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\*E-Filed 8/24/10\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARDELL NEWTON,  
Plaintiff,  
v.  
OFFICER CURZEN, and SAN  
QUENTIN STATE PRISON,  
Defendants.

No. C 10-1490 RS (PR)  
**ORDER GRANTING LEAVE TO  
FILE A MOTION FOR  
RECONSIDERATION**

Plaintiff's complaint was dismissed for plaintiff's failure to (1) pay the filing fee of \$350.00, or (2) file a complete application to proceed *in forma pauperis*, by the appropriate date. Judgment was entered in favor of defendants.

Plaintiff has filed a letter in which he contends that the Court's ruling was in error. The Court will construe this letter as a motion for leave to file a motion for reconsideration. So construed, the motion is GRANTED.

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

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ORDER

1 error or made an initial decision that was manifestly unjust, or (3) there is an intervening  
2 change in controlling law.” *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772,  
3 779 (9th Cir. 2009) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir.  
4 2001)). Plaintiff may not bring a motion under Rule 59(e) because such a motion must be  
5 brought no later than 28 days after the entry of judgment. Judgment was entered well over  
6 28 days ago.

7 Plaintiff may, however, bring a motion for reconsideration under Rule 60(b). Rule  
8 60(b) provides for reconsideration where one or more of the following is shown:  
9 (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that  
10 by due diligence could not have been discovered before the court’s decision; (3) fraud by the  
11 adverse party; (4) voiding of the judgment; (5) satisfaction of the judgment; (6) any other  
12 reason justifying relief. *See* Fed. R. Civ. P. 60(b); *School Dist. 1J v. ACandS Inc.*, 5 F.3d  
13 1255, 1263 (9th Cir.1993). Although couched in broad terms, subparagraph (6) requires a  
14 showing that the grounds justifying relief are extraordinary. *See Twentieth Century - Fox*  
15 *Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981).

16 Plaintiff must file a motion for reconsideration within 30 days from the date of this  
17 order. **No extensions of time will be granted.**

18 **IT IS SO ORDERED.**

19 DATED: August 24, 2010

  
20 RICHARD SEEBORG  
United States District Judge