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E-Filed 12/7/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCENT LEE ROSENBALM,

No. C 10-0071 RS (PR)

Plaintiff,

**ORDER DENYING MOTION FOR
REHEARING**

v.

EDWARD FOULK,

Defendant.

This closed federal civil rights action was filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. Plaintiff's motion for a rehearing, which the Court construes as a motion for reconsideration, (Docket No. 44), is DENIED. Where, as here, the Court's ruling has resulted in a final judgment or order, a motion for reconsideration may be based either on Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure.

"Under Rule 59(e), it is appropriate to alter or amend a judgment if '(1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law.'" *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 779 (9th Cir. 2009) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)). Here, plaintiff has made no showing that there is newly-discovered evidence, the

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1 Court committed clear error or made an initial decision that was manifestly unjust, or that
2 there was an intervening change in controlling law.

3 Rule 60(b) provides for reconsideration where one or more of the following is shown:
4 (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that
5 by due diligence could not have been discovered before the court's decision; (3) fraud by the
6 adverse party; (4) voiding of the judgment; (5) satisfaction of the judgment; (6) any other
7 reason justifying relief. *See* Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d
8 1255, 1263 (9th Cir. 1993). Although couched in broad terms, subparagraph (6) requires a
9 showing that the grounds justifying relief are extraordinary. *See Twentieth Century-Fox*
10 *Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981). Here, plaintiff has made no
11 showing that there is newly-discovered evidence, nor has he shown that there was any
12 mistake, inadvertence, surprise, excusable neglect, fraud by the adverse party, or voiding of
13 the judgment; plaintiff offers no other reason justifying relief. The Clerk shall terminate
14 Docket No. 44.

15 **IT IS SO ORDERED.**

16 DATED: December 7, 2011


17 RICHARD SEEBORG
18 United States District Judge

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