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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RAUL ARRELLANO,

12 Plaintiff,

13 v.

14 BLAHNIK,

15 Defendant.

Case No.: 16cv2412-CAB-DHB

**ORDER DENYING MOTION “TO
KNOW IF PERMITTED TO
INCLUDE AS RELIEF FREEDOM
FROM INCARCERATION” [Doc. No.
114]**

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18 On August 2, 2019, Plaintiff filed a motion “to know if I can be permitted to
19 include as relief freedom from incarceration and to be allowed to allege compensating
20 money damages for wrongful incarceration” (“motion to know”). [Doc. No. 114.] The
21 motion to know appears to be yet another motion for reconsideration of this Court’s order
22 of August 17, 2017 (the “August 17 Order”) [Doc. No. 16.] For the reasons stated in the
23 August 17 Order, as well as this Court’s order of September 8, 2017 [Doc. No. 21]
24 denying Plaintiff’s first motion for reconsideration, the motion to know is **DENIED**.

25 DISCUSSION

26 Although the Federal Rules of Civil Procedure do not expressly authorize a motion
27 for reconsideration, “(a) district court has the inherent power to reconsider and modify its
28 interlocutory orders prior to the entry of judgment ...” Posthearing Procedures, *Cal.*

1 *Prac. Guide Fed. Civ. Pro. Before Trial*, Ch. 12-E, §12:158, quoting *Smith v.*
2 *Massachusetts*, 543 US 462, 475 (2005). However, reconsideration is an “extraordinary
3 remedy, to be used sparingly.” Absent highly unusual circumstances, a motion for
4 reconsideration will not be granted “unless the district court is presented with newly
5 discovered evidence, committed clear error, or if there is an intervening change in the
6 controlling law.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F3d 877, 890 (9th Cir.
7 2000)(internal quotes omitted).

8 First, Plaintiff’s motion to know is untimely. Civil Local Rule 7.1.i.2. Second,
9 Plaintiff has not presented any newly discovered evidence, nor has he shown clear error
10 or an intervening change in the controlling law. *Kona Enterprises, Inc.*, 229 F3d at 890.
11 Plaintiff continues to argue, as he did in the underlying motion to dismiss and in the first
12 motion for reconsideration, that he was prohibited from filing a habeas petition because
13 defendants allegedly stole his documents and, therefore, he should be allowed to seek
14 monetary damages for wrongful incarceration. [Doc. No. 114 at 2.] Again, as clearly set
15 forth in the August 17 Order, this Court has ruled that Plaintiff’s access-to-court claim is
16 barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), to the extent that it seeks damages for
17 wrongful incarceration. [Doc. No. 16 at 8.] If Plaintiff disagrees with this Court’s ruling
18 then, after a final judgment in this case, Plaintiff is free to appeal the ruling on that issue.
19 In the meantime, this case will proceed pursuant to the August 17 Order.

20 CONCLUSION

21 For the reasons set forth above, the motion to know is **DENIED**.

22 Dated: August 5, 2019



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24 Hon. Cathy Ann Bencivengo
25 United States District Judge
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