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

PHILLIP V. LIGGINS,)	
)	2:09-cv-01777-GEB-EFB
Petitioner,)	
)	
v.)	<u>ORDER DENYING PETITIONER'S</u>
)	<u>REQUEST FOR RECONSIDERATION</u>
P.D. BRAZELTON,)	
)	
Respondent.)	
_____)	

On December 13, 2012, Petitioner filed a "Request for Reconsideration of this Court's November 28[,] 2012 Order Denying Habeas Corpus Relief," in which he requests "this court . . . recind [sic] its order at issue, and grant habeas corpus relief." (Pet'r's Req. for Recons. 1:23-24, ECF No. 43.) In essence, Petitioner argues the Court "inadvertently overlooked" points of law applicable to his Batson/Wheeler claims, in denying habeas corpus relief. (Id. at 3:3-4.)

Respondent opposes Petitioner's request, arguing it "attacks this Court's ruling on the merits[, and a]s such it should be considered a second or successive [habeas] petition and be dismissed." (Resp't's Opp'n 3:14-15, ECF No. 44.) Respondent further argues: "[t]o the extent that Petitioner's [request] is not considered a second or successive petition, Respondent submits that it must be denied." (Id. at 3:16-17.)

Respondent argues:

Although Petitioner makes a general argument that this Court overlooked applicable law, he does nothing to specifically address this Court's order. The order itself clearly shows that the District

1 Judge rejected the Magistrate Judge's findings and
2 recommendation as to the Batson claim after
3 conducting a de novo review of the case and
4 carefully reviewing the entire file. The fact that
5 Petitioner disagrees with the District Judge's
6 decision is not a ground for relief

7 (Id. at 3:17-22 (internal citation omitted).)

8 Whether and/or when a Rule 59(e) motion for reconsideration
9 may constitute a second or successive habeas corpus application under 28
10 U.S.C. § 2244 need not be decided since Petitioner has not made an
11 adequate showing on the merits of his request for reconsideration.

12 Since Petitioner's request for reconsideration was made within
13 twenty-eight days of entry of judgment, it "is treated as a motion to
14 alter or amend judgment under Federal Rule of Civil Procedure [("Rule")]
15 59(e) [,]" rather than a "motion for relief from a judgment or order"
16 under Rule 60(b). Am. Ironworks & Erectors, Inc. v. N. Am. Constr.
17 Corp., 248 F.3d 892, 898-99 (9th Cir. 2001) (applying Rule 59(e)'s ten
18 day deadline before its 2009 amendment to twenty-eight days) (citation
19 omitted).


20 In general, there are four basic grounds upon which
21 a Rule 59(e) motion may be granted: (1) if such
22 motion is necessary to correct manifest errors of
23 law or fact upon which the judgment rests; (2) if
24 such motion is necessary to present newly
25 discovered or previously unavailable evidence; (3)
26 if such motion is necessary to prevent manifest
27 injustice; or (4) if the amendment is justified by
28 an intervening change in controlling law.

29 Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011).
30 However, "amending a judgment after its entry [is] an extraordinary
31 remedy which should be used sparingly." Id. (internal quotation marks
32 omitted). Further, "[a] reconsideration motion is properly denied where
33 it merely presents arguments previously raised" Lopes v. Vieria,
34 No. 1:06-cv-01243 OWW SMS, 2011 WL 3568600, at *2 (E.D. Cal. Aug. 12,

1 2011) (citing Blacklund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir.
2 1985)).

3 Plaintiff has not made an adequate showing under any of the
4 four basic grounds for reconsideration referenced above; rather, he
5 "simply repeats arguments raised" raised in his Petition and Traverse
6 (ECF Nos. 1, 15). Id. For the stated reasons, Plaintiff's request for
7 reconsideration is DENIED.

8 Dated: March 11, 2013

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12 GARLAND E. BURRELL, JR.
13 Senior United States District Judge
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