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

DEVONTE B. HARRIS,

Plaintiff,

No. 2:09-cv-1523 LKK AC P

vs.

L. ZAMUDIO, et al.,

Defendants.

ORDER

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Plaintiff has filed a request for reconsideration of the district court’s order, filed on September 21, 2012. By that order, the court denied defendants’ motion to dismiss as to three of the defendants but granted the motion as to defendant Zamudio.<sup>1</sup> Plaintiff contends that the court erred in dismissing defendant Zamudio for plaintiff’s failure to exhaust administrative remedies.

**I. STANDARD FOR A MOTION FOR RECONSIDERATION**

Federal Rule of Civil Procedure 60(b) provides: “On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding” in the case of mistake or excusable neglect, newly discovered evidence, fraud, a judgment that is void, satisfaction of

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<sup>1</sup> Plaintiff, in a separate motion (Doc. No. 51), also took issue with the magistrate judge’s denial of an extension of time for plaintiff to file his motion for reconsideration. As the court herein addresses plaintiff’s reconsideration motion, that request is denied as moot.

1 the judgment, or for “(6) any other reason that justifies relief.” Fed.R.Civ.P. 60(b). This catch-all  
2 provision of Rule 60(b)(6) “vests power in courts adequate to enable them to vacate judgments  
3 whenever such action is appropriate to accomplish justice.” Klapprott v. United States, 335 U.S.  
4 601, 615, 69 S.Ct. 384, 93 L.Ed. 266 (1949). Rule 60(b) “attempts to strike a proper balance  
5 between the conflicting principles that litigation must be brought to an end and that justice should  
6 be done.” Delay v. Gordon, 475 F.3d 1039, 1044 (9th Cir. 2007) (citing 11 Wright & Miller  
7 Federal Practice & Procedure § 2851 (2d ed. 1995)). Nonetheless, in order to seek relief under  
8 Rule 60(b)(6), the movant must demonstrate “extraordinary circumstances.” Liljeberg v. Health  
9 Services Acquisition Corp., 486 U.S. 847, 864, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) (quoting  
10 Ackermann v. United States, 340 U.S. 193, 199, 71 S.Ct. 209, 95 L.Ed. 207 (1950)).

11 In addition, Local Rule 230(j) applies to motions for reconsideration filed in the Eastern  
12 District. That rule requires the movant to brief the court on, inter alia, “what new or different  
13 facts or circumstances . . . were not shown upon such prior motion, or what other grounds exist  
14 for the motion; and . . . why the facts or circumstances were not shown at the time of the prior  
15 motion.” L.R. 230(j)(3)-(4).

## 16 II. ANALYSIS

17 The May 24, 2011 findings and recommendations thoroughly addressed the  
18 question of whether plaintiff had administratively exhausted his claim against defendant  
19 Zamudio. See Doc. No. 44. Upon de novo review and consideration of plaintiff’s objections  
20 (Doc. No. 46), this court rejected the magistrate judge’s finding that plaintiff’s ability to file an  
21 unrelated administrative appeal while housed in administrative segregation undercut his assertion  
22 of an inability to file the third level appeal as to defendant Zamudio. See Doc. No. 48.  
23 Nevertheless, this court agreed with the magistrate judge’s determination that plaintiff had failed  
24 to exhaust his administrative remedies as to defendant Zamudio.

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