

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

4 TOMAS LOPEZ MENEWEATHER,

No. C 07-04092 SBA (PR)

5 Plaintiff,

**ORDER ADDRESSING PENDING
MOTION**

6 v.

7 B. POWELL, et al.,

(Docket no. 5)

8 Defendants.
9 _____/

10 In an Order dated December 18, 2007, the Court dismissed this action because it was opened
11 in error. In that Order, the Court noted that it "received documents in two separate envelopes from
12 Plaintiff that were intended to be filed in a single action." (Dec. 18, 2007 Order at 1.) The Court
13 concluded that, "[t]wo different actions were opened, although only one action should have been
14 opened." (Id.) The Court determined that the motion to proceed in forma pauperis (IFP) filed in this
15 action was a copy of that same document filed in Case No. C 07-4204 SBA (PR). Therefore, this
16 action was closed.

17 Before the Court is Plaintiff's "Motion for Permission to File a Motion for Reconsideration"
18 (docket no. 5). Plaintiff states that he only sent one envelope to the Court. (Pl.'s Mot. at 1-2.)
19 Because the Court stated that Plaintiff submitted two separate envelopes, he argues that "the facts on
20 which the Court dismissed Plaintiff's action are untrue" (Id. at 3.)

21 The Court has conducted another review of the pleadings in this action and in Case No. C
22 07-4204 SBA (PR). The aforementioned motions to proceed IFP are indeed identical, thus, the
23 Court correctly concluded that only one action should have been opened. Whether or not Plaintiff
24 sent the motions in two different envelopes is irrelevant. Therefore, the Court finds that this action
25 was properly dismissed because it was opened in error. Accordingly, Plaintiff's "Motion for
26 Permission to File a Motion for Reconsideration" (docket no. 5) is DENIED.

27 The Court notes that since he filed the instant motion, Plaintiff has submitted an amended
28 complaint in Case No. C 07-4204 SBA (PR). Thus, the Court assumes that Plaintiff is aware that his

1 civil rights action is proceeding in that case. The Court will conduct a review of his amended
2 complaint in a separate written Order to be issued in Case No. C 07-4204 SBA (PR).

3 This Order terminates Docket no. 5.

4 IT IS SO ORDERED.

5 DATED: 9/30/08


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 TOMAS LOPEZ MENEWEATHER,
5 Plaintiff,

Case Number: CV07-04092 SBA

6 v.

CERTIFICATE OF SERVICE

7 B. POWELL et al,
8 Defendant.

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

11 That on October 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Tomas Lopez Meneweather D35219
16 Salinas Valley State Prison
17 P.O. Box 1050
18 Soledad, CA 93960

19 Dated: October 1, 2008

Richard W. Wiekling, Clerk
By: LISA R CLARK, Deputy Clerk

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