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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 RUBEN J. RUIZ,

No. C 09-2968 MHP (pr)

9 Plaintiff,

**ORDER**

10 v.

11 MATHEW CATE, etc.; et al.,

12 Defendants.  
13 \_\_\_\_\_/

14 This action was dismissed and judgment entered on February 10, 2010. Thereafter,  
15 plaintiff filed several motions which the court now addresses.


16 Plaintiff's motion to issue order of summons and motion to amend complaint are  
17 DENIED as moot because, at the time they were filed, judgment already had been entered.  
18 (Docket # 8, # 9.) After a final judgment has been entered, the district court may consider a  
19 Rule 15 motion to amend only if the judgment is first reopened pursuant to a motion under  
20 Federal Rule of Civil Procedure 59 or 60. See Lindauer v. Rogers, 96 F.3d 1355, 1357 (9th  
21 Cir. 1996). This is a high hurdle to overcome, as judgment is not properly reopened "'absent  
22 highly unusual circumstances, unless the district court is presented with newly discovered  
23 evidence, committed clear error, or if there is an intervening change in the controlling law."  
24 Weeks v. Bayer, 246 F.3d 1231, 1236-37 (9th Cir. 2001) (quoting 389 Orange St. Partners v.  
25 Arnold, 179 F.3d 656, 665 (9th Cir. 1999)). Plaintiff's filing does not suggest that he could  
26 meet this high standard. See Motion To Amend Complaint (docket # 9), p. 1 (proposed  
27 second amended complaint "removes and consolidated numerous causes of action from  
28 sixteen to nine causes of action; correcting misnumbering of paragraphs on pages 3 and 4;

1 and describes in more detail, is more organized and more clearly drafted.")

2 Plaintiff's motion for leave to proceed in forma pauperis on appeal is DENIED.  
3 (Docket # 10, # 13.) The plaintiff did not comply with Federal Rule of Appellate Procedure  
4 24(a)(1). Specifically, he did not attach an affidavit that shows his inability to pay in the  
5 detail prescribed in Form 4 and did not attach a certified prisoner trust account statement for  
6 the last six months. Petitioner may file a new in forma pauperis application in the U.S. Court  
7 of Appeals for the Ninth Circuit. See Fed. R. App. P. 24(a)(5).

8 IT IS SO ORDERED.

9 Dated: April 29, 2010

  
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Marilyn Hall Patel  
United States District Judge

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