

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFF E. WALKER,
CDCR #F-11343,

Plaintiff,

v.

C/O D. HUBERT, et al.,

Defendant.

Case No.: 3:14-cv-0788 BTM (KSC)

**ORDER DENYING PLAINTIFF'S
MOTION TO REQUEST ACCESS
TO A TYPEWRITER AND MOTION
FOR RECONSIDERATION.**

Doc. Nos. 101; 104

Plaintiff, a state prisoner proceeding *pro se*¹ and *in forma pauperis* filed this action pursuant to 42 U.S.C. § 1983. Before the Court are plaintiff's Motion to Request Access to a Typewriter [Doc. No. 101] and Motion for Reconsideration [Doc. No. 104.] Plaintiff seeks a court order to address several grievances concerning his access to the Court as well as reconsideration of the Court's Order [Doc. No. 99] denying his request for access to a typewriter. For the reasons articulated below, plaintiff's Motion to Request Access to a Typewriter [Doc. No. 101] and Motion for Reconsideration [Doc. No. 104] are **DENIED**.

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¹ Plaintiff requests an order declaring him a "*pro per*" litigant. See [Doc. Nos. 93; 97; 101.] *Pro se* and *pro per* are legally equivalent terms denoting a litigant who, without the aid of a lawyer, represents himself before a court. Compare PRO SE, Black's Law Dictionary (10th ed. 2014) with PRO PER, Black's Law Dictionary (10th ed. 2014).

1 **I. Quality of Legal Documents**

2 Plaintiff asserts that “copies mailed or given to light not readable” and that some of
3 the pages or exhibits are missing. [Doc. No. 101, at p. 3.] Plaintiff offers no other additional
4 details nor is it clear what form of relief Plaintiff is seeking. The Court takes judicial notice
5 that plaintiff has provided responsive filings to all of the Court’s orders as well as the
6 communications from defendant. Accordingly, plaintiff’s Motion concerning the quality
7 of his legal documents is **DENIED**.

8 **II. Opening Legal Mail**

9 Plaintiff asserts that his legal mail is being opened and read outside of his presence.
10 [Doc. No. 101, at p. 3.] In support of his motion, plaintiff references “Vickie” who “sent
11 in Christmas card [sic] with notice legal [sic] written on outside of mail.” *Id.* Plaintiff later
12 clarifies that Vickie is a witness in one of his cases. *Id.* There is no evidence that Vickie or
13 any other person sending mail to the plaintiff is a lawyer. Plaintiff has a right to
14 communicate confidentially with a lawyer. Plaintiff does not have a right to avoid the
15 regular screening process by labeling items as “legal mail.” *See Dung v. Alameda Cty.*
16 *Sheriff Dep’t*, No. C 03-2911 WHA PR, 2003 WL 21982659, at *1 (N.D. Cal. Aug. 5,
17 2003) (“The stamp on the envelope saying that it must be opened in the presence of the
18 inmate [or labeling the document as legal mail] does not define plaintiff’s constitutional
19 rights.”) The Ninth Circuit has held that envelopes that carry the “legal mail” notation even
20 from courts, as opposed to communication from a prisoner’s lawyer, are not legal mail
21 entitled to enhanced protection. *Keenan v. Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996).
22 Plaintiff has provided no evidence indicating that communications from a lawyer are being
23 opened outside of his presence. Therefore, plaintiff’s request for an order concerning his
24 mail is **DENIED**.

25 **III. Access to Legal Supplies**

26 Plaintiff asserts that he doesn’t have access to sufficient legal supplies. [Doc. No.
27 101, at p. 3.] Plaintiff asserts that he is not receiving sufficient legal supplies and that he
28 should be receiving an “unlimited” amount because of his *in forma pauperis* status. *Id.*

1 Plaintiff materially misunderstands the *in forma pauperis* statute. The *in forma pauperis*
2 statute is a privilege created by Congress, not a Constitutional right. *Smart v. Heinze*, 347
3 F.2d 114, 116 (9th Cir. 1965). The right to access the Court, established in *Bounds v. Smith*,
4 430 U.S. 817 (1977), *does* requires prison authorities to provide, at state expense, the
5 supplies required to access the court including pen and paper. *Id* at 824-825. Ensuring
6 prisoners have sufficient supplies to adequately access the Court does not create a *de facto*
7 requirement to provide “unlimited resources” as plaintiff demands.

8 Here, plaintiff has demonstrated a clear ability to access the court. The Declaration
9 of N. Gregoratos, Director of Prisoner Legal Services, indicates that from June 2015 until
10 December 2015 plaintiff had a minimum of 172 contacts with the prison legal staff. [Doc.
11 No. 106-1, at pp. 1-2.] The 172 contacts consisted largely of, “supplying [plaintiff] with
12 case law and other legal materials.” *Id.* at 2. Plaintiff filing history in this case presents
13 additional evidence of his ability to access the court. From April 2014 until January 2016,
14 plaintiff filed twenty-nine motions constituting hundreds of pages. [Doc. Nos, 2; 5; 9; 13;
15 17; 19; 21; 23; 32; 34; 38; 40; 43; 50; 53; 60; 64; 67; 69; 75; 78; 85; 89; 90; 93; 97; 101;
16 104; 105.] Consequently, plaintiff’s Motion regarding legal supplies is **DENIED**.

17 **IV. Motion to Reconsider**

18 Motions for reconsideration are only appropriate in rare or highly unusual
19 circumstances to correct manifest errors of fact or law or to consider an intervening change
20 in the controlling law or newly discovery evidence. *School Dist. No. 1J v. ACandS, Inc.*, 5
21 F.3d 1255, 1263 (9th Cir. 1993). When seeking reconsideration, a party’s moving papers
22 must include an affidavit setting forth any new or different facts that did not exist when the
23 prior request for relief was made. CivLR 7.1(i).

24 Here, plaintiff’s Motion for Reconsideration presents the same arguments and facts
25 presented in his original motion. The Court notes that plaintiff filed his original Complaint
26 on April 3, 2014. [Doc. No. 1.] Subsequently, plaintiff filed twenty-five legible handwritten
27 motions before filing a motions requesting access to a typewriter on December 14, 2015.
28 [Doc. No. 97.] Additionally, plaintiff has indicated his involvement in at least three other

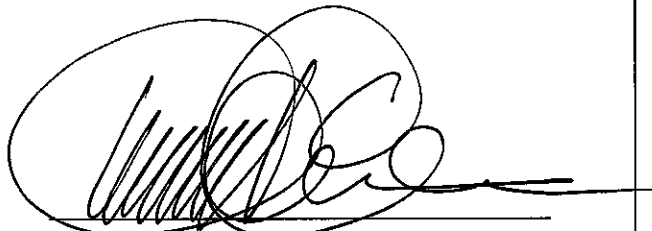
1 court cases he is actively perusing without the aid of a typewriter. Therefore, plaintiff's
2 Motion for Reconsideration must be **DENIED**.

3 **CONCLUSION**

4 For the reason stated above, plaintiff's Motion to Request Access to a Typewriter
5 [Doc. No. 101] and Motion for Reconsideration [Doc. No. 104] are **DENIED**.

6 IT IS SO ORDERED.

7 Date: Feb 12, 2016

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11 KAREN S. CRAWFORD
12 United States Magistrate Judge
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