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

ALEXANDER DELGADO,

No. 2:14-cv-0634-CMK-P

Plaintiff,

vs.

ORDER

JERRY SANTANA, et al.,

Defendant.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are several motions plaintiff has filed indicating that this case was closed in error. The court has interpreted these motions as a motion for reconsideration. Defendants were ordered to respond to the plaintiff's motions, and those responses have been submitted.

The court may grant reconsideration of a final judgment under Federal Rules of Civil Procedure 59(e) and 60. Generally, a motion for reconsideration of a final judgment is appropriately brought under Federal Rule of Civil Procedure 59(e). See Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985) (discussing reconsideration of summary judgment); see also Schroeder v. McDonald, 55 F.3d 454, 458-59 (9th Cir. 1995). The motion must be filed no later

1 than twenty-eight (28) days after entry of the judgment.¹ See Fed. R. Civ. P. 59(e). Under Rule
2 59(e), three grounds may justify reconsideration: (1) an intervening change in controlling law; (2)
3 the availability of new evidence; or (3) the need to correct clear error or prevent manifest
4 injustice.² See Kern-Tulare Water Dist. v. City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal.
5 1986), rev'd in part on other grounds, 828 F.2d 514 (9th Cir. 1987), cert. denied, 486 U.S. 1015
6 (1988); see also 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999); accord
7 School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

8 Alternatively, under Rule 60(b), the court may grant reconsideration of a final
9 judgment and any order based on, among other things: (1) mistake, inadvertence, surprise, or
10 excusable neglect; (2) newly discovered evidence which, with reasonable diligence, could not
11 have been discovered within ten days of entry of judgment; and (3) fraud, misrepresentation, or
12 misconduct of an opposing party. A motion for reconsideration on any of these grounds must be
13 brought within a reasonable time and no later than one year of entry of judgment or the order
14 being challenged. See Fed. R. Civ. P. 60(c)(1).

15 The basis of plaintiff's motion appears to be mistake or clear error.

16 On March 29, 2016, the undersigned conducted a settlement conference in one of
17 plaintiff's other cases in this court, case number 2:14-cv-0306-EFB, at High Desert State Prison,
18 as well as a Lassen County Superior Court case, number JC57685. Plaintiff was present and
19 participated in the negotiations with the undersigned acting as mediator between plaintiff and
20 defense counsel who appeared by video conference. During the negotiations, the parties included
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22 ¹ Pursuant to Houston v. Lack, 487 U.S. 266 (1988), for pro se prisoner litigants
23 seeking reconsideration, the court calculates the 28-day period from the date the motion was
24 delivered to prison authorities for mailing to the court. Otherwise, the 28-day period is
calculated based on the date the motion for reconsideration is actually filed.

25 ² If reconsideration is sought based on new evidence which could not have been
26 discovered through due diligence in time to move for reconsideration under Rule 59(e), relief
may be available under Federal Rule of Civil Procedure 60(b)(2). A motion under Rule 60(b)(2)
may not be brought more than one year after entry of judgment.

1 this case in a global settlement, settling all three cases. Thereafter, the defendants obtained
2 plaintiff's approval of a stipulated dismissal, which was filed with the court on April 4, 2016.
3 Judgment was then entered and this case was closed. Plaintiff now seeks to reopen this case,
4 arguing there was an error and this case was not included as one of the cases settled at the
5 settlement conference.

6 In response, counsel for the defendants set forth their recollection as to the events
7 during the settlement conference. Counsel recalls it was plaintiff's suggestion to settle this case
8 as part of a global settlement of all of plaintiff's cases. As such, the defendants offered a larger
9 settlement in consideration of settling all three cases. Counsel present for the defendants in the
10 settlement conference case then contacted counsel for the defendants in this case, who approved
11 the global settlement. In support of the defendants' version of events, counsel has provided the
12 court with a declaration of Deputy Attorney General Aseil Mohmoud, who participated in the
13 settlement conference on behalf of the defendants in a third case, the Lassen County Superior
14 Court case. Defense counsel sets forth the events of the day, including the negotiation of a global
15 settlement of all three of plaintiff's cases, and explained that because the agreed upon settlement
16 included a transfer of property the settlement agreements had to be modified. Plaintiff was later
17 presented with settlement agreements for the three cases, which he agreed to and signed.

18 The court's recollection of the events concurs with the defense counsel's. This is
19 supported by the stipulations for dismissal plaintiff signed. As plaintiff indicates, the parties
20 were separated during the negotiations, with the undersigned communicating with them
21 individually. This is typically how settlement conferences are conducted so the parties may
22 discuss their case freely without the opposing party present. The negotiator then communicates
23 between the parties. Following the successful negotiation, plaintiff was presented with three
24 separate stipulations for dismissal, and it was explained to plaintiff what he was agreeing to and
25 what he was getting in exchange for the three stipulated dismissals. Plaintiff stated he
26 understood and agreed to the global settlement.

1 Plaintiff's claim³ that he did not settle this case in addition to the other two cases,
2 and that the judgment and dismissal were entered in error is unsupported. Plaintiff provides no
3 support for his claim that this case was not included in the settlement. While not originally set
4 for the settlement conference, that did not bar the parties from including it in a global settlement
5 of all three cases. Similarly, that the parties entered into a separate settlement stipulation from
6 the one prepared for the other two cases at the settlement conference is not a bar to the inclusion
7 of this case in the settlement. Plaintiff has been provided the benefit of the settlement, as the
8 defendants have paid him the agreed upon sum and property negotiated. The court finds no error
9 or mistake, and declines to reverse a settlement plaintiff agreed to and has already benefitted
10 from.

11 Accordingly, IT IS HEREBY ORDERED that plaintiff's motions for
12 reconsideration (Docs. 33, 34, 35, 36, 40) are denied.

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14 DATED: March 30, 2017

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE

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24 ³ Plaintiff appears to be confused as to the judges involved in his various cases. He
25 had two cases pending in this court, this cases in which the undersigned was assigned, and 2:14-
26 cv-0306-EFB, in which case Magistrate Judge Brennan was assigned. The undersigned was
drawn to conduct the settlement conference in Judge Brennan's case. The undersigned was the
one in attendance at High Desert State Prison for the settlement conference, not Judge Brennan.