three days are added after the period would otherwise expire under Rule 6(a). Fed. R.
Civ. P. 6(d).

1 be granted further extensions of time to file objections. Therefore, Plaintiff shall be granted one,
2 final extension of time in which to file supplemental objections to the Magistrate Judge's Findings
3 and Recommendations of August 23, 2010.

4 **III. CONCLUSION**

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's motion for reconsideration, filed on July 29, 2011, is GRANTED; and
- 7 2. Plaintiff is GRANTED one, final extension of time until thirty days from the date of
8 service of this order, in which to file supplemental objections to the Magistrate
9 Judge's Findings and Recommendations of August 23, 2010.

10 IT IS SO ORDERED.

11 **Dated:** August 2, 2011

11 /s/ Lawrence J. O'Neill
12 UNITED STATES DISTRICT JUDGE