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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 MARIO MARTINEZ ARIAS,

7 Plaintiff,

8 v.

9 D. DAVEY, et al.,

10 Defendants.

Case No. [15-cv-01857-JSC](#)

**ORDER DENYING MOTION FOR  
RECONSIDERATION; GRANTING  
LEAVE TO PROCEED IN FORMA  
PAUPERIS ON APPEAL**

Re: Dkt. Nos. 6, 9

11  
12 Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42  
13 U.S.C. § 1983 against his former and current wardens.<sup>1</sup> He was granted leave to proceed *in forma*  
14 *pauperis* in a separate order. (Dkt. No. 4.) After reviewing the complaint pursuant to 28 U.S.C. §  
15 1915A, the Court dismissed it without leave to amend because it did not state a cognizable claim  
16 for relief. (Dkt. No. 3.) Plaintiff has filed a motion for reconsideration. (Dkt. No. 6.) In addition,  
17 he filed a notice of appeal, and the United States Court of Appeals has referred the appeal to this  
18 Court for the limited purpose of determining whether pauper status should continue on appeal or  
19 whether the appeal is frivolous or taken in bad faith. (Dkt. No. 9.) *See* 28 U.S.C. § 1915(a)(3).

20 In the Northern District of California, Local Rule 7-9 allows for the filing of motions for  
21 reconsideration only with respect to interlocutory orders made in a case prior to the entry of final  
22 judgment. *See* Civil L.R. 7-9(a). Therefore, a post-judgment motion for reconsideration is  
23 construed as a motion to alter or amend judgment under Rule 59(e) or a motion for relief from  
24 judgment under Rule 60(b) of the Federal Rules of Civil Procedure.

25 Plaintiff does not specify whether he seeks relief under Rule 59(e) or Rule 60(b). The  
26 motion is therefore construed as a motion under Rule 59(e) because the denial of a motion under

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28 <sup>1</sup> Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. §  
636(c). (Dkt. No. 1 at 5.)

1 Rule 59(e) is construed as a denial of relief under Rule 60(b) as well. *See McDowell v. Calderon*,  
2 197 F.3d 1253, 1255 n.3 (9th Cir. 1999) (citation omitted) (en banc). A motion to alter or amend  
3 judgment under Rule 59(e) ““should not be granted, absent highly unusual circumstances, unless  
4 the district court is presented with newly discovered evidence, committed clear error, or if there is  
5 an intervening change in the law.”” *Id.* at 1255.

6 Plaintiff does not indicate the provision of Rule 59(e) under which reconsideration is  
7 warranted. Plaintiff alleges no newly discovered evidence, no clear error, and no intervening  
8 change in the law. Rather, plaintiff argues that his rights under the California Code of Regulations  
9 pertaining to the pursuit of prison administrative appeals are being violated. As explained in the  
10 dismissal order, the violation of state law is not grounds for relief under Section 1983. *See West v.*  
11 *Atkins*, 487 U.S. 42, 48 (1988). He states that the violation of his right to pursue administrative  
12 appeals violates his right to due process, but the Court explained in the dismissal order that there is  
13 no federal constitutional right to a prison administrative appeal or grievance system. *See Ramirez*  
14 *v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Plaintiff cites no authority indicating that the above  
15 conclusions are wrong, let alone clearly erroneous, nor does he show any other grounds for  
16 reconsideration. Plaintiff’s disagreement with the Court’s conclusions in the dismissal order may  
17 be raised in his appeal, but are not grounds for reconsideration. *See Twentieth Century - Fox Film*  
18 *Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981) (motions for reconsideration are not a  
19 substitute for appeal or a means of attacking some perceived error of the court). Consequently, the  
20 motion for reconsideration (dkt. 6) is DENIED

21 Pursuant to the referral from the United States Court of Appeals, this Court finds that the  
22 appeal is taken in good faith such that plaintiff’s pauper status may continue on appeal. *See* 28  
23 U.S.C. § 1915(a)(3).

24 **IT IS SO ORDERED.**

25 Dated: 9/2/15

26   
27 JACQUELINE SCOTT CORLEY  
28 United States Magistrate Judge