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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GENE EVANS,

 Plaintiff,

 v.

K. LASSITER, et al.,

 Defendants.

No. 2:16-cv-01997-DAD-JDP (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF’S MOTION TO REOPEN THIS
CASE

(Doc. Nos. 97, 100)

Plaintiff Gene Evans is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 23, 2024, the court granted summary judgment in favor of the defendants due to plaintiff’s failure to submit any evidence that would elevate defendants’ alleged threats directed at plaintiff to the level of an Eighth Amendment violation under controlling legal precedent. (Doc. No. 95 at 1.) That same day, judgment was entered and this case was closed. (Doc. No. 96.)

Four weeks later, on March 25, 2024, plaintiff filed a motion to reopen this case. In his motion, plaintiff asserts that there are “genuine disputes” as to the facts material to his claims that he wants the court to consider. (Doc. No. 97 at 2.) On April 18, 2024, defendants filed an

1 opposition to this pending motion contending, should the court construe this motion as being filed
2 pursuant to Federal Rule of Civil Procedure 60(b), that the plaintiff has not shown any basis to
3 justify the extraordinary relief of reopening this case. (Doc. No. 98 at 3.)

4 On July 17, 2024, the assigned magistrate judge issued findings and recommendations
5 recommending that plaintiff’s motion to reopen this case (Doc. No. 97) be denied. (Doc. No.
6 100.) Specifically, the magistrate judge concluded that plaintiff had “failed to establish any basis
7 for relief under Rule 60(b) from the court’s dismissal order and judgment” (Doc. No. 100 at
8 2.)

9 The pending findings and recommendations were served on plaintiff and contained notice
10 that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 3.) On
11 August 14, 2024, plaintiff filed his objections. (Doc. No. 101.)

12 Plaintiff’s primary objection appears to be that he and his family were denied justice by
13 the prior order granting summary judgment against him. (Doc. Nos. 95, 101.) The court
14 construes this objection as arguing that the case should be reopened pursuant to Federal Rule of
15 Civil Procedure 60(b)(6) to prevent manifest injustice. However, plaintiff’s objection does not
16 meaningfully address the deficiencies in his pending motion identified by the magistrate judge.
17 “Rule 60(b)(6) is to be ‘used sparingly as an equitable remedy to prevent manifest injustice and is
18 to be utilized only where extraordinary circumstances prevented a party from taking timely action
19 to prevent or correct an erroneous judgment.’” *Goff v. Walters*, No. 1:18-cv-00904-KES-HBK
20 (PC), 2024 WL 1722251, at *2 (E.D. Cal. Apr. 22, 2024) (quoting *Latshaw v. Trainer Wortham*
21 *& Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)). Recognizing that plaintiff has expressed
22 frustration with the outcome of his case, the law nonetheless requires that the pending motion to
23 reopen the case be denied. *See Brown v. Warden*, No. 2:10-cv-2040-MCE-KJN P, 2011 WL
24 2559428, at *2 (E.D. Cal. June 27, 2011) (noting that dissatisfaction or disagreement with the
25 court’s order alone is not adequate grounds for relief under Rule 60(b)(6)).

26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
27 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
28 pending findings and recommendations are supported by the record and proper analysis.

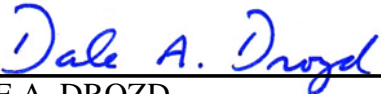
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Accordingly,

1. The findings and recommendations issued on July 17, 2024 (Doc. No. 100) are adopted; and
2. Plaintiff's motion to reopen this case (Doc. No. 97) is denied.

IT IS SO ORDERED.

Dated: October 15, 2024



DALE A. DROZD
UNITED STATES DISTRICT JUDGE