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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEVIN ALMY,)	2:12-cv-00129-HDM-VCF
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
D. DAVIS, et al.,)	
)	
Defendant.)	
)	

Plaintiff has filed an "amended objection" to the court's order denying him leave to file a motion for reconsideration of the dismissal of Count XV of his complaint for failure to exhaust (#375). Defendants have opposed (#380). Plaintiff has not filed any reply, and the time for doing so has expired.

In his request for leave, plaintiff argued that he did not receive notice under *Klinge* v. *Eikenberry*, *Rand v. Rowland*, and *Woods v. Carey* before responding to the defendants' partial motion to dismiss. The court rejected plaintiff's assertion on the grounds that the docket clearly shows the court sent plaintiff a *Klinge* notice the same day defendants filed their motion to dismiss, and such notice was never returned undelivered to the court. Plaintiff's "amended objection" attaches a kite that he says shows he never received the *Klinge* notice. (Doc. #375 Ex. 1). The kite offers insufficient proof that plaintiff did not receive the *Klinge* notice. The dismissal of Count XV was

1 definitively decided by Judge Mahan on September 27, 2013. A
2 substantial period of time has passed since the entry of Judge
3 Mahan's order, and several objections and motions to reconsider the
4 dismissal have been considered and rejected. Plaintiff has had the
5 document he now relies on in his possession since December 2012,
6 and he did not include it in his original motion. Accordingly, the
7 court finds that plaintiff's amended objection is untimely and that
8 the granting of the motion four weeks prior to the commencement of
9 the trial is prejudicial to the defendants. This holding is
10 without prejudice to the plaintiff seeking such relief on his
11 retaliation claims as may be legally permitted in a separate
12 action.

13 IT IS SO ORDERED.

14 DATED: This 12th day of November, 2014.

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16 UNITED STATES DISTRICT JUDGE

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