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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY MCCLELLAN,
Plaintiff,
v.
KERN COUNTY SHERIFF'S OFFICE,
et al.,
Defendants.

CASE NO. 1:10-cv-00386-LJO-MJS (PC)
**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF ORDER
DENYING EXTENSION OF TIME TO PAY
FILING FEE**
(ECF No. 162)

Plaintiff is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On January 15, 2016, the Undersigned denied Plaintiff's request for leave to proceed in form pauperis. (ECF No. 141.) Plaintiff appealed. (ECF No. 144.) On August 15, 2017, the Ninth Circuit Court of Appeals affirmed the decision. (ECF No. 154.) On September 11, 2017, the District Judge assigned to this case ordered Plaintiff to pay the filing fee in full within fourteen days. (ECF No. 156.) Plaintiff was warned that failure to comply would result in dismissal of the action. (Id.) Plaintiff sought a sixty-day extension of time to pay the fee. (ECF No. 157.) The Undersigned denied the request but extended the deadline to October 3, 2017. (ECF No. 158.) The deadline passed and Plaintiff did not submit the filing fee. Instead, on September 29, 2017, Plaintiff filed a

1 motion for the appointment of counsel. (ECF No. 159.) Therein, he asks, “What is the
2 filing fee?” (Id.) On October 4, 2017, the District Judge assigned to this case dismissed
3 the action for failure to pay the filing fee and entered judgment of dismissal. (ECF Nos.
4 160; 161.)

5 On October 5, 2017, Plaintiff filed a motion for reconsideration of the
6 Undersigned’s Order denying his motion for extension of time to pay the filing fee. (ECF
7 No. 162.) In the motion, Plaintiff claims that his appeal to the Ninth Circuit is not yet final.
8 (Id.) He asks for an additional 30 days to pay the filing fee. (Id.)

9 “A motion for reconsideration should not be granted, absent highly unusual
10 circumstances, unless the . . . court is presented with newly discovered evidence,
11 committed clear error, or if there is an intervening change in the controlling law,” Marlyn
12 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

13 “A motion for reconsideration may not be used to raise arguments or present evidence
14 for the first time when they could reasonably have been raised in earlier litigation.” Id.
15 Furthermore, “[a] party seeking reconsideration must show more than a disagreement
16 with the Court’s decision, and ‘recapitulation . . .’” of that which was already considered
17 by the court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d
18 1111, 1131 (E.D. Cal. 2001) (*quoting* Birmingham v. Sony Corp. of Am., Inc., 820 F.
19 Supp. 834, 856 (D. N.J. 1992)). Similarly, Local Rule 230(j) requires that a party seeking
20 reconsideration show that “new or different facts or circumstances are claimed to exist
21 which did not exist or were not shown upon such prior motion, or what other grounds
22 exist for the motion[.]”

23 Plaintiff does not present newly discovered evidence, nor does he demonstrate
24 that this Court committed clear error or that there was an intervening change in the law.
25 On September 6, 2017, the Ninth Circuit entered a Mandate on the docket in this matter
26 that it’s Order (ECF No. 153) denying Plaintiff’s appeal took effect on that date. (ECF No.
27 155.) That is the law of this case. Based upon that Mandate, this Court required Plaintiff
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1 to pay the filing fee by September 23, 2017 (ECF No. 156), and then extended that
2 deadline to October 3, 2017 (ECF No. 158.) Plaintiff did not pay the fee by that deadline,
3 and now asks for additional time to do so. (ECF No. 162.) Plaintiff's motion for
4 reconsideration merely reiterates his prior requests and offers no basis for
5 reconsideration..

6 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration
7 (ECF No. 162) is DENIED. His case has been dismissed. It remains closed.

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9 IT IS SO ORDERED.

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Dated: October 16, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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