

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

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3	EDDIE J. STREETER, JR.,) No. C 04-3969 CW (PR)
4	Plaintiff,)
5	v.) ORDER DENYING REQUEST FOR
6	COUNTY OF SANTA CLARA,) RECONSIDERATION
7	et al.,) (Docket nos. 73, 74)
8	Defendants.)

BACKGROUND

Plaintiff, a state prisoner, filed the above-referenced pro se civil rights action pursuant to 42 U.S.C. § 1983 regarding the conditions of his incarceration.

On September 1, 2006, Plaintiff met Defendants' representative, County Liability Claims Adjustor Ted Althausen, and the two sides reached a settlement agreement. (Def.'s Resp., Ex. A.) The agreement required Defendants to pay Plaintiff \$49,000.00, to make the check payable to Plaintiff's father, "Eddie J. Streeter Sr.," to call Plaintiff's father to verify his Louisville, Kentucky mailing address, and to mail the check to that address. (Id.) These terms were handwritten into the settlement agreement and initialed by both parties. (Id.) Plaintiff signed the settlement agreement and the "Stipulation and Order Dismissing Entire Action With Prejudice" in the presence of Mr. Althausen. (Althausen Decl. ¶¶ 5-6.)

On or about September 12, 2006, Althausen confirmed Plaintiff's father's mailing address by telephone. (Id. at ¶ 8.) On September 13, 2006, Althausen mailed a \$49,000 check to

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1 Plaintiff's father at the correct Louisville, Kentucky address.
2 (Def.'s Resp., Ex. B.) On September 15, 2006, the check was
3 cashed. (Def.'s Resp., Ex. D.)

4 On September 20, 2006, the signed "Stipulation and Order
5 Dismissing Entire Action With Prejudice" was filed, and the Court
6 dismissed this action with prejudice.

7 On March 1, 2010, Plaintiff filed the present motions
8 entitled, "Ex Parte Motion (Breach of Contract)" and "Writ Mandate
9 Re: Payment Order (Breach of Contract)" (docket nos. 73, 74).
10 Plaintiff claims that "an agreement for \$49,600.00 was reached" and
11 that the "check should've been only made payable to Eddie Streeter
12 'Jr.'" (Mot. at 1-2.) Because his father allegedly failed to
13 forward the funds from the \$49,000.00 check and because Defendants
14 wrote the check to his father instead of to him, Plaintiff seeks
15 \$49,600.00 plus interest, or alternatively that the "case be able
16 to be reopened." (Id. at 4.)

17 In an Order dated February 14, 2011, the Court construed
18 Plaintiff's motions as a request for reconsideration under Rule
19 60(b) of the Federal Rules of Civil Procedure, stating:
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21 Plaintiff argues that this is a breach of their
22 settlement agreement. It seems that Plaintiff's father
23 cashed the check, claiming that it was in his name and
24 for his personal use. Plaintiff is now attempting to
reclaim his settlement payment because he will soon be
released from prison. The Court construes Plaintiff's
motion as a request for reconsideration.

25 Where the Court's ruling has resulted in a final
26 judgment or order, as here, a motion for reconsideration
27 may be based either on Rule 59(e) (motion to alter or
amend judgment) or Rule 60(b) (motion for relief from
judgment) of the Federal Rules of Civil Procedure.
28 Because Plaintiff's motion was not filed within ten days
of entry of judgment, as is required for a Rule 59(e)
motion, it will be treated as a Rule 60(b) motion.

1 Rule 60(b) provides for reconsideration where one
2 or more of the following is shown: (1) mistake,
3 inadvertence, surprise or excusable neglect; (2) newly
4 discovered evidence which by due diligence could not
5 have been discovered before the Court's decision;
6 (3) fraud by the adverse party; (4) the judgment is
7 void; (5) the judgment has been satisfied; (6) any other
8 reason justifying relief. Fed. R. Civ. P. 60(b); School
9 Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir.
10 1993). "Rule 60(b) [] provides a mechanism for parties
11 to seek relief from a judgment when 'it is no longer
12 equitable that the judgment should have prospective
13 application,' or when there is any other reason
14 justifying relief from judgment." Jeff D. v.
15 Kemphorne, 365 F.3d 844, 853-54 (9th Cir. 2004)
16 (quoting Fed. R. Civ. P. 60(b)).

17 Subparagraph (6) requires a showing that the
18 grounds justifying relief are extraordinary. "[T]he
19 major grounds that justify reconsideration involve an
20 intervening change of controlling law, the availability
21 of new evidence, or the need to correct a clear error or
22 prevent manifest injustice.'" Pyramid Lake Paiute Tribe
23 of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir.
24 1989) (quoting United States v. Desert Gold Mining Co.,
25 433 F.2d 713, 715 (9th Cir. 1970)).

26 (Feb. 14, 2011 Order at 2-3.) The Court then directed Defendants
27 to file a response to the motion for reconsideration.

28 On February 16, 2011, Defendants filed their response, stating
that they have "complied with the terms of the settlement
agreement" and "acted specifically as demanded by Plaintiff as a
condition of securing the dismissal of his lawsuit." (Def.'s Resp.
at 2.)

Plaintiff had fourteen days from the date Defendants filed
their response, or until March 2, 2011, to file a reply to the
response. (Feb. 14, 2011 Order at 3.) To date, Plaintiff has not
filed a reply.

DISCUSSION

Usually, "upon repudiation of a settlement agreement, the

1 frustrated party may sue anew for breach of the agreement and may
2 not . . . reopen the underlying litigation after dismissal."
3 Keeling v. Sheet Metal Workers Intern. Ass'n, Local Union 162, 937
4 F.2d 408, 410 (9th Cir. 1991). However, "[r]epudiation of a
5 settlement agreement that terminated litigation pending before a
6 court constitutes an extraordinary circumstance, and it justifies
7 vacating the court's prior dismissal order," where there is
8 evidence of "bad faith noncompliance." Id. at 410-11.

9 Here, there is no evidence of repudiation of the settlement
10 agreement. Despite making conclusory allegations regarding the
11 terms of the settlement agreement, Plaintiff provides no evidence
12 that the parties agreed to a settlement amount of \$49,600.00 or
13 that the check should have been made payable to himself, "Eddie J.
14 Streeter, Jr." As mentioned above, the record shows the terms of
15 the settlement agreement contradict Plaintiff's allegations because
16 the handwritten additions state that the settlement check for
17 \$49,000.00 would be made payable to "Eddie J. Streeter, Sr."
18 Defendants have shown that they complied with the terms of the
19 agreement. (Def.'s Resp., Exs. A, B.) Because there is no
20 evidence of "bad faith noncompliance" on Defendants' part, no
21 extraordinary circumstances exist to warrant reconsideration of the
22 Court's dismissal of this action. See Keeling, 937 F.2d at 410-11.
23 Accordingly, Plaintiff's request for reconsideration is DENIED. If
24 Plaintiff wishes to file a breach of contract claim or a suit
25 against his father for refusing to forward the funds from his
26 settlement check, no such relief is justified in this Court.
27 Instead, Plaintiff could seek relief by pursuing those claims in
28

1 state court.

2 CONCLUSION

3 For the foregoing reasons, Plaintiff's request for
4 reconsideration (docket nos. 73, 74) is DENIED.

5 This Order terminates Docket nos. 73 and 74.

6 IT IS SO ORDERED.

7 DATED: 3/4/2011

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9 CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 STREETER,

5 Plaintiff,

Case Number: CV04-03969 CW

CERTIFICATE OF SERVICE

6 v.

7 COUNTY OF SANTA CLARA DEPARTMENT
8 OF CORRECTIONS et al,

9 Defendant.
_____ /

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

12 That on March 4, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Eddie J. Streeter V-17183
17 CA State Prison - Corcoran
18 B2-02-243
19 P.O. Box 3461
20 Corcoran, CA 93212

21 Dated: March 4, 2011

22 Richard W. Wieking, Clerk
23 By: Nikki Riley, Deputy Clerk
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