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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN WARE,  
Plaintiff,  
v.  
M. McDONALD, et al.,  
Defendants.

No. 2:12-cv-1505 TLN KJN P

ORDER

On September 3, 2013, the undersigned issued an order and findings and recommendations. (ECF No. 43.) The court recommended that plaintiff’s First and Fourteenth Amendment claims be dismissed. (Id. at 4.) On November 21, 2013, the district court adopted the findings and recommendations, and directed plaintiff to submit the forms necessary to accomplish service of process. (ECF No. 49.)

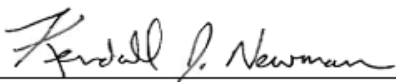
On November 22, 2013, plaintiff filed a motion for reconsideration directed to the district court and to the undersigned. (ECF No. 50 at 1.) Plaintiff notes that he was not granted leave to amend his claims alleging violations of the First and Fourteenth Amendments, and seeks leave to amend “because plaintiff has no other available remedy for the injury.” (ECF No. 50 at 2.)

Local Rule 303(b), states “rulings by Magistrate Judges . . . shall be final if no reconsideration thereof is sought from the Court within fourteen days . . . from the date of service of the ruling on the parties.” Id.

1 Here, plaintiff's motion was given to prison officials for mailing on November 12, 2013.  
2 (ECF No. 50 at 3.) See Houston v. Lack, 487 U.S. 266, 275-76 (1988) (pro se prisoner filing is  
3 dated from the date prisoner delivers it to prison authorities).<sup>1</sup> Thus, even under the mailbox rule,  
4 plaintiff's request for reconsideration of the September 3, 2013 order is untimely as it was filed  
5 over two months after the order.<sup>2</sup>

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion (ECF No. 50) is denied  
7 as untimely.

8 Dated: December 3, 2013

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10 \_\_\_\_\_  
11 KENDALL J. NEWMAN  
12 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> Because the request for reconsideration was given to prison officials for mailing prior to the  
27 district court's November 21, 2013 order, the court cannot construe plaintiff's filing as a request  
28 for reconsideration of the November 21, 2013 order.

<sup>2</sup> Plaintiff did file objections to the findings and recommendations (ECF No. 44), which the  
district court considered in the November 21, 2013 order (ECF No. 49).