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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MAURICE HUNT,
Plaintiff,
v.
MATEVOUSIAN, et al.,
Defendants.

Case No. 1:16-cv-01560-LJO-BAM (PC)
ORDER DENYING SECOND MOTION TO
REOPEN CASE
(ECF No. 43)

Plaintiff Maurice Hunt (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Fed Bureau of Narcotics, 403 U.S. 388 (1971).

On June 15, 2018, the assigned Magistrate Judge issued findings and recommendations recommending dismissal of this action, with prejudice, for failure to state a claim, and denial of Plaintiff’s motion for preliminary injunction. (ECF No. 29.) Those findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (Id. at 14.) Following two extensions of time, Plaintiff’s objections were due on or before September 18, 2018. (ECF Nos. 32, 38.) No objections were filed, and the findings and recommendations were adopted in full on October 1, 2018. (ECF No. 39.) Judgment was entered accordingly the same day. (ECF No. 40.)

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1 On October 18, 2018, Plaintiff filed a motion to reopen the case and allow him additional
2 time to file his objections to the findings and recommendations, stating that he timely provided
3 his written objections to prison officials for mailing, complete with postage. (ECF No. 41.)
4 Finding no evidence of the preparing or mailing of Plaintiff's objections, beyond Plaintiff's
5 vague, unspecific word, the Court found no good cause to grant reconsideration and denied the
6 motion. (ECF No. 42.)

7 Currently before the Court is Plaintiff's second motion to reopen this matter, filed October
8 29, 2018. (ECF No. 43.) Specifically, Plaintiff argues that the Ninth Circuit case Rodriguez v.
9 Swartz, 899 F.3d 719, 2018 U.S. App. Lexis 21930, (9th Cir. 2018), bears on the proper
10 interpretation of the Supreme Court's opinion in Ziglar v. Abassi, and that holding warrants
11 reconsideration of the Court's finding that Plaintiff has alternative remedies available to address
12 his constitutional claims under the Eighth, Fifth, and Fourteenth Amendments. (Id.)

13 "A motion for reconsideration should not be granted, absent highly unusual
14 circumstances, unless the district court is presented with newly discovered evidence, committed
15 clear error, or if there is an intervening change in the controlling law," Marlyn Nutraceuticals,
16 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks
17 and citations omitted), and "[a] party seeking reconsideration must show more than a
18 disagreement with the Court's decision, and recapitulation . . ." of that which was already
19 considered by the Court in rendering its decision, U.S. v. Westlands Water Dist., 134 F. Supp. 2d
20 1111, 1131 (E.D. Cal. 2001) (internal quotation marks and citation omitted). Additionally,
21 pursuant to this Court's Local Rules, when filing a motion for reconsideration of an order, a party
22 must show "what new or different facts or circumstances are claimed to exist which did not exist
23 or were not shown upon such prior motion, or what other grounds exist for the motion." Local
24 Rule 230(j).

25 Although Plaintiff argues that he has newly discovered the Rodriguez case, due to a delay
26 in updating the inmate law library system, the Court notes that the case was decided on August 7,
27 2018, two months prior to the dismissal of this action. The Court was aware of the ruling at the
28 time the undersigned adopted the Magistrate Judge's findings and recommendations, and the case

1 is not applicable to this action. In Rodriguez, the Ninth Circuit found a Bivens remedy was
2 available with respect to the violation of a Mexican citizen's Fourth Amendment right in relation
3 to an incident in which a United States Border Patrol agent, while standing on the United States
4 side of the U.S.-Mexico border, shot and killed the Mexican citizen, who was walking down a
5 street on the Mexican side of the border. See Rodriguez, 899 F.3d 719. The Ninth Circuit further
6 held that the estate of the Mexican citizen lacked an adequate alternative remedy against the
7 United States, in part because the claims arose in a foreign country, the difficulty of obtaining
8 restitution following a criminal conviction, and the lack of evidence that a Mexican court could
9 grant a remedy. This holding presents no basis for reconsideration of the Court's finding in this
10 action that Plaintiff has alternative remedies available to him, including the Bureau of Prisons
11 administrative grievance process, the filing of a writ of habeas corpus, and injunctive relief.

12 Plaintiff has presented no new grounds that would warrant reconsideration of the Court's
13 final order and judgment dismissing this action. Accordingly, Plaintiff's motion for
14 reconsideration and to reopen this action, (ECF No. 43), is HEREBY DENIED. This action
15 remains closed.

16
17 IT IS SO ORDERED.

18 Dated: November 29, 2018

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