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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONALD KNUTSON,

No. C 09-05534 CW (PR)

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

v.

(Docket no. 10)

FRANCISCO JACQUEZ, et al.,

Defendants.

In an Order dated April 20, 2010, the Court dismissed the amended complaint filed in this action after Plaintiff filed a letter entitled, "Re: Notice of Withdraw," in which he made a reference to the present case and stated that he wished to "voluntarily withdraw from all matters" (Apr. 20, 2010 Order at 1 (citing Pl.'s Feb. 25, 2010 Letter at 2).) The Court construed Plaintiff's letter as a notice of voluntary dismissal and terminated the action. (Id. (citing Fed. R. Civ. P. 41(a)(1)(A)(i)).) Because the Court noted that Plaintiff's handwriting was difficult to decipher, it further stated that if it was not Plaintiff's intention to dismiss this action voluntarily, dismissal was "still appropriate because Plaintiff did not exhaust his administrative remedies prior to filing this action." (Id. at 2.) The Court included the following background relating to exhaustion of Plaintiff's claims:

Plaintiff conceded that he had not exhausted his administrative remedies at the time he filed his original complaint on November 20, 2009, stating "Exhaustion of remedies pending. Seeking file date. Will amend when exhaustion is completed." (Compl. at 2.) Plaintiff has since filed an amended complaint, in

1 which he states that "an inmate appeal was typed and
2 submitted to the administration at Pelican Bay State
3 Prison seeking to establish a record for review as these
conditions relate to exhaustion of administrative
remedies." (Am. Compl. at 2a.)

4 (Id. at 3-4.) Therefore, the Court dismissed the amended complaint
5 "without prejudice to refiling his exhausted claims in a new
6 action." (Id. at 4 (citing McKinney v. Carey, 311 F.3d 1198, 1199-
7 1201 (9th Cir. 2002)).)

8 Before the Court is Plaintiff's motion entitled, "Request
9 Reconsideration of Order Dated 4-20-10."

10 A motion which challenges the Court's final judgment (in this
11 case, the dismissal without prejudice) may be properly brought
12 under either Rule 59(e) or Rule 60(b) of the Federal Rules of Civil
13 Procedure. See Fuller v. M.G. Jewelry, 950 F.2d 1437, 1441-42 (9th
14 Cir. 1991). Plaintiff's motion, which was filed on April 30, 2010¹
15 -- within ten days of entry of judgment -- will be treated as a
16 motion to alter or amend judgment under Rule 59(e). See United
17 States v. Nutri-Cology, Inc., 982 F.2d 394, 396-97 (9th Cir. 1992)
18 (a motion to reconsider, however labeled, served within ten days of
19 the entry of order or judgment should be construed as a Rule 59(e)
20 motion).

21 "A motion for reconsideration under Rule 59(e) 'should not be
22 granted, absent highly unusual circumstances, unless the district
23 court is presented with newly discovered evidence, committed clear

24 ¹ Plaintiff's motion is deemed filed on April 30, 2010, the
25 date it was signed and delivered to prison authorities for mailing.
26 See Saffold v. Newland, 250 F.3d 1262, 1268 (9th Cir. 2001),
27 vacated and remanded on other grounds, Carey v. Saffold, 536 U.S.
28 214 (2002) (holding that a federal or state habeas petition is
deemed filed on the date the prisoner submits it to prison
authorities for filing, rather than the date it is received by the
courts).

1 error, or if there is an intervening change in the controlling
2 law.'" McDowell v. Calderon, 197 F.3d 1253, 1254 (9th Cir. 1999)
3 (quoting 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th
4 Cir. 1999).

5 While Plaintiff's motion is difficult to decipher, the Court
6 notes that it was submitted on a civil rights complaint form. On
7 page two of the form, Plaintiff answers paragraph E and marks "YES"
8 to the question: "Is the last level to which you appealed the
9 highest level of appeal available to you?" (Pl.'s Mot. at 2.)
10 Nowhere on the form does he indicate the "appeal number and the
11 date and result of the appeal at each level of review," as
12 requested on the earlier page of the form. Instead, Plaintiff
13 completes paragraph F, which states: "If you did not present your
14 claims for review through the grievance procedure, explain why."
15 (Id.) From what the Court can decipher, he answers: "See e.g.,
16 claims exhaustion is defined [unintelligible] in Case No. 08-5694
17 (amended pleading dated 4-18-10)." (Id.)

18 Case No. 08-5694 CW was a habeas action in which Plaintiff
19 also filed a notice of voluntary dismissal; therefore, the Court
20 terminated that action on January 25, 2011. The "Amended Pleading"
21 Plaintiff refers to is an amended "Petition for a Writ of Habeas
22 Corpus," signed on April 18, 2010 and filed in Case No. 08-5694 CW
23 on April 23, 2010. Again, the Court notes that Plaintiff's
24 handwriting in his "Amended Pleading" is difficult to decipher.
25 From what the Court can decipher, Plaintiff writes the phrase,
26 "Exhaustion of Administrative Remedies," on page 6b. However, his
27 handwriting is unintelligible and the Court cannot determine what
28 claims Plaintiff exhausted in Case No. 08-5694 CW, if any. For

1 clarification, the Court turns to the "Reasonable Modification or
2 Accommodation Request" (CDC-1824) forms and responses that were
3 attached to his "Amended Pleading." (Am. Pleading in Case No. 08-
4 5694 CW, Ex. A.) In the first CDC-1824 form (with no log number)
5 dated January 14, 2010, prison officials state that Plaintiff's
6 disability is his "inability to communicate via written word,
7 writing is illegible" and that his "specific modification or
8 accommodation" requested is "a typewriter [sic] for legal
9 correspondence."² (Id.) The "Inmate/Parolee Appeals Screening
10 Form" dated January 15, 2010 attached to that CDC 1824 form states,
11 "You failed to provide evidence of a disability that supports this
12 requested accommodation. The previous screened out appeal was not
13 sent back due to penmanship, it was improperly filled out and had
14 no clear accommodation request." (Id.) There is another CDC-1824
15 form, also dated January 14, 2010, with log number PBSP 18-10-
16 10071, that is written in Plaintiff's undecipherable handwriting.
17 On January 19, 2010, the CDC-1824 form was returned to Plaintiff
18 with a note stating, "A Clinic RN (Mark), we need you to interview
19 this inmate and ask him to provide us with what accommodation
20 request can we resolve for him at CDCR." (Id.) Based on the
21 "Health Care Appeals Effective Communication Confirmation" form,
22 that interview took place on January 25, 2010. (Id.) On February
23 1, 2010, appeal log number PBSP 18-10-10071 was "rejected/cancelled
24 and returned" for the following reasons: "not in CDCR jurisdiction,
25

26
27 ² The Court notes that this CDC-1824 form does not have the
28 same illegible handwriting as Plaintiff's other filings; therefore,
the Court assumes it was written by another person on behalf of
Plaintiff.

1 no real issue relative to disability. Your complaint is with the
2 U.S. Army and a property deal in Hawaii not CDCR." (Id.)

3 As mentioned above, a motion for reconsideration should not be
4 granted "absent highly unusual circumstances, unless the district
5 court is presented with newly discovered evidence, committed clear
6 error, or if there is an intervening change in the controlling
7 law." See McDowell, 197 F.3d at 1254. Here, Plaintiff seems to be
8 alleging that he exhausted all his administrative remedies and thus
9 the Court committed clear error when it dismissed as unexhausted
10 his amended complaint in the present action. Upon reviewing the
11 attachments to the "Amended Pleading" in Case No. 08-5694 CW, the
12 Court notes that the CDC-1824 forms and responses were all dated
13 after November 10, 2009, the date the original complaint in the
14 present action was filed. While it is not clear whether
15 Plaintiff's attachments to his "Amended Pleading" show that he has
16 exhausted administrative remedies as to the claims in the present
17 action, that is irrelevant because any such attempt to exhaust
18 occurred after he filed suit. As mentioned in the Court's April
19 20, 2010 Order, dismissal is appropriate "even if the prisoner
20 fully exhausts while the suit is pending." (Apr. 20, 2010 Order at
21 4 (quoting McKinney, 311 F.3d at 1199).)

22 In addition, the dismissal of the amended complaint was
23 without prejudice, which means the dismissal does not in itself bar
24 Plaintiff's filing a new suit on the same claims. Therefore,
25 Plaintiff's motion for reconsideration under Rule 59(e) is DENIED.

26 CONCLUSION

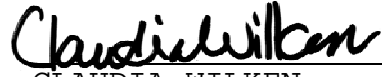
27 For the foregoing reasons, Plaintiff's "Request
28 Reconsideration of Order Dated 4-20-10" (docket no. 10) is DENIED.

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This Order terminates Docket no. 10.

IT IS SO ORDERED.

Dated: 3/29/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 RONALD KNUTSON,

5 Plaintiff,

6 v.

7 FRANCISCO JACQUEZ et al,

8 Defendant.

Case Number: CV09-05534 CW

CERTIFICATE OF SERVICE

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 March 29, 2011, 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
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Ronald Knutson C-04763
16 Pelican Bay State Prison
17 P.O. Box 7500
18 Crescent City, CA 95531

19 Dated: March 29, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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