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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES O. MOLEN,
Petitioner,
v.
CONRAD M. GRABER,
Respondent.

No. 2:15-cv-2141 KJM KCD P

FINDINGS AND RECOMMENDATIONS

Petitioner, a United States prisoner proceeding pro se, has filed a motion asking that this case be reopened. On September 27, 2016, this action was dismissed because: (1) petitioner failed to pay the filing fee or file an application to proceed in forma pauperis; and (2) the relief sought by petitioner must be sought in a 28 U.S.C. § 2255 motion filed in 2:12-cr-0252 TLN. The district court judge has referred the motion to the undersigned.

The 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.

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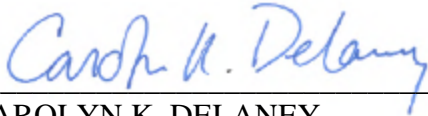
1 Petitioner does not present newly discovered evidence suggesting this matter should not
2 be dismissed and the law has not changed. Furthermore, the decision to dismiss the case is not
3 clearly erroneous or manifestly unjust.

4 After reviewing the record, the court notes it appears at least possible that petitioner
5 attempted to pay the filing fee for this action. See ECF No. 17 at 2 & 6. However, this is still not
6 the appropriate action for the relief sought.

7 Accordingly, IT IS HEREBY RECOMMENDED that petitioner’s October 17, 2016
8 motion to reopen this case be denied.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
14 objections shall be served and filed within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: November 7, 2016

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20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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