

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

3  
 4 BERNARD HAMILTON,

No. C 06-6268 CW (PR)

5                                    Plaintiff,

ORDER DENYING PLAINTIFF'S  
 MOTION FOR RECONSIDERATION

6                                    v.

7 OFFICER ADAMIK, et al.,

(Docket no. 211)

8                                    Defendants.  
 9 \_\_\_\_\_/

10 BERNARD HAMILTON,

No. C 09-0648

11                                    Plaintiff,

ORDER GRANTING MOTION TO  
 REOPEN, DENYING PLAINTIFF'S  
 MOTION FOR SUMMARY JUDGMENT,  
 GRANTING PLAINTIFF LEAVE TO  
 FILE AMENDED COMPLAINT AND  
 SETTING BRIEFING SCHEDULE  
 FOR DISPOSITIVE MOTIONS

12                                    v.

13 G. THOMPSON, et al.,

14                                    Defendants.  
 15 \_\_\_\_\_/

(Docket no. 101)

16  
 17                                    BACKGROUND

18                                    The cases discussed in this Order have a lengthy procedural  
 19 history, which the Court sets forth below.

20                                    In 2006, Plaintiff, a state prisoner incarcerated at (SQSP),  
 21 filed Hamilton v. Adamik, et al., C 06-06268 CW (PR) (Adamik),  
 22 alleging prison officials at SQSP had acted with deliberate  
 23 indifference to his serious medical needs and retaliated against  
 24 him because of his attempts to obtain medical care.

25                                    On June 11, 2008, after meeting with Magistrate Judge Nandor  
 26 Vadas, the parties entered into a settlement agreement comprised  
 27 of the following terms: "(1) Plaintiff shall be provided a medical  
 28 chrono allowing him an extra pillow; (2) Plaintiff shall be

1 allowed to possess and use his pulse oximeter as long as it is  
2 medically necessary; (3) Plaintiff shall be examined by SQSP  
3 doctors for determination on the appropriate treatment of  
4 Plaintiff's current medical condition; (4) in exchange  
5 for the foregoing, Plaintiff shall dismiss the Complaint with  
6 prejudice; (5) Judge Vadas shall retain jurisdiction to monitor  
7 this case until the dismissal is filed." Adamik, Docket no. 65 at  
8 1-2. On July 7, 2008, the Court approved the settlement agreement  
9 and dismissed the case with prejudice. Id., Docket 66.

10 Subsequently, Plaintiff moved for reconsideration of the order of  
11 dismissal based on Defendants' alleged failure to comply with the  
12 terms of the settlement agreement. Id., Docket nos. 69-72.

13 While the motion for reconsideration was pending, Plaintiff  
14 filed Hamilton v. Thomson, et al., C 09-00648 CW (PR) (Thomson),  
15 raising claims of deliberate indifference to his serious medical  
16 needs, violations of the Americans with Disabilities Act, breach  
17 of contract and retaliation. The parties filed cross-motions for  
18 summary judgment and various other motions. Plaintiff voluntarily  
19 withdrew all claims other than the breach of contract and  
20 retaliation claims. Thomson, Docket no. 99.

21 On March 26, 2012, the Court granted Plaintiff's motion for  
22 reconsideration in the Adamik case. The Clerk was directed to  
23 reopen the case; it was referred to Magistrate Judge Vadas for  
24 further proceedings to determine whether the settlement agreement  
25 had been breached and/or whether further Court action was required  
26 to ensure compliance with the terms of the settlement agreement.  
27 Adamik, Docket no. 73.

28 On June 27, 2012, Defendants in Adamik filed their motion to

1 enforce the settlement and to dismiss the case. Adamik, Docket  
2 no. 182. On November 6, 2012, the Court issued its Order Adopting  
3 Magistrate Judge's Report and Recommendation Re: Motion to Enforce  
4 Settlement and Motion to Dismiss Litigation. Adamik, Docket no.  
5 210. In particular, the Court concurred with Magistrate Judge  
6 Vadas's assessment that "although there is no doubt that Plaintiff  
7 entered into the 2008 settlement to end the ice dispute and obtain  
8 a laptop computer, the settlement agreement does not include the  
9 provision of these items as terms of the settlement." Id. at  
10 1:18-21. The Court adopted the Report and Recommendation in full,  
11 including Magistrate Judge Vadas's "regretful[]" conclusion that  
12 the Court lacks the power to order Defendants to provide a laptop  
13 and ice to Plaintiff under the terms of the Notice of Settlement.  
14 Id. at 1:24-26. In that same order, Plaintiff was advised by the  
15 Court that if he is of the belief that he has a serious medical  
16 need that requires he be provided with a laptop and ice, he is not  
17 precluded from filing a new and separate lawsuit raising such  
18 claims. Id. at 2:2-5.

19 Plaintiff now moves for reconsideration of the Court's order  
20 dismissing the Adamik case, and to reopen and be granted summary  
21 judgment in the Thomson case. Defendants have opposed Plaintiff's  
22 motions and Plaintiff has filed replies.

23 For the reasons discussed below, the motion for  
24 reconsideration of the order of dismissal in Adamik is DENIED, the  
25 motion to reopen Thomson is GRANTED, the motion for summary  
26 judgment in that case is DENIED as premature and Plaintiff is  
27 GRANTED leave to file an amended complaint.

28 //

1 I. Motion for Reconsideration in Adamik

2 A motion which challenges the Court's final judgment may be  
3 brought under either Rule 59(e) or Rule 60(b) of the Federal Rules  
4 of Civil Procedure. See Fuller v. M.G. Jewelry, 950 F.2d 1437,  
5 1441-42 (9th Cir. 1991). Plaintiff's motion, which was filed  
6 within ten days of entry of judgment, will be treated as a motion  
7 to alter or amend judgment under Rule 59(e). See United States v.  
8 Nutri-Cology, Inc., 982 F.2d 394, 396-97 (9th Cir. 1992). "A  
9 motion for reconsideration under Rule 59(e) should not be granted,  
10 absent highly unusual circumstances, unless the district court is  
11 presented with newly discovered evidence, committed clear error,  
12 or if there is an intervening change in the controlling law."  
13 McDowell v. Calderon, 197 F.3d 1253, 1254 (9th Cir. 1999)  
14 (quotation and citation omitted).

15 The Court has reviewed Plaintiff's motion and his declaration  
16 and other evidence in support thereof. Plaintiff has not  
17 presented the Court with newly discovered evidence, shown that the  
18 Court committed clear error, or shown that there has been an  
19 intervening change in the controlling law that would change the  
20 Court's ruling. Accordingly, the motion for reconsideration under  
21 Rule 59(e) is DENIED.

22 II. Motion to Reopen and for Summary Judgment in Thomson

23 Following entry of the order of dismissal in Adamik,  
24 Plaintiff moved for summary judgment in Thomson on his breach of  
25 contract and retaliation claims. Defendants object to the motion  
26 on the ground that the case is closed and the issues raised  
27 therein already have been adjudicated. Plaintiff has responded by  
28 moving to reopen the case, arguing that his breach of contract and

1 retaliation claims are different than the claims addressed in  
2 Adamik. Specifically, Plaintiff maintains that Adamik addressed  
3 solely the terms of the settlement agreement and resulted in a  
4 finding that the settlement agreement did not encompass  
5 Plaintiff's demands for ice and a laptop. By contrast, Plaintiff  
6 argues, his claims in Thomson concern Dr. E. Tootell's alleged  
7 unwarranted revocation of the medical chrono she previously  
8 authorized ordering that he receive ice and a laptop, and the  
9 alleged retaliatory denial of his medical grievance concerning  
10 that matter by N. Grannis at the Director's level of review.

11 The Court finds Plaintiff's argument sufficiently persuasive  
12 to warrant reopening the Thomson case to allow him to reassert his  
13 claims against Dr. Tootell and N. Grannis. Plaintiff, however,  
14 must file and serve on Defendants' counsel an amended complaint  
15 that sets forth only the claims against Defendants Tootell and  
16 Grannis.

17 Based on the above, the Court rules as follows: Plaintiff's  
18 motion to reopen the Thomson case is GRANTED, his motion for  
19 summary judgment is DENIED as premature and he is GRANTED leave to  
20 file an amended complaint that sets forth the claims he seeks to  
21 pursue against Dr. Tootell and N. Grannis in this case. Any  
22 medical care claims that Plaintiff might seek to pursue concerning  
23 events that occurred after the date the Thomson case was filed  
24 must be brought in a new and separate action.

25 CONCLUSION

26 For the foregoing reasons, the Court orders as follows:

27 1. Plaintiff's motion for reconsideration in Hamilton v.  
28 Adamik, et al., C 06-6268 CW (PR) is DENIED. Docket no. 211.

1           2.     Plaintiff's motion to reopen Hamilton v. Thomson, et  
2 al., C 09-0648 CW (PR) is GRANTED. The Clerk of the Court is  
3 directed to REOPEN this case.

4           3.     Plaintiff's motion for summary judgment in C 09-0648 is  
5 DENIED as premature. Docket no. 101.

6           4.     Plaintiff is GRANTED leave to file an amended complaint  
7 in C 09-0648. Plaintiff shall file the amended complaint and  
8 serve a copy thereof on counsel for Defendants in that case no  
9 later than thirty days from the date of this Order. His failure  
10 to do so will result in the dismissal of the action without  
11 prejudice.

12           5.     Defendants shall answer the complaint in accordance with  
13 the Federal Rules of Civil Procedure. The following briefing  
14 schedule shall govern dispositive motions in this action:

15                 a.     No later than thirty days from the date their  
16 answer is due, Defendants shall file a motion for summary judgment  
17 or other dispositive motion. If Defendants file a motion for  
18 summary judgment, it shall be supported by adequate factual  
19 documentation and shall conform in all respects to Federal Rule of  
20 Civil Procedure 56. If Defendants are of the opinion that this  
21 case cannot be resolved by summary judgment, they shall so inform  
22 the Court prior to the date the summary judgment motion is due.  
23 All papers filed with the Court shall be promptly served on  
24 Plaintiff.

25           At the time of filing the motion for summary judgment or  
26 other dispositive motion, Defendants shall comply with the Ninth  
27 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.  
28 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and

1 provide Plaintiff with notice of what is required of him to oppose  
2 a summary judgment motion or a motion to dismiss for failure to  
3 exhaust administrative remedies.

4           b. Plaintiff's opposition to the motion for summary  
5 judgment or other dispositive motion shall be filed with the Court  
6 and served on Defendants no later than twenty-eight days after the  
7 date on which Defendants' motion is filed.

8           Before filing his opposition, Plaintiff is advised to read  
9 the notice that will be provided to him by Defendants when the  
10 motion is filed, and Rule 56 of the Federal Rules of Civil  
11 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party  
12 opposing summary judgment must come forward with evidence showing  
13 triable issues of material fact on every essential element of his  
14 claim). Plaintiff is cautioned that because he bears the burden  
15 of proving his allegations in this case, he must be prepared to  
16 produce evidence in support of those allegations when he files his  
17 opposition to Defendants' summary judgment motion. Such evidence  
18 may include sworn declarations from himself and other witnesses to  
19 the incident, and copies of documents authenticated by sworn  
20 declaration. Plaintiff will not be able to avoid summary judgment  
21 simply by repeating the allegations of his complaint.

22           c. Defendants shall file a reply brief no later than  
23 fourteen days after the date Plaintiff's opposition is filed.

24           d. The motion shall be deemed submitted as of the date  
25 the reply brief is due. No hearing will be held on the motion  
26 unless the Court so orders at a later date.

27           6. Discovery may be taken in this action in accordance with  
28 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
to Rule 30(a)(2) is hereby granted to Defendants to depose

1 Plaintiff and any other necessary witnesses confined in prison.

2 7. All communications by Plaintiff with the Court must be  
3 served on Defendants' counsel, by mailing a true copy of the  
4 document to Defendants' counsel.

5 8. It is Plaintiff's responsibility to prosecute this case.  
6 He must keep the Court informed of any change of address and must  
7 comply with the Court's orders in a timely fashion.

8 9. Extensions of time are not favored, though reasonable  
9 extensions will be granted. Any motion for an extension of time  
10 must be filed no later than fourteen days prior to the deadline  
11 sought to be extended.

12 This Order terminates Docket no. 211 in C 06-6268 and Docket  
13 no. 101 in C 09-0648

14 IT IS SO ORDERED.

15 Dated: 6/4/2013

  
CLAUDIA WILKEN  
United States District Judge