

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HOWARD YOUNG, CDCR #F-44590,
Plaintiff,
v.
LARRY SMALLS, et al.,
Defendants.

Case No. 09-CV-2545-DMS (JMA)

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
[Doc. 73]**

On January 24, 2011 nunc pro tunc January 18, 2011, Plaintiff Howard Young ("Plaintiff") filed a Rule 60(b) Motion for Reconsideration of the Court's December 27, 2010 Order Granting Ex Parte Application by Defendant Smalls to Extend the Initial Time to Respond to the Fourth Amended Complaint. [Doc. 55.] Plaintiff previously filed a similar motion for reconsideration regarding other defendants (Price, Ochoa, Rigney, and Tapia) on December 30, 2010 nunc pro tunc December 27, 2010, which the Court denied on January 5, 2011. [Docs. 59, 64.] Although Plaintiff's initial motion for reconsideration pertained to other defendants, Defendant Smalls, in conjunction with the other defendants, filed an opposition to the motion. [Doc. 56.]

For the reasons set forth below, Plaintiff's Motion for Reconsideration is **DENIED**.

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2 The Federal Rules of Civil Procedure do not expressly provide for motions for
3 reconsideration. Rule 60(b), to which Plaintiff cites, allows a party to seek relief from “a
4 final judgment, order, or proceeding” due to “mistake, inadvertence, surprise, or
5 excusable neglect,” “newly discovered evidence,” “fraud,” or because “the judgment is
6 void,” “the judgment has been satisfied,” or for “any other reason that justifies relief.”
7 Fed. R. Civ. P. 60(b). Local Civil Rule 7.1(i), however, does expressly permit motions
8 for reconsideration. Under Rule 7.1(i)(1), a party applying for reconsideration must set
9 forth “what new or different facts or circumstances are claimed to exist which did not
10 exist, or were not shown” upon the prior application. Civ. L.R. 7.1(i)(1).

11 Plaintiff’s motion for reconsideration is premised on his belief that at the time of
12 the Court’s December 27, 2010 Order Granting Ex Parte Application by Defendant
13 Smalls to Extend the Initial Time to Respond to the Fourth Amended Complaint, Plaintiff
14 had a motion for default judgment pending. Mot. for Recon. [Doc. 73] at 2. Plaintiff,
15 however, did not have a motion for default judgment against Defendant Smalls. While
16 the Court received a purported motion for default judgment from Plaintiff on December
17 27, 2010, the motion was rejected for filing by the chambers of the Honorable Dana M.
18 Sabraw on January 6, 2011. See Notice of Document Discrepancies, Doc. 67. The
19 motion was rejected for filing in part because Plaintiff had not yet filed a Request for
20 Clerk’s Entry of Default. Id. Therefore, no motion for default judgment was pending
21 against Defendant Smalls at the time the Court issued its December 27, 2010 Order,
22 nor is one currently pending.

23 Plaintiff has shown no “newly discovered evidence” nor has he demonstrated that
24 any “new or different facts or circumstances” warrant reconsideration of the Court’s

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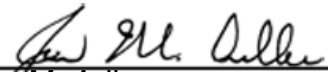
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2 December 27, 2010 Order. Accordingly, Plaintiff's Motion for Reconsideration is
3 **DENIED.**

4 **IT IS SO ORDERED.**

5 DATED: January 27, 2011

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8 Jan M. Adler
9 U.S. Magistrate Judge
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