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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST MILLER,

Plaintiff,

No. CIV S-08-3101 GGH P

vs.

T. PEREZ, et al.,

Defendants.

ORDER

On February 22, 2010, this action was dismissed with prejudice¹ and judgment was entered. On March 29, 2010, plaintiff filed a “notice of motion objection” which the court construes as Rule 60(b) motion.

Under Rule 60(b), a party may seek relief from judgment and to re-open his case in limited circumstances, “including fraud, mistake, and newly discovered evidence.” Gonzalez v. Crosby, 545 U.S. 524, 528, 125 S. Ct. 2641, 2645-46 (2005). “Motions for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are addressed to the sound discretion of the district court.” Allmerica Financial Life Insurance and Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

¹ The court notes that plaintiff consented to the jurisdiction of the undersigned. See Docket Entry # 7, entered on the docket on January 5, 2009.

1 Once a decision of law is made, it becomes the “law of the case,” and absent clear
2 error or changed circumstances should not be changed. See United States v. Estrada-Lucas, 651
3 F.2d 1261, 1263-64 (9th Cir.1980). The law of the case doctrine provides that “a court is
4 generally precluded from reconsidering an issue that has already been decided by the same court,
5 or a higher court in the identical case.” United States v. Cuddy, 147 F.3d 1111, 1114 (9th Cir.
6 1998), quoting United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) (internal quotation
7 and citation omitted).

8 Plaintiff’s objection is solely predicated on the court having found that plaintiff
9 was barred by the three-strikes provision under 28 U.S.C. § 1915(g) and having revoked his in
10 forma pauperis status. Plaintiff essentially maintains that he should be allowed to proceed under
11 the “imminent danger of serious physical injury” exception under § 1915(g), but he raises no new
12 fact or point of law not previously considered; in fact he raises no substantive argument whatever
13 and his assertion is wholly conclusory and without any substantive basis. Moreover, plaintiff
14 does not note that the case was dismissed with prejudice on an entirely separate ground, that is,
15 plaintiff’s repeated failure to state a claim upon which relief may be granted.

16 Accordingly, IT IS HEREBY ORDERED that plaintiff’s March 29, 2010, “notice
17 of motion objection” (Docket No. 22), construed as a motion for relief from judgment under Fed.
18 R. Civ. P. 60(b), is denied.

19 DATED: April 21, 2010

20
21 /s/ Gregory G. Hollows

22 _____
23 GREGORY G. HOLLOWS
24 UNITED STATES MAGISTRATE JUDGE

23 GGH:009
24 mill3101.60(b)