

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 RUBEN DARIO GARCIA, JR.,
11 CDCR #J-73373,

12 Plaintiff,

13 vs.

14 SMITH; CHANCE; MOORE; STEWART;
15 BROWN; VASQUEZ; S. WALL; ELIAS;
16 SAVALA; MERCHANT; SUGLICH; E.A.
17 CONTRERAS; BROWN; STRICKLAND;
18 CLUCK;CORTEZ; MORRIS;
19 PEDERSEN; DOES 1-5,

20 Defendants.

Civil No. 10-1187 AJB (RBB)

**ORDER DENYING PLAINTIFF'S
MOTION TO VACATE ORDER
PURSUANT TO FED.R.CIV.P. 60**

[ECF Nos. 20, 28]

21 Currently before the Court is Plaintiff's "Motion Pursuant to Rule 60(a)" and "Notice and
22 Request to the Court by the Plaintiff" [ECF Nos. 20, 28]. In these Motions, Plaintiff claims that
23 the Court failed to address all the claims presented by Plaintiff in his Second Amended
24 Complaint when the Court issued its Order on February 3, 2011 [ECF No. 17]. The Court notes
25 that Plaintiff has filed a Notice of Appeal to the Ninth Circuit Court of Appeals of the Court's
26 February 3, 2011 Order [ECF No. 22]. However, this Court need not refrain from proceeding
27 with ruling on Plaintiff's pending motions as Plaintiff's Notice of Appeal is jurisdictionally
28 invalid. *See Nascimento v. Dummer*, 508 F.3d 905, 908-10 (9th Cir. 2007).

///

1 **I.**

2 **Procedural History**

3 On June 10, 2010, and while incarcerated at the Richard J. Donovan Correctional Facility
4 (“RJD”), Plaintiff, proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983.
5 The Court dismissed Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2)(b) & § 1915A(b).
6 *See* Aug. 9, 2010 Order at 7-8. Plaintiff was granted leave to file an Amended Complaint in
7 order to correct the deficiencies of pleading identified by the Court. *Id.* Plaintiff then filed his
8 First Amended Complaint which was also dismissed by the Court pursuant to 28 U.S.C.
9 § 1915(e)(2)(b) & § 1915A(b). *See* Nov. 8, 2010 Order at 6. On December 7, 2010, Plaintiff
10 filed his Second Amended Complaint (“SAC”). The Court, once again, conducted the required
11 sua sponte screening, dismissed some of Plaintiff’s claims pursuant to 28 U.S.C. § 1915(e)(2)(b)
12 & § 1915A(b) and directed the U.S. Marshal to effect service of Second Amended Complaint
13 on the remaining claims on the Defendants. *See* Feb. 3, 2011 Order at 7-8.

14 On February 22, 2011, Plaintiff filed his Motion for Reconsideration pursuant to
15 Fed.R.Civ.P. 60 [ECF No. 20]. Plaintiff subsequently filed his “Notice of Request to the Court
16 by Plaintiff” [ECF No. 28].

17 **II.**

18 **Plaintiff’s Motion**

19 **A. Standard of Review**

20 Under Rule 60, a motion for “relief from a final judgment, order or proceeding” may be
21 filed within a “reasonable time,” but usually must be filed “no more than a year after the entry
22 of the judgment or order or the date of the proceeding.” FED.R.CIV.P. 60(c). Reconsideration
23 under Rule 60 may be granted in the case of: (1) mistake, inadvertence, surprise or excusable
24 neglect; (2) newly discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the
25 judgment has been satisfied; or (6) for any other reason justifying relief. FED.R.CIV. P. 60(b).

26 **B. Plaintiff’s Arguments**

27 Plaintiff claims that the Court erred when it failed to mention one of his claims in his
28 Second Amended Complaint in the Court’s February 3, 2011 Order. Specifically, Plaintiff

1 claims that the Court failed to address his claims in "Count 5" in which he claims he alleges that
2 "Defendants violated Plaintiff's First Amendment rights 'to be able to file grievances with the
3 Government/Department and have such properly heard.'" (Pl.'s Mot. for Reconsid. at 1.)

4 Plaintiff is incorrect. The Court did address this claim in the February 3, 2011 Order.
5 Plaintiff's "Count 5" found in his Second Amended Complaint is entitled "Defendants violated
6 Plaintiff 1st Amendment Right to be able to file Grievances with the Department, and have such
7 properly heard, denying the Plaintiff meaningful access to the Court to Petition the Court for the
8 redress of grievances." (SAC at 21.) In the Court's Order dated February 3, 2011 Order, the
9 Court clearly addressed Plaintiff's access to courts claim found in "Count 5." (See Feb. 3, 2011
10 Order at 5-7.) The Court found that Plaintiff had failed to adequately state a claim based on the
11 facts alleged in "Count 5" and thus, dismissed these claims pursuant to 28 U.S.C.
12 § 1915(e)(2)(b) & § 1915A(b). (*Id.* at 7.)

13 In sum, a motion for reconsideration cannot be granted merely because Plaintiff is
14 unhappy with the judgment, frustrated by the Court's application of the facts to binding
15 precedent or because he disagrees with the ultimate decision. See 11 Charles Alan Wright &
16 Arthur R. Miller *Federal Practice & Procedure* 2d § 2858 (Supp. 2007) (citing *Edwards v.*
17 *Velvac, Inc.*, 19 F.R.D. 504, 507 (D. Wis. 1956)). Thus, without more, the Court finds Plaintiff
18 has failed to show that the Court rendered a "manifestly unjust decision," and has further failed
19 to identify any intervening changes in controlling law which justify reconsideration of the
20 Court's Order. *McDowell*, 197 F.3d at 1255; *School Dist. No. 1J*, 5 F.3d at 1263.


21 III.

22 Conclusion and Order

23 Accordingly, Plaintiff's Motions brought pursuant to FED.R.CIV.P. 60 [ECF Nos. 20, 28]
24 are hereby DENIED.

25 **IT IS SO ORDERED.**

26 DATED: March 21, 2011

27 
28 Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court