

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS GARDNER,

No. 2:12-cv-01963 AC P

Plaintiff,

## ORDER<sup>1</sup>

STEVE DARDEN,

Defendant.

Plaintiff commenced this civil rights action pursuant to 42 U.S.C. § 1983, on July 26, 2012, shortly after his release from Solano County Jail, challenging the conduct of a Vallejo police officer and seeking a jury trial and damages. ECF No. 1. The court granted plaintiff's request to proceed in forma pauperis but dismissed his original complaint for failure to state a cognizable claim; however, plaintiff was granted leave to file an amended complaint. ECF No. 6. Plaintiff's First Amended Complaint, filed November 2, 2012, was also dismissed for failure to state a claim. ECF No. 12. In explaining the deficiencies in the pleading, the undersigned emphasized that plaintiff was foreclosed from proceeding on his claim for money damages against defendant arresting officer, under Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994). Nevertheless, the court again granted plaintiff leave to file a further amended complaint.

<sup>1</sup> Plaintiff has consented to the jurisdiction of the magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c), and Local Rule 305(a). (See ECF No. 5.)

1       Id.

2           On January 9, 2013, in light of plaintiff's failure to respond to the court's November 26,  
3           2012 order, the court dismissed this action with prejudice due to the noncognizability of  
4           plaintiff's claims. ECF No. 13.

5           Commencing four months later, plaintiff filed three notices of change of address  
6           (explaining that he had been temporarily incarcerated), a request for information concerning how  
7           to reopen this case, and, a year later, the instant motion for reconsideration. See ECF Nos. 15-9.

8           Local Rule 230 requires that a motion for reconsideration include identification of "what  
9           new or different facts or circumstances are claimed to exist which did not exist or were not shown  
10           upon such prior motion, or what other grounds exist for the motion," and a statement explaining  
11           "why the facts or circumstances were not shown at the time of the prior motion." Local Rule  
12           230(j)(3), (4). This rule derives from the "law of the case" doctrine, which provides that legal  
13           decisions made in a case "should be followed unless there is substantially different evidence . . . ,  
14           new controlling authority, or the prior decision was clearly erroneous and would result in  
15           injustice." Handi Inv. Co. v. Mobil Oil Corp., 653 F.2d 391, 392 (9th Cir. 1981); see also  
16           Waggoner v. Dallaire, 767 F.2d 589, 593 (9th Cir. 1985), cert. denied, 475 U.S. 1064 (1986).

17           In addition, Rule 60, Federal Rules of Civil Procedure, authorizes relief from an order for  
18           "any . . . reason that justifies relief," Fed. R. Civ. P. 60(b)(6), subject to an "extraordinary  
19           circumstances" standard, so as not to permit "a second bite at the apple," but to avoid inequitable  
20           results and accomplish justice, In re Pacific Far East Lines, Inc., 889 F.2d 242, 250 (9th Cir.  
21           1989).

22           In the present case, plaintiff's motion for reconsideration states only: "I'm writing this  
23           missive in regards to Case No. 2:12-cv-01963 AC request for reconsideration to open this case."  
24           ECF No. 19. Plaintiff has not made the requisite showing to obtain reconsideration of the court's  
25           dismissal of this action.

26           Accordingly, IT IS HEREBY ORDERED that:

- 27           1. Plaintiff's motion for reconsideration, ECF No. 19, is denied.  
28           2. This action shall remain closed for the reasons set forth in the court's order filed

January 9, 2013, ECF No. 13.

3. The Clerk of Court is directed to ignore any further filings by plaintiff in this action.

DATED: March 6, 2015

Allison Claire  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE