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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAUL ARRELLANO,

Plaintiff,

v.

BLAHNIK,

Defendant.

Case No.: 16cv2412-CAB-DHB

**ORDER DENYING MOTION FOR
TRANSCRIPTS,
RECONSIDERATION AND COPIES
[Doc. No. 216]**

On October 4, 2021, this Court held an evidentiary hearing regarding whether Plaintiff exhausted his administrative remedies. [Doc. No. 211.] The Court found that Plaintiff did not exhaust his administrative remedies and dismissed the case with prejudice. [Doc. No. 213.] On October 4, 2021, a Clerk’s Judgment was issued in favor of Defendant. [Doc. No. 214.]

On October 15, 2021, Plaintiff filed a “Motion (1) to receive transcripts of the evidentiary hearing so I can properly create an effective appeal; (2) I would like to know if I can file a motion for rehearing or reconsideration regarding the outcome of evidentiary hearing or Fed. R. 60(b), (3) copy of these motion. “ [Doc. No. 216]. For the reasons set forth below, all three requests are **DENIED**.

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1 1. Transcripts.

2 Plaintiff requests a free copy of the transcript of the evidentiary hearing held on
3 October 4, 2021. Before a free transcript can be furnished, appeal to the Court of
4 Appeals from judgment of the District Court in a civil proceeding must be permitted *in*
5 *forma pauperis*, and required certification must be made. *Maloney v. E.I. DuPont de*
6 *Nemours & Co.*, 396 F.2d 939, 940 (D.C. Cir. 1967); *Franks v. Kirk*, No. 1:15-cv-00401-
7 EPG (PC), 2019 WL 249518, *1-2 (E.D. Cal. Jan. 17, 2019). To date, Plaintiff has not
8 filed a notice of appeal, nor a request to appeal *in forma pauperis*. Therefore, the request
9 for a free transcript is **DENIED AS PREMATURE**.

10 2. Rule 60/Reconsideration.

11 While Plaintiff states that he “would like to know if I can file” a motion for
12 reconsideration, the Court deems Docket No. 216 to be an actual motion for
13 reconsideration under Fed.R. 60(b).

14 Rule 60 provides for extraordinary relief and may be invoked only upon a showing
15 of “exceptional circumstances.” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1044
16 (9th Cir. 1994). The Rule identifies six permissible grounds for relief from a final
17 judgment, order, or proceeding, namely: “(1) mistake, inadvertence, surprise, or excusable
18 neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been
19 discovered in time to move for a new trial under Rule 59(b); (3) fraud by the adverse party;
20 (4) the judgment is void; (5) the judgment has been satisfied; (6) and other reason justifying
21 relief.” Fed. R. Civ. P. 60(b). Further, the Rule provides that a motion brought under it
22 “must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a
23 year after the entry of judgment or order of the date of the proceeding.” Fed. R. Civ. P.
24 60(c).

25 Here, Plaintiff does not identify which ground for relief he seeks, nor does he state
26 a basis for relief under Rule 60(b). Rather, Plaintiff merely describes testimony given
27 during the evidentiary hearing (as he remembers it) and then quarrels with the Court’s fact-
28 finding decision. The Court has reviewed Docket No. 216 and sees no basis for relief under

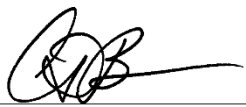
1 Rule 60(b). Plaintiff is free to appeal this Court’s rulings and findings to the Court of
2 Appeals.

3 3. Copies.

4 Plaintiff requests a copy of Docket No. 216 because he is not sure when he will be
5 able to get a copy at the prison law library. While “prisoners have a constitutional right of
6 access to the courts,” *Bounds v. Smith*, 430 U.S. 817, 821 (1977), there is no constitutional
7 right to receive photocopies free of charge. *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir.
8 1990), *overruled on other grounds by Lewis v. Casey*, 518 U.S. 343, 351 (1996). The rule
9 prohibiting free photocopies is the same for plaintiffs proceeding *in forma pauperis*. See *In*
10 *re Richard*, 914 F.2d 1526, 1527 (6th Cir. 1990) (Title 28 U.S.C. section 1915 “waives
11 only ‘prepayment of fees and costs and security ...’ [but] does not give the litigant a right
12 to have documents copied and returned to him at government expense). Plaintiff has not
13 shown he has been denied access to obtaining his own copy and, therefore, his request for
14 a copy of Docket No. 216 is **DENIED**.

15 **IT IS SO ORDERED.**

16 Dated: October 19, 2021

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19 Hon. Cathy Ann Bencivengo
20 United States District Judge
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