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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 MICHAEL ALAN YOCOM,

7 Plaintiff,

8 vs.

9 RANDY GROUNDS, et al.,

10 Defendants.
11

Case No: C 10-3609 SBA

**ORDER DENYING MOTIONS FOR
RECONSIDERATION, TO ALTER
OR AMEND THE JUDGMENT
FOR CONSOLIDATION AND FOR
A HEARING**

Docket Nos. 121, 127

12 The parties are presently before the Court on Plaintiff Michael Alan Yocom's
13 motions: (1) for reconsideration, doc. no. 121; (2) to alter judgment, doc. nos. 121 and 127;
14 (3) for a hearing regarding judgment, doc. no. 121; (4) to amend or correct the judgment,
15 doc. no. 127; and (4) for consolidation, doc. no. 127. Having read and considered the
16 papers filed in connection with these matters, the Court hereby DENIES the motions for the
17 reasons set forth below. The Court, in its discretion, finds these matters suitable for
18 resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

19 **I. BACKGROUND**

20 On August 17, 2010, Plaintiff filed the instant civil rights action, alleging claims of
21 deliberate indifference to serious medical needs against Defendants Wilcox and Siegel, and
22 supervisory liability against Defendant Receiver Kelso. In addition, Plaintiff brought
23 claims for due process violations against Defendants Palmer, Cowan and Benedetti based
24 on three rules violation proceedings.

25 On March 30, 2012, the Court issued an Order granting Kelso's summary judgment
26 motion and granting judgment on the pleadings as to the remaining Defendants. Dkt. 118.
27 The Court ruled that Plaintiff had failed to provide evidence establishing supervisory
28 liability on the part of Kelso and that the claims against the other Defendants were barred

1 by the doctrines of res judicata and collateral estoppel. Plaintiff filed a notice of appeal of
2 the Court’s March 30, 2012 decision. Dkt. 120.

3 On April 20 and May 22, 2012, Plaintiff filed the above-referenced motions. Dkt.
4 121, 127.¹ Defendants filed oppositions thereto. Dkt. 134. Thereafter, Plaintiff filed a
5 document entitled, “Notice of Denial of Federal Review of Causes of Action or Writ of
6 Habeas Corpus and Request for Writ of Mandate or Prohibition,” which the Court liberally
7 construes as a reply brief. Dkt. 135.

8 **II. DISCUSSION**

9 **A. Motions for Reconsideration and to Alter or Amend the Judgment**

10 Motions to reconsider a decision of the court are appropriately brought under Rule
11 59(e) or 60(b) of the Federal Rules of Civil Procedure. Fuller v. M.G. Jewelry, 950 F.2d
12 1437, 1442 (9th Cir. 1991). Generally, a motion for reconsideration of a final judgment is
13 appropriately brought under Federal Rule of Civil Procedure 59(e). See Backlund v.
14 Barnhart, 778 F.2d 1386, 1388 (9th Cir.1985). Rule 59(e) allows a party to move to “alter
15 or amend a judgment....” “There are four grounds upon which a Rule 59(e) motion may
16 be granted: 1) the motion is ‘necessary to correct manifest errors of law or fact upon which
17 the judgment is based;’ 2) the moving party presents ‘newly discovered or previously
18 unavailable evidence; 3) the motion is necessary to ‘prevent manifest injustice;’ or 4) there
19 is an ‘intervening change in controlling law.’” Turner v. Burlington N. Santa Fe R.R. Co.,
20 338 F.3d 1058, 1063 (9th Cir. 2003) (citations omitted). Relief based on this rule generally
21 is reserved for “highly unusual circumstances.” School Dist. No. 1J, Multnomah County v.
22 ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

23 As to Defendant Kelso, Plaintiff’s motion for reconsideration does not recite a
24 change in the law, newly- discovered evidence or clear error by the Court. Therefore, the
25 motion to reconsider the Court’s decision to grant summary judgment for Kelso is denied.
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27 _____
28 ¹ The appeal is being held in abeyance pending resolution of Plaintiff’s motion for
reconsideration. Dkt. 124.

1 With regard to the Court’s ruling in favor of Defendants Wilcox and Siegel on
2 Plaintiff’s deliberate indifference claim and in favor of Defendants Palmer, Cowan and
3 Benedetti on his Due Process claims, Plaintiff repeats his argument that the doctrine of res
4 judicata does not apply because the previous state court judgments were not based on the
5 merits of his claims. This contention lacks merit. In its March 30, 2012 Order, the Court
6 reviewed the two state court decisions which rejected Plaintiff’s Due Process claims, and
7 concluded that they disposed of his claims on the merits. See March 30, 2012 Order at 17.
8 Therefore, Plaintiff’s motion to reconsider the Order granting judgment to Defendants
9 Palmer, Cowan and Benedetti on the Due Process claims is denied.

10 However, in relation to the deliberate indifference claim, the Court did not
11 specifically analyze the argument that Plaintiff raises here; namely, that the state judgment
12 on which the Court relied for application of res judicata was not on the merits on the
13 ground that Plaintiff had not exhausted state administrative remedies prior to filing his case
14 in state court. The Court addresses this argument here, and begins by first summarizing the
15 relevant facts.

16 Plaintiff filed habeas petitions in the Monterey County Superior Court (In re Michael
17 Alan Yocom, case no. HC 6657), the California Court of Appeal (In re Michael Alan
18 Yocom, case no. H035189), and the California Supreme Court (In re Michael Alan Yocom,
19 case no. S186028) in which he asserted that Defendants were deliberately indifferent to his
20 serious mental health needs by denying him prescriptions for Seroquel and Wellbutrin. The
21 Monterey Superior Court denied the mental health claim on the ground that Plaintiff had
22 failed to exhaust administrative remedies. In his petition to the Court of Appeal, Plaintiff
23 argued that he should be excused from the exhaustion requirement due to the injuries he
24 would suffer without proper mental health care. See Defs.’ Request for Judicial Notice, Ex.
25 C, Pl’s Pet. in Monterey Court of Appeal at 6 (“Regardless of the fact that petitioner hasn’t
26 totally exhausted administrative remedies as is normally required to bring this writ, . . . this
27 Court has the discretion to hear this matter now. Injuries have already occurred due to
28 negligent medical care (mental health care) here . . . This Court has the power and the

1 authority to intervene and order independent evals and/or order the non-formulary meds:
2 Seroquel and Wellbutrin be ordered now.”). The Court of Appeal instructed the parties to
3 brief the merits of Plaintiff’s claim. See Pl.’s Opp’n Ex. B at 7 (March 4, 2010 Letter from
4 Court of Appeal). The parties complied with the court’s order and filed briefs on Plaintiff’s
5 Eighth Amendment deliberate indifference claim. See Defs.’ Ex. B, Attorney General’s
6 informal response; Ex. C, Pl.’s informal response. Subsequently, the Court of Appeal
7 issued a one-sentence denial of the petition. See Defs’ Ex. D. The California Supreme
8 Court also denied Plaintiff’s petition. See Defs.’ Request for Judicial Notice, Ex. H.

9 In their motion for judgment on the pleadings, Defendants argued that the appellate
10 court judgment denying the petition was a final judgment on the merits for purposes of
11 applying res judicata to Plaintiff's deliberate indifference claim here. Under the doctrine of
12 res judicata, also known as claim preclusion, “a final judgment on the merits of an action
13 precludes the parties or their privies from re-litigating issues that were or could have been
14 raised in that action.” Allen v. McCurry, 449 U.S. 90, 94 (1980). The Federal Full Faith
15 and Credit Statute, 28 U.S.C. § 1738, requires that a federal court give to a state court
16 judgment the same preclusive effect as would be given that judgment under the law of the
17 state in which the judgment was rendered. Migra v. Warren City School Dist. Bd. of Educ.,
18 465 U.S. 75, 81 (1984).

19 In California, a final judgment in state court “precludes further proceedings if they
20 are based on the same cause of action.” Brodheim v. Cry, 584 F.3d 1262, 1268 (9th Cir.
21 2009) (quoting Maldonado v. Harris, 370 F.3d 945, 951 (9th Cir. 2004)). A “cause of
22 action is (1) a primary right possessed by the plaintiff, (2) a corresponding primary duty
23 devolving upon the defendant, and (3) a harm done by the defendant which consists in a
24 breach of such primary right and duty.” Brodheim, 584 F.3d at 1268 (citation omitted). If
25 the cause of action test is satisfied, then claim preclusion applies to the cause of action,
26 even if in the later suit the plaintiff pleads different theories of recovery, seeks different
27 forms of relief, or adds new facts supporting recovery. Id. Therefore, a prior judgment is
28

1 not res judicata on a subsequent action unless three elements are satisfied: (1) the issues
2 decided in the prior suit must be identical to those presented in the subsequent action;
3 (2) there was a final judgment on the merits in the first action; and (3) the party against
4 whom the claim is raised was a party or in privity with a party in the prior adjudication.
5 Consumer Advocacy Gp., Inc. v. ExxonMobil Corp., 168 Cal. App. 4th 675, 686 (2008).

6 Here, Plaintiff challenges the Court's ruling only on the ground that there allegedly
7 was no final judgment on the merits. That argument is unavailing. It is true that Plaintiff
8 did not exhaust remedies before he filed his petition in Monterey Superior Court and that
9 the court denied his deliberate indifference claim for failure to exhaust remedies. Thus, the
10 state trial court's decision was not on the merits. The same cannot be said of Plaintiff's
11 appellate petition. When Plaintiff filed his petition with the California Court of Appeal, it
12 was a *new petition*, as opposed to an appeal of the superior court's judgment. See People v.
13 Gallardo, 77 Cal. App. 4th 971, 985-86 (2000) (a petitioner cannot appeal the denial of a
14 petition, he must file a new petition in a higher court). Therefore, the superior court's lack
15 of exhaustion ruling was not before the Court of Appeal.

16 In his new petition to the Court of Appeal, Plaintiff requested that the court consider
17 his mental health deliberate indifference claim, even though he did not exhaust
18 administrative remedies. In California, administrative remedies need not be exhausted if
19 irreparable harm would result from pursuit of such a remedy. See In re Strick, 148 Cal.
20 App. 3d 906, 911 (1983) (noting that exhaustion requirement does not apply if the remedy
21 is inadequate). Thus, the California Court of Appeal acted within its discretion in
22 instructing the parties to brief the merits of Plaintiff's deliberate indifference claim,
23 irrespective of whether Plaintiff had exhausted administrative remedies. Therefore, despite
24 the fact that Plaintiff did not exhaust his deliberate indifference claim, the appellate court
25 considered the merits of the claim before denying it.

26 Furthermore, the fact that the appellate court issued a summary denial does not mean
27 that it did not consider the merits of the claim. See In re Clark, 5 Cal. 4th 750, 769 n.9
28 (1993) (summary denial of habeas corpus petition does not mean that the court has not

1 considered the claims on their merits; unless a procedural bar is apparent, the court will
2 determine whether the petition states facts which, if true, entitle the petitioner to relief).
3 Therefore, the state appellate court's rejection of Plaintiff's deliberate indifference claim
4 was on the merits and, thus, res judicata precludes litigation of the same claim here.
5 Accordingly, Plaintiff's motion for reconsideration of this claim is denied.

6 **B. Motion for Consolidation**

7 Under Rule 42 of the Federal Rules of Civil Procedure, if actions before the court
8 involve a common question of law or fact, the court may join for hearing or trial any or all
9 matters at issue in the actions or consolidate the actions. Plaintiff argues that this case
10 should be consolidated with his petition for a writ of habeas corpus, Case No. C 10-3806
11 EJD (PR), because his habeas petition alleges similar claims to those he presents in this
12 civil rights case. However, the law that pertains to federal habeas claims differs from the
13 law applicable to civil rights claims. As Petitioner himself acknowledges, his habeas
14 petition focuses on the fact that his sentence was increased due to improper prison
15 disciplinary procedures. However, whether Plaintiff's sentence was increased is not
16 relevant to whether his constitutional rights were violated. Furthermore, Heck v.
17 Humphrey 512 U.S. 477, 486 (1994) bars civil rights claims that call into question the
18 validity of a state criminal conviction or sentence, unless the plaintiff can show that the
19 criminal conviction has been invalidated. Thus, Plaintiff's habeas claims, which are aimed
20 at reducing his sentence, cannot be consolidated with this now-closed civil rights case.

21 For the foregoing reasons, the Court denies Plaintiff's motion for consolidation.

22 **III. CONCLUSION**

23 IT IS HEREBY ORDERED THAT:

- 24 1. Plaintiff's motions for reconsideration, to alter or amend the judgment, for
25 consolidation and for a hearing on these motions are DENIED.
- 26 2. This Order terminates Docket Nos. 121 and 127.
- 27 3. The Clerk of the Court shall send a copy of this Order to the Ninth Circuit
28 Court of Appeals.

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IT IS SO ORDERED.

Dated: December 12, 2012



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 MICHAEL ALAN YOCOM,

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7 CTF-SOLEDAD et al,

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9 _____/

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Case Number: CV10-03609 SBA

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CERTIFICATE OF SERVICE

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13

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

16

17 That on December 13, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
18 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
19 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
20 receptacle located in the Clerk's office.

18

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20

21 Michael Alan Yocom
22 20731 Rd. 254
23 Strathmore, CA 93267

24 Dated: December 13, 2012

25

Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk

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