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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOHN LAZARO MAINEZ
12 Booking #14704837,

13 Plaintiff,

14 vs.

15 SHERIFF WILLIAM GORE;
16 JUDGE PATRICIA SHAMOON,

17 Defendants.
18

Case No.: 3:17-cv-01359-JAH-JLB

ORDER

19 **1) DENYING MOTION TO ALTER**
20 **OR AMEND JUDGMENT**
21 **PURSUANT TO**
22 **Fed. R. Civ. P. 59(e)**
[ECF No. 6]

AND

23 **2) RE-CERTIFYING APPEAL**
24 **WOULD NOT BE TAKEN IN**
25 **GOOD FAITH PURSUANT**
26 **TO 28 U.S.C. § 1915(a)(3)**

27 **I. Procedural History**

28 JOHN LAZARO MAINEZ (“Plaintiff”), proceeding pro se and in forma pauperis, is currently in the custody of Defendant William Gore, the San Diego County Sheriff, and incarcerated at the Sheriff’s Department Vista Detention Facility, where he claims be serving an unconstitutional sentence imposed on May 20, 2014, by Defendant Shamoan, a San Diego County Superior Court Judge. See Compl. ECF No. 1 at 3, 7-8. In his

1 Complaint, filed on July 3, 2017 pursuant to 42 U.S.C. § 1983, Plaintiff claimed Judge
2 Shamoon’s May 20, 2014 sentence violated his Sixth Amendment right to effective
3 assistance of counsel and his Fourteenth Amendment rights to due process and equal
4 protection, as well as California’s Realignment Act and Penal Code § 1170(h).¹ He
5 sought both money damages and injunctive relief in the form of an order “enjoining
6 Defendants from continuing to falsely imprison him in the County Jail.” See *id.* at 12-14.

7 On September 11, 2017, the Court granted Plaintiff leave to proceed in forma
8 pauperis pursuant (“IFP”) to 28 U.S.C. § 1915(a), but dismissed his Complaint, in part,
9 because he sought damages against Judge Shamoon, who is absolutely immune, and
10 pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). See ECF No. 3 at 8, 11. In
11 addition, because Plaintiff’s Sixth and Fourteenth Amendment claims “‘necessarily
12 impl[ied] the invalidity’ of his conviction and continued incarceration,” *id.*, at 5-8 (citing
13 *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)), and because he did not further allege his
14 conviction or sentence had already been “reversed on direct appeal, expunged by
15 executive order, declared invalid by a state tribunal,” or “called into question by a federal
16 court’s issuance of a writ of habeas corpus,” *id.* at 6 (quoting *Heck*, 512 U.S. at 486-87),
17 the Court dismissed the entirety of Plaintiff’s Complaint sua sponte for failing to state a
18 claim upon which § 1983 relief could be granted. *Id.* at 5-8, 11. Finally, the Court took
19 judicial notice of its own records, as well as the exhibits attached to Plaintiff’s Complaint,
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23 ¹ “The Criminal Justice Realignment Act of 2011 addressing public safety (Stats. 2011,
24 ch. 15, § 1; Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 1, ... significantly change[d] the
25 punishment for some felony convictions” in California. *People v. Scott*, 58 Cal. 4th 1415,
26 1418 (2014). “Under the terms of the Act, low-level felony offenders who have neither
27 current nor prior convictions for serious or violent offenses, who are not required to register
28 as sex offenders and who are not subject to an enhancement for multiple felonies involving
fraud or embezzlement, no longer serve their sentences in state prison. Instead, such
offenders serve their sentences either entirely in county jail or partly in county jail and
partly under the mandatory supervision of the county probation officer.” *Id.* at 1418-19
(citing CAL. PEN. CODE, § 1170, subd. (h)(2), (3), (5)).

1 and denied him leave to amend as futile because Plaintiff’s previous attempts to
2 invalidate his convictions in San Diego Superior Court Case Nos. SCD240472,
3 SCD228286, SCE298454, SCE316127 via a direct appeal (D070112), and through
4 multiple state habeas petitions (HC21682) had been denied, and a federal writ of habeas
5 corpus he filed pursuant to 28 U.S.C. § 2254 in *Mainez v. Gore*, S.D. Cal. Civil Case No.
6 3:17-cv-00397-JLS-KSC, still remained pending before Judge Sammartino. *Id.* at 8-11.
7 Finally, the Court certified that an IFP appeal would be frivolous, and therefore, not taken
8 in good faith pursuant to 28 U.S.C. § 1915(a)(3). *Id.* at 11.

9 On October 11, 2017, Plaintiff filed a “Motion to Alter and Amend” the Court’s
10 September 11, 2017 Judgment (ECF No. 6).²

11 **II. Motion for Reconsideration**

12 A. Standard of Review

13 “A Rule 59(e) motion may be granted if ‘(1) the district court is presented with
14 newly discovered evidence, (2) the district court committed clear error or made an initial
15 decision that was manifestly unjust, or (3) there is an intervening change in controlling
16 law.’” *Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011) (quoting *Zimmerman v.*
17 *City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001)). This type of motion seeks “a
18 substantive change of mind by the court,” *Tripati v. Henman*, 845 F.2d 205, 206 n.1 (9th
19 Cir. 1988) (quoting *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 526 (9th Cir.
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22 ² Plaintiff’s Motion is signed on October 4, 2017, see ECF No. 6 at 5, but it is deemed to
23 have been filed on October 10, 2017—the day it was deposited in the internal mail at VDF.
24 See ECF No. 6 at 15; *Houston v. Lack*, 487 U.S. 266, 270-72 (1988) (notice of appeal filed
25 by a pro se prisoner is deemed to be “filed” when it is delivered to prison authorities for
26 forwarding to the district court); *Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th Cir. 2009)
27 (“Houston mailbox rule applies to § 1983 suits filed by pro se prisoners.”). Motions to alter
28 or amend judgment “must be filed no later than 28 days after the entry of the judgment.”
FED. R. CIV. P. 59(e). While Plaintiff’s 28 days lapsed on October 9, 2017, his Motion is
nevertheless timely because October 9, 2017 was a legal holiday. See FED. R. CIV. P.
6(a)(1)(C).

1 1983)), and “is an extraordinary remedy which should be used sparingly.” McDowell v.
2 Calderon, 197 F.3d 1253, 1254 n.1 (9th Cir. 1999). Rule 59(e) may not be used to
3 “relitigate old matters, or to raise arguments or present evidence that could have been
4 raised prior to the entry of judgment.” Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F. Supp.
5 2d 1112, 1117 (D. Nev. 2013) (quoting 11 Charles Alan Wright et al., Federal Practice
6 and Procedure § 2810.1 (2d ed. 1995)).

7 B. Plaintiff’s Arguments

8 In his Motion, Plaintiff contends, as he did in his Complaint, see ECF No. 1 at 4,
9 that his claims for damages are not Heck barred, and that “judicial immunity is not a bar”
10 to the prospective injunctive relief he seeks—namely, an order “enjoining the state court
11 and sheriff from [his] continued illegal confinement in the county jail.” See ECF No. 6 at
12 2-5.

13 C. Discussion

14 “A motion for reconsideration may not be used to get a second bite at the apple.”
15 *Campion v. Old Repub. Home Protection Co., Inc.*, No. 09-CV-00748-JMA(NLS), 2011
16 WL 1935967, at *1 (S.D. Cal. May 20, 2011). The purpose of Rule 59(e) is not to “give
17 an unhappy litigant one additional chance to sway the judge. [A]rguments and evidence
18 [that] were previously carefully considered by the Court, [] do not provide a basis for
19 amending the judgment,” *Kilgore v. Colvin*, No. 2:12-CV-1792-CKD, 2013 WL 5425313
20 at *1 (E.D. Cal. Sept. 27, 2013) (internal quotations omitted), and “[m]ere doubt[] or
21 disagreement about the wisdom of a prior decision” is insufficient to warrant granting a
22 Rule 59(e) motion. *Campion*, 2011 WL 1935967 at *1 (quoting *Hopwood v. Texas*, 236
23 F.3d 256, 273 (5th Cir. 2000)). For a decision to be considered “clearly erroneous” it
24 must be “more than just maybe or probably wrong; it must be dead wrong.” *Id.* A
25 “movant must demonstrate a ‘wholesale disregard, misapplication, or failure to recognize
26 controlling precedent.’” *Id.* (quoting *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th
27 Cir. 2000)); see also *Garcia v. Biter*, No. 1:13-CV-00599-LJO-SKO-PC, 2016 WL
28 3879251, at *2 (E.D. Cal. July 18, 2016).

1 Here, Plaintiff has failed to point to any newly discovered evidence or intervening
2 change in controlling law. See *Ybarra*, 656 F.3d at 998. And while he disagrees with this
3 Court’s application of the facts as he pleaded them to well-established Supreme Court
4 and Ninth Circuit precedent, his Motion offers no valid basis upon which the Court might
5 find its September 11, 2017 Order and judgment of dismissal was clearly erroneous or
6 manifestly unjust. *Id.*

7 In fact, while Plaintiff insists success on his § 1983 claims “would only require a
8 change in the location of [his] confinement,” and not “the confinement itself or its
9 duration,” see ECF No. 6 at 3, he makes the opposite claim in a recent filing before Judge
10 Sammartino related to his currently pending habeas petition, in which he raises some of
11 the same legal challenges to his sentence under California’s Realignment Act as he does
12 in this case. See *Mainez v. Gore*, 3:17-cv-00397-JLS-KSC, ECF No. 1-2 at 13, 19, 32;
13 ECF No. 21 at 3 (“A resentencing of Petitioner’s case would require the State apply
14 Proposition 57, SB 180, and sentence the petitioner to the state prison as required by state
15 law. The new sentence will *result in the petitioner’s immediate release.*”) (emphasis
16 added).

17 As the Court noted in its September 11, 2017 Order, a constitutional challenge to
18 the validity or duration of Plaintiff’s confinement may be raised by way of direct appeal,
19 or through state or federal habeas corpus petitions. See ECF No. 3 at 6 (citing *Wilkinson*
20 *v. Dotson*, 544 U.S. 74, 78-79 (2005)). “Core” habeas claims, however, may not be
21 brought in a § 1983 action. *Id.*

22 For these reasons, relief under FED. R. CIV. P. 59(e) is not warranted.

23 **III. Conclusion and Order**

24 Accordingly, the Court:

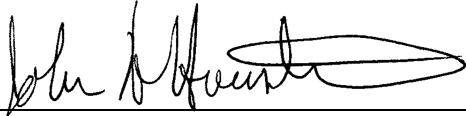
- 25 1) **DENIES** Plaintiff’s Motion to Alter or Amend Judgment (ECF No. 6);
- 26 2) **RE-CERTIFIES** that an IFP appeal from either this or the Court’s
27 September 11, 2017 Order, would be frivolous and therefore, not taken in good faith
28 pursuant to 28 U.S.C. § 1915(a)(3). See *Coppedge v. United States*, 369 U.S. 438, 445

1 (1962); Gardner v. Pogue, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is
2 permitted to proceed IFP on appeal only if appeal would not be frivolous); and

3 3) **DIRECTS** the Clerk of Court to terminate this civil action.

4 **IT IS SO ORDERED.**

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6 Dated: December 18, 2017



7 HON. JOHN A. HOUSTON
8 United States District Judge

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