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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,
Plaintiff,
v.
T. SANDERS,
Defendant.

Case No. 1:10-cv-01259-LJO-SKO (PC)
Appeal No. 14-15673
**ORDER DENYING RULE 60 MOTION
AND DISREGARDING OBJECTION
TO LODGED PROPOSED JUDGMENT**
(Docs. 129 and 130)

_____ /

Plaintiff Melvin Joseph Simmons, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 14, 2010. Jury trial commenced on January 22, 2014, and the case was dismissed on January 22, 2014, pursuant to Plaintiff's motion. Plaintiff filed a notice of appeal on March 10, 2014.

On April 9, 2014, the United States Court of Appeals for the Ninth Circuit issued an order holding Plaintiff's appeal in abeyance until this court resolved Plaintiff's motion filed on February 18, 2014, a motion which the appellate court treated as brought under Federal Rule of Appellate Procedure 4(a)(4). (Doc. 137.)

The court is not certain which ground for relief under Fed. R. App. P. 4(a)(4) was contemplated by the appellate court when it issued its order, as Plaintiff filed two documents on February 18, 2014, and neither filing was initially construed as a motion by this court.

1 First, Plaintiff filed an “opposition” to judgment in favor of Defendant. (Doc. 129.) To
2 the extent that this filing may be construed as seeking relief from judgment under Federal Rule of
3 Civil Procedure 60(b), the filing is devoid of any grounds supporting relief from judgment.¹ Fed.
4 R. Civ. P. 7(b)(1)(B), 60(b)(1)-(6).

5 Plaintiff moved to dismiss his case and his oral motion was granted. Plaintiff has made no
6 showing entitling him to relief under Rule 60(b)(1) through (5), and Plaintiff’s subsequent regret
7 over dismissing his case is not grounds for relief under Rule 60(b)(6). *See In re Pacific Far East*
8 *Lines, Inc.*, 889 F.2d 242, 250 (9th Cir. 1989) (Rule 60(b)(6) may provide relief where parties
9 were confronted with extraordinary circumstances but it does not provide a second chance for
10 parties who made deliberate choices).

11 Second, Plaintiff filed a separate objection to Defendant’s lodged proposed judgment.
12 (Doc. 130.) However, the proposed judgment was prepared and lodged with the Court merely as a
13 courtesy. (Doc. 126.) No basis for objection was presented and Plaintiff’s objection is
14 disregarded.²

15 Accordingly, based on the foregoing, Plaintiff’s Rule 60(b) motion is HEREBY
16 ORDERED DENIED and Plaintiff’s objection to Defendant’s lodged proposed judgment is
17 DISREGARDED. The Clerk’s Office is DIRECTED to serve a copy of this order on the Ninth
18 Circuit.

19
20 IT IS SO ORDERED.

21 Dated: April 23, 2014

/s/ Lawrence J. O’Neill
UNITED STATES DISTRICT JUDGE

27 ¹ The motions identified in Fed. R. App. P. 4(a)(4)(A)(i) through (v) do not apply in this case, leaving Fed. R. App. P.
28 4(a)(4)(A)(vi), which pertains to motions for relief under Fed. R. Civ. P. Rule 60.

² A modified version of the proposed judgment was signed and filed. (Doc. 127)