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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,
Plaintiff,
v.
PUGETT, et al.,
Defendants.

Case No. [13-cv-03366-JD](#)

**ORDER DENYING MOTION TO
ALTER OR AMEND THE
JUDGMENT**

Re: Dkt. No. 80

This civil rights case filed pro se by a state prisoner was dismissed and closed when defendants’ motion for summary judgment was granted. Plaintiff has filed a motion for reconsideration that the Court will construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e).

A motion to alter or amend judgment under Rule 59 must be made no later than twenty-eight days after entry of judgment. *See* Fed. R. Civ. P. 59(e). A motion for reconsideration under Rule 59(e) “‘should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the law.’” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (citation omitted) (en banc).

Evidence is not newly discovered for purposes of a Rule 59(e) motion if it was available prior to the district court’s ruling. *See Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011) (affirming district court’s denial of habeas petitioner’s motion for reconsideration where petitioner’s evidence of exhaustion was not “newly discovered” because petitioner was aware of such evidence almost one year prior to the district court’s denial of the petition).

The day before defendants’ filed the motion for summary judgment, plaintiff filed a proposed third amended complaint and a motion to amend. In the third amended complaint, plaintiff noted that a key date in the prior complaint was incorrect and he sought to correct the

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record. The Court granted the motion for summary judgment and denied plaintiff's motion to amend. Plaintiff seeks reconsideration for the Court to reconsider the motion for summary judgment in light of the third amended complaint. While the Court denied the motion to amend, the Court also considered the merits of the summary judgment motion in light of the third amended complaint and found that summary judgment would still be granted despite the corrected factual assertions. Because the Court has already considered the third amended complaint and has already addressed the other arguments plaintiff presents in this motion, the motion to alter or amend the judgment (Docket No. 80) is **DENIED**.¹

IT IS SO ORDERED.

Dated: March 17, 2016



JAMES DONATO
United States District Judge

¹ The Court also declines to alter the decision not to exercise supplemental jurisdiction over the state law claims that were dismissed without prejudice to be filed in state court.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 THOMAS GOOLSBY,
4 Plaintiff,

5 v.

6 PUGETT, et al.,
7 Defendants.
8

Case No. [13-cv-03366-JD](#)

CERTIFICATE OF SERVICE

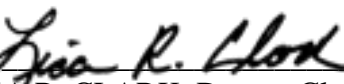
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on March 17, 2016, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Thomas Goolsby
18 PBSP D-8-224
19 F-19778
20 P.O. Box 7500
21 Crescent City, CA 95532

22 Dated: March 17, 2016

23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO