

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MANUEL GUADALUPE SANCHEZ, JR.,

Plaintiff,

No. CIV S-10-2029 CKD P

vs.

T. VIRGA, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff has filed a motion requesting that the court reconsider several aspects of the screening order issued March 16, 2012. A district court may reconsider a ruling under Federal Rule of Civil Procedure 60(b). Generally speaking, “[r]econsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Plaintiff has consented to all proceedings in this matter being held before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

First, plaintiff asks that the court extend the page limit on plaintiff’s second amended complaint from 30 pages to 35-40 pages. Good cause appearing, the page limitation

////

1 will be extended to 35 pages. The court expects plaintiff to adhere to his representation in his  
2 motion that he will not use small print in drafting his second amended complaint.

3           Second, plaintiff asks that he be allowed to include references to “Doe”  
4 defendants. This request will be denied. If plaintiff obtains the names of persons whom he feels  
5 should be defendants in this action through discovery or some other means, plaintiff may file a  
6 motion for leave to file an amended complaint.

7           Third, plaintiff asks that he be allowed to include his claim that his validation as a  
8 gang member violates rights arising under the First Amendment. Essentially, plaintiff asserts  
9 that he was validated as a gang member, at least in part, because plaintiff possessed items  
10 plaintiff describes as “cultural art.” While the court assumes plaintiff has a right under the First  
11 Amendment to possess such items, he does not have a First Amendment right to not have the  
12 items used as evidence that he is a member of a prison gang in violation of prison rules.  
13 Plaintiff’s motion for reconsideration with respect to his First Amendment claim will be denied.

14           Fourth, plaintiff was ordered not to include his third, fourth, fifth, and seventh  
15 causes of action from his amended complaint in his second amended complaint. Plaintiff objects  
16 to this without pointing to any basis for his objection. Plaintiff’s motion for reconsideration of  
17 this aspect of the court’s screening order will be denied.

18           Plaintiff also requests an extension of time to file his second amended complaint.  
19 Good cause appearing, that request will be granted.

20           Accordingly, IT IS HEREBY ORDERED that:

21           1. Plaintiff’s request for an extension of time to file his second amended  
22 complaint is granted.

23           2. Plaintiff’s second amended complaint shall be filed within 30 days of this  
24 order.

25 ////

26 ////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

3. Plaintiff's April 2, 2012 motion for reconsideration is denied in all respects except that the page limit for plaintiff's second amended complaint is extended to 35 pages.

Dated: April 12, 2012

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

l/mp  
sanc2029.36