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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

STANFORD PAUL BRYANT,  
CDCR #E-46727,  
  
Plaintiff,  
  
vs.  
  
TIM OCHOA, et al.,  
  
Defendants.

Civil No. 10-0273 W (WMc)

**ORDER DENYING PLAINTIFF'S  
MOTIONS TO ALTER OR AMEND  
THE JUDGMENT PURSUANT TO  
FED.R.CIV.P. 59(e)**

[Doc. Nos. 10, 12]

Currently before the Court is Plaintiff's "Motion to Alter or Amend the Judgment"<sup>1</sup> [Doc. No. 43] in which he seeks reconsideration of the Court's June 10, 2010 Order [Doc. No. 8].

**I. Procedural Background**

The Court's June 10, 2010 Order dismissed claims against Defendants for failing to state a claim upon which relief could be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(b) & 1915A. Plaintiff was given the option to either: 1) proceed with his claims against Defendants Ochoa and Janda; or 2) file a Second Amended Complaint which cured the deficiencies of pleading

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<sup>1</sup> Plaintiff filed two identical motions [Doc. Nos. 10, 12]. For the purpose of this Order, the Court will refer to the papers filed in Docket entry number 10.

1 identified in the Court's Order. *See* June 10, 2010 Order at 4-5. Instead of choosing either  
2 option, Plaintiff filed the Motions currently before the Court.

## 3 **II. Plaintiff's Motion**

### 4 **A. Grounds**

5 Plaintiff seeks reconsideration pursuant to Rule 59 of the Federal Rules of Civil  
6 Procedure on grounds that the Court should have found that he adequately stated a claim against  
7 all the named Defendants.

### 8 **B. Standard of Review**

9 Here, while Plaintiff purportedly brings this Motion pursuant to Rule 59 of the Federal  
10 Rules of Civil Procedure, that is not the proper ground for this motion. A Rule 59 Motion seeks,  
11 in part, to "alter or amend a judgment." FED.R.CIV.P. 59(e). The Court's June 10, 2010 Order  
12 was not a final judgment. Accordingly, the Court will consider Plaintiff's Motion to fall under  
13 Rule 60 of the Federal Rules of Civil Procedure.

14 Under Rule 60, a motion for "relief from a final judgment, order or proceeding" may be  
15 filed within a "reasonable time," but usually must be filed "no more than a year after the entry  
16 of the judgment or order or the date of the proceeding." FED.R.CIV.P. 60(c). Reconsideration  
17 under Rule 60 may be granted in the case of: (1) mistake, inadvertence, surprise or excusable  
18 neglect; (2) newly discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the  
19 judgment has been satisfied; or (6) for any other reason justifying relief. FED.R.CIV. P. 60(b).  
20 A Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent manifest injustice and  
21 is to be utilized" only under "extraordinary circumstances." *Harvest v. Castro*, 531 F.3d 737,  
22 749 (9th Cir. 2008) (internal quotations marks and citation omitted).

### 23 **C. Application to Plaintiff's Case**

24 Plaintiff seeks reconsideration of the Court's dismissal of his due process and retaliations  
25 claims. Plaintiff does not set forth any new case law or new facts that would warrant the Court's  
26 reconsideration. "A motion for reconsideration should not be granted, absent highly unusual  
27 circumstances, unless the district court is presented with newly discovered evidence, committed  
28

1 clear error, or if there is an intervening change in the controlling law.” *389 Orange St. Partners*  
2 *v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

3 Plaintiff has offered no argument in support of his Motion other than he believes the  
4 Court should have found that the facts he alleged were sufficient to state a claim. Here, Plaintiff  
5 has been given the opportunity to file an Amended pleading in order to correct the deficiencies  
6 of pleading identified by the Court. The arguments Plaintiff makes in his Motion do not show  
7 “clear error” and instead merely “rehash arguments previously presented.” *McQuillion v.*  
8 *Duncan*, 342 F.3d 1012, 1014 (9th Cir. 2003).

9 Plaintiff’s Motions to “Alter or Amend the Judgment” are DENIED. However, the Court  
10 will grant Plaintiff an extension of time to file a Second Amended Complaint that complies with  
11 the Court’s June 10, 2010 Order.

12 **III. Conclusion and Order**

13 For the reasons set forth above, the Court hereby:


14 1) DENIES Plaintiff’s Motions to Alter, Amend or Vacate the Court’s June 10, 2010  
15 Order [Doc. Nos. 10, 12]; and

16 2) Sua Sponte **GRANTS** Plaintiff an extension of time in which to file a Second  
17 Amended Complaint. Plaintiff’s Second Amended Complaint must be filed with the Court no  
18 later than **thirty (30)** days from the date this Order is “filed” and must comply in all other  
19 respects with the Court’s June 10, 2010 Order.

20 **IT IS SO ORDERED.**

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DATED: 7/9/10

  
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**HON. THOMAS J. WHELAN**  
United States District Judge