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

GUILLERMO VERA,
CDCR #K-73387,

Plaintiff,

vs.

DIRECTOR OF CDCR; RAFAEL DIAS,
Warden; CLEMENTS OGBUEHY,
Nurse Practitioner; TIMOTHY BYERS,
Physician Assistant,

Defendants.

Civil No. 13cv0247 JLS (BGS)

**ORDER DENYING PLAINTIFF'S
MOTION TO VACATE**

[ECF Doc. No. 11]

I. PROCEDURAL HISTORY

Plaintiff, a state prisoner currently incarcerated at California State Prison in Corcoran, California (CSP-COR), and proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 28, 2013.

In his Complaint, Plaintiff claims the Director of the California Department of Corrections and Rehabilitation (CDCR), and several California Substance Abuse Treatment Facility (SATF) officials, violated his rights to adequate medical care, access to the court, and to be free from cruel and unusual punishments during his incarceration there in 2011 and early 2012. (Compl. at 2-3.)

1 On February 20, 2013, the Court dismissed the action for two reasons. First,
2 Plaintiff failed to prepay the civil filing fees required by 28 U.S.C. § 1914(a) and did not
3 seek leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See*
4 Feb. 20, 2013 Order [ECF Doc. No. 2] at 2, 3. Second, “while the Court would normally
5 grant Plaintiff an opportunity to either submit the full filing fee or file a Motion to
6 Proceed IFP, an initial review of the Complaint further reveal[ed] that [Plaintiff’s] case
7 lacks proper venue.” *Id.* at 2. Specifically, the Court found that:

8 [w]hile Plaintiff is currently incarcerated at CSP-COR, [...] he
9 fails to allege a county of residence for any Defendant, [...] claims the substantial part of the events or omissions giving
10 rise to his claims occurred while he was incarcerated at SATF in Corcoran, California, and the exhibits attached to his
11 Complaint indicate Defendants Dias, Ogbuehy and Byers are CDCR officials employed at SATF.¹ (*See* Compl. at 2; Exs.
12 [ECF No. 1-1] at 13, 14, 16, 23.) The City of Corcoran is located in Kings County, California. Therefore, venue is
13 proper in the Eastern District of California, pursuant to 28 U.S.C. § 84(b), but not in the Southern District of California,
14 pursuant to 28 U.S.C. § 84(d) (“The Southern District [of California] comprises the counties of Imperial and San
15 Diego.”). *See* 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488.

16 Therefore, the Court dismissed the action sua sponte but without prejudice to
17 Plaintiff’s re-filing it in the proper district. *Id.* at 2-3 (citing 28 U.S.C. § 1914(a); 28
18 U.S.C. § 1406(a)).

19 However, on June 3, 2013, Plaintiff re-opened the case in *this* Court by filing a
20 Motion to Proceed IFP [ECF Doc. No. 5], while providing no explanation as to why
21 venue might lie in the Southern District of California.² Therefore, on June 26, 2013, the
22 Court denied Plaintiff’s Motion to Proceed IFP as moot, noted his case remained

23
24 ¹ The only remaining Defendant is the “Director of the CDCR.” (Compl. at 1.) The
25 CDCR is headquartered in Sacramento, California. The City and County of Sacramento are also
located in the Eastern District of California. *See* 28 U.S.C. § 84(b).

26 ² While not altogether clear, it appears Plaintiff *may* have also attempted to bring his
27 medical care claims before the Eastern District of California on June 10, 2013 by way of a
28 petition for writ of habeas corpus seeking to subpoena medical records. *See Vera v. Gipson*,
E.D. Cal. Civil Case No. 1:13-cv-00870 MJS (HC); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th
Cir. 2007) (a court “‘may take notice of proceedings in other courts, both within and without the
federal judicial system, if those proceedings have a direct relation to matters at issue.’”) (quoting
Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

1 dismissed for lack of proper venue pursuant to 28 U.S.C. § 1406(a), and again directed
2 him, should he wish to pursue the claims as alleged in his Complaint, to file a civil action
3 on the Eastern District of California, “as that district appears to be the only proper
4 venue.” *See* June 26, 2013 Order (ECF Doc. No. 6) at 2-3.

5 Plaintiff has since filed a “Motion to Vacate the Judgment” in which he claims an
6 “error of fact existed before the judgment was rendered.” (ECF Doc. No. 11 at 1.)
7 Plaintiff asks the Court to reconsider its June 26, 2013 Order and construe his pleadings
8 liberally pursuant to FED.R.CIV.P. 59 and 60(b). He argues reconsideration is appropriate
9 because “there are genuine issues of material fact” as to “whether the district court
10 applied the relevant substantive law.” (*Id.* at 7, 12.)

11 **II. PLAINTIFF’S MOTION TO VACATE**

12 The Federal Rules of Civil Procedure do not expressly provide for motions for
13 reconsideration. However, the Court may reconsider matters previously decided under
14 Rule 59(e) or Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989);
15 *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994). In
16 *Osterneck*, the Supreme Court stated that a ruling may be re-considered under Rule 59(e)
17 motion where it involves “‘matters properly encompassed in a [previous] decision on the
18 merits.’” 489 U.S. at 174 (quoting *White v. New Hampshire Dep’t of Employ’t Sec.*, 455
19 U.S. 445, 451 (1982)). Reconsideration is generally appropriate only if the district court
20 “(1) is presented with newly discovered evidence, (2) committed clear error or the initial
21 decision was manifestly unjust, or (3) if there is an intervening change in controlling
22 law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citations
23 omitted).

24 As noted above, the Court’s June 26, 2013 Order simply denied Plaintiff’s Motion
25 to Proceed IFP as moot and reiterated that his case remained dismissed without prejudice
26 to refiling in the proper venue (ECF Doc. No. 6). Because Plaintiff’s Complaint was filed
27 in the wrong judicial district, this Court never considered the validity of Plaintiff’s
28 claims, nor did it have any opportunity to determine whether genuine issues of material

1 fact might eventually exist necessitating a trial. In fact, its decision was based merely on
2 a very preliminary procedural question, and except for the venue statute itself, the Court
3 had no occasion to apply any relevant substantive law, let alone misapply it, as Plaintiff's
4 Motion contends.


5 Accordingly, the Court finds that Plaintiff's request for reconsideration provides
6 no newly discovered evidence, fails to show clear error, demonstrates no manifestly
7 unjust decision, and does not identify any intervening change in controlling law which
8 would demand reconsideration of the Court's June 26, 2013 Order. *School Dist. No. 1J*,
9 5 F.3d at 1263.

10 **III. CONCLUSION**

11 Accordingly, the Court hereby **DENIES** Plaintiff's Motion to Vacate (ECF Doc.
12 No. 11). This action remains dismissed without prejudice for lack of proper venue
13 pursuant to 28 U.S.C. § 1406(a).

14 **IT IS SO ORDERED.**

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16 DATED: October 18, 2013

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19 Honorable Janis L. Sammartino
20 United States District Judge
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