

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 MARIO TORRES,

5 Petitioner,

6 v.

7 SHAWN HATTON,

8 Respondent.

Case No. [17-cv-04332-PJH](#)

**ORDER DENYING MOTION FOR  
EXTENSION OF TIME TO FILE  
MOTION FOR RECONSIDERATION;  
GRANTING MOTION FOR LEAVE TO  
PROCEED IN FORMA PAUPERIS ON  
APPEAL**

Re: Dkt. Nos. 50, 54

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12  
13 This is a *pro se* prisoner habeas case. On March 8, 2019, after the parties fully  
14 briefed the claims in the petition, the Court issued an Order Denying the Petition for a  
15 Writ of Habeas Corpus and Denying Certificate of Appealability. On the same day, the  
16 Court entered judgment in favor of the respondent. On March 25, 2019, petitioner filed a  
17 motion for an extension of time to file a motion for reconsideration, on April 5, 2019, he  
18 filed a notice of appeal and, on April 18, 2019, he filed a motion for leave to proceed *in*  
19 *forma pauperis* ("IFP") on appeal.

20 In his motion for reconsideration, petitioner states he is in county jail on another  
21 matter and, in addition to an order for an extension of time, he requests the Court issue  
22 orders to the state court about his *in forma pauperis* status and his need for appointment  
23 of counsel. This Court lacks jurisdiction over petitioner's new state case; therefore, it  
24 cannot issue orders to the state court regarding that case.

25 Where the court's ruling has resulted in a final judgment, a motion for  
26 reconsideration may be based either on Rule 59(e) (motion to alter or amend judgment)  
27 or Rule 60(b) (motion for relief from judgment) of the Federal Rules of Civil Procedure.  
28 *Am. Ironworks & Erectors v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001).

1 The denial of a motion for reconsideration under Rule 59(e) is construed as a denial of  
2 relief under Rule 60(b). *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.3 (9th Cir. 1999)  
3 (*en banc*).

4 Motions for reconsideration should not be frequently made or freely granted; they  
5 are not a substitute for appeal or a means of attacking some perceived error of the court.  
6 *Twentieth Century - Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981).  
7 "[T]he major grounds that justify reconsideration involve an intervening change of  
8 controlling law, the availability of new evidence, or the need to correct a clear error or  
9 prevent manifest injustice." *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d  
10 364, 369 n.5 (9th Cir. 1989) (quoting *United States v. Desert Gold Mining Co.*, 433 F.2d  
11 713, 715 (9th Cir. 1970)).

12 In his motion for an extension of time, petitioner does not argue there has been an  
13 intervening change in controlling law, the availability of new evidence or the need to  
14 correct clear error or prevent manifest injustice. His motion indicates he seeks to  
15 relitigate the claims in his petition. However, a motion for reconsideration is not a  
16 substitute for an appeal or a forum for re-litigating claims. Therefore, the motion for an  
17 extension of time to file a motion for reconsideration is denied because petitioner has not  
18 indicated he has grounds for reconsideration.

19 Although petitioner has not filed his trust account statement with his motion to  
20 proceed IFP, the Court credits his statements in his application that he is indigent and  
21 has only \$.13 in his trust account. Therefore, petitioner's motion to proceed IFP on  
22 appeal is granted.

23 This Order terminates docket numbers 50 and 54.

24 **IT IS SO ORDERED.**

25 Dated: April 24, 2019



26  
27 PHYLLIS J. HAMILTON  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 MARIO TORRES,  
4 Plaintiff,

5 v.

6 SHAWN HATTON,  
7 Defendant.  
8

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**CERTIFICATE OF SERVICE**


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

11  
12 That on April 24, 2019, I SERVED a true and correct copy(ies) of the attached, by placing  
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.  
16

17 Mario Torres ID: CC19KW389  
18 4058 Treat Blvd.  
19 Concord, CA 94518

20 Dated: April 24, 2019  
21

22 Susan Y. Soong  
23 Clerk, United States District Court

24   
25 By: \_\_\_\_\_  
26 Kelly Collins, Deputy Clerk to the  
27 Honorable PHYLLIS J. HAMILTON  
28