

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

3  
4 MALIK JONES,

No. C 09-3003 CW

5                                    Plaintiff,

ORDER DENYING  
PLAINTIFF'S MOTION  
FOR LEAVE TO FILE  
A MOTION FOR  
RECONSIDERATION  
AND MOTION FOR  
RECONSIDERATION

6                                    v.

7 L. WASHINGTON, et al.,

8                                    Defendants.

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10                                    Plaintiff Malik Jones, a state prisoner currently  
11 incarcerated at High Desert State Prison (HDSP), filed this pro se  
12 civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that  
13 Defendants L. Washington, D. Lang, B. Brown, E. Contreras, and E.  
14 Ramirez violated his Eighth Amendment rights during his transfer  
15 from Salinas Valley State Prison (SVSP) to HDSP on July 7, 2006.  
16 The Court found cognizable Plaintiff's Eighth Amendment claims for  
17 excessive force and deliberate indifference to medical needs  
18 against above named Defendants.  
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20                                    On September 23, 2011, the Court granted Defendants' motion  
21 to dismiss the complaint for failure to exhaust administrative  
22 remedies as required under 42 U.S.C. § 1997e(a). The Court also  
23 dismissed Plaintiff's motions to file a supplemental complaint and  
24 denied injunctive relief because the complaints addressed in those  
25 motions were not related to the events at issue in this case.  
26 Judgment was entered in favor of Defendants that same date.  
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1 Now pending before the Court is Plaintiff's motion for leave  
2 to file a motion for reconsideration under Federal Rule of Civil  
3 Procedure 60(b).

4 DISCUSSION

5 A. Legal Standard

6 Where the district court's ruling has resulted in a final  
7 judgment or order, a motion for reconsideration may be based on  
8 Rule 60(b) of the Federal Rules of Civil Procedure. See Am.  
9 Ironworks & Erectors v. N. Am. Constr. Corp., 248 F.3d 892, 898-99  
10 (9th Cir. 2001). Rule 60(b) provides for reconsideration where  
11 one or more of the following is shown: (1) mistake, inadvertence,  
12 surprise or excusable neglect; (2) newly discovered evidence which  
13 by due diligence could not have been discovered before the court's  
14 decision; (3) fraud by the adverse party; (4) the judgment is  
15 void; (5) the judgment has been satisfied; (6) any other reason  
16 justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v.  
17 ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

18 Motions for reconsideration should not be frequently made or  
19 freely granted; they are not a substitute for appeal or a means of  
20 attacking some perceived error of the court. See Twentieth  
21 Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir.  
22 1981). "[T]he major grounds that justify reconsideration involve  
23 an intervening change of controlling law, the availability of new  
24 evidence, or the need to correct a clear error or prevent manifest  
25 injustice." Pyramid Lake Paiute Tribe of Indians v. Hodel, 882  
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1 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting United States v. Desert  
2 Gold Mining Co., 433 F.2d 713, 715 (9th Cir. 1970)).

3 B. Analysis

4 In the present motion, Plaintiff requests that  
5 reconsideration be granted and the judgment of dismissal vacated  
6 because the Court misinterpreted the evidence presented by the  
7 parties in support of and in opposition to the motion to dismiss.  
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9 First, Plaintiff maintains the Court overlooked or  
10 misinterpreted evidence that he attempted to exhaust his  
11 administrative remedies. Second, Plaintiff challenges the Court's  
12 conclusion that the claims raised in his motion for injunctive  
13 relief and his motion to file a supplemental complaint are  
14 unrelated to the claims in the instant case.

15 Plaintiff's arguments were raised in his opposition to the  
16 motion to dismiss and discussed by the Court in the order granting  
17 that motion. Although Plaintiff disagrees with the Court's  
18 ruling, he has presented no evidence or legal argument that  
19 warrants reconsideration. Further, Plaintiff contends that the  
20 Court wrongly determined that he did not attempt to challenge the  
21 screening of his administrative appeal by prison officials. This  
22 argument is without merit. The Court found that Plaintiff did not  
23 comply with the applicable requirements when he sent his  
24 administrative appeal directly to Warden Evans rather than mailing  
25 or submitting it to an appeals coordinator. Further, the Court  
26 found that Plaintiff had not followed the explicit instructions  
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1 provided on the screening form for challenging the screening  
2 decision. Specifically, the Court found as follows:

3 Both the screening form that was returned to  
4 Plaintiff, and the regulations in effect at the  
5 time, require that appeals be sent to the appeals  
6 coordinator within fifteen days of the incident.  
7 Medina Dec., Ex. B; Cal. Code Regs. tit. 15,  
8 § 3084.2(c)(2006). Plaintiff did not comply with  
9 the applicable requirements when he sent his appeal  
10 directly to Warden Evans rather than mailing or  
11 submitting it to an appeals coordinator. There is  
12 nothing to contradict Defendants' contention that  
13 the appeal was sent to the appeals coordinator after  
14 the fifteen day limit had expired.

15 Moreover, the screening document included an  
16 instruction to Plaintiff to write an explanation if  
17 he did not feel that the reason given for screening  
18 the complaint was accurate. Medina Dec., Ex. B.  
19 While Plaintiff wrote on a subsequent Form 602 that  
20 the denial of his appeal as untimely showed "blatant  
21 biasness (sic) toward my appeal," he never claims to  
22 have submitted the appeal timely. The record shows  
23 no explanation of how prison authorities exhibited  
24 bias towards his appeal or why his appeal should not  
25 have been screened as untimely. Compl. Attach. 6.  
26 Because SVSP-C-06-02436 was properly screened and  
27 Plaintiff had further remedies available, he is not  
28 entitled to an exception to the exhaustion  
requirement.

Docket no. 86 at 8:11-9:4

20 Plaintiff did not argue in his opposition, nor does he here,  
21 that he followed the procedures on the screening form.

22 Plaintiff's arguments for reconsideration of his motion to  
23 file a supplemental complaint and motion for injunctive relief are  
24 likewise without merit. Plaintiff alleged that prison staff at  
25 HDSP continue to be indifferent to his medical needs. While in  
26 the instant motion he does refer to claims that he was denied  
27 medical treatment in July 2006, the motions mentioned above were

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concerned with more recent events. Specifically Plaintiff alleged that prison officials at HDSP took away his wheelchair and were denying him medication. These allegations are separate from this case, which concerns the incident that took place on July 7, 2006 while Plaintiff was being transferred from SVSP to HDSP.

In its order the Court suggested that Plaintiff could pursue relief for his recent complaints either under the terms of the Armstrong decree, if appropriate, or by filing a new and separate action after he had exhausted administrative remedies. (Docket no. 96 at 13:16-21). See Armstrong v. Wilson, 124 F.3d 1019, 1020 (9th Cir. 1997). Plaintiff has shown no cause why the Court's judgment should reconsidered. Accordingly Plaintiff's motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: 11/1/2011

  
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CLAUDIA WILKEN  
United States District Judge