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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREG SMITH,
Plaintiff,
v.
TIM HART, et al.,
Defendants.

No. 2:14-cv-1832 CKD P

ORDER

On December 1, 2014, the court received a motion from plaintiff asking that the court reconsider the November 20, 2014 order dismissing this action for plaintiff's failure to timely-file an amended complaint. A district court may reconsider a ruling under either Federal Rule of Civil Procedure 59(e) or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). "Reconsideration 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." Id. at 1263. On August 13, 2014, plaintiff consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

On October 10, 2014, the court dismissed plaintiff's complaint with leave to file an amended complaint within 30 days of service of the order. Plaintiff was warned that failure to file an amended complaint in compliance with the order would result in dismissal.


1 Under Rule 6(d) of the Federal Rules of Civil Procedure, an additional 3 days is added to
2 the time within which a party must act, if commencement of the time within which a party must
3 act begins with service of a document. Also, a document submitted by a prisoner is generally
4 deemed filed in court the day the document is submitted to prison officials for mailing. See
5 Houston v. Lack, 487 U.S. 266, 270-71 (1988). Accordingly, plaintiff had 33 days following
6 October 10, 2014, until November 12, 2014, within which to submit his amended complaint to
7 prison officials for mailing.

8 Plaintiff's amended complaint was received by the court the day judgment was entered.
9 In the amended complaint, plaintiff asserts under the penalty of perjury that he gave his amended
10 complaint to prison officials for mailing on November 13, 2014, one day late. Accordingly,
11 plaintiff's argument that his amended complaint was timely-filed must be rejected and his motion
12 for reconsideration denied.

13 Nonetheless, the court has reviewed the amended complaint filed by plaintiff and finds
14 that it does not state a claim upon which relief can be granted as the deficiencies in plaintiff's
15 original complaint, identified in the court's October 10, 2014 order, have not been cured.
16 Therefore, even if the court were to grant plaintiff's motion for reconsideration, the amended
17 complaint would be screened out pursuant to 28 U.S.C. § 1915A.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff's December 1, 2014 motion for
19 reconsideration (ECF No. 14) is denied.

20 Dated: December 4, 2014

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23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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