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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 KEVIN JOSEPH SMITH,

11 Plaintiff,

12 v.

13 ELDON VAIL,

14 Defendant.

Case No. C10-5614RJB

ORDER DENYING
MOTION FOR
RECONSIDERATION

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16 This matter comes before the court on plaintiff's Motion for Reconsideration OF Order Adopting
17 Report and Recommendation. Dkt. 29. The court has considered the documents filed in support of the
18 motion and the file herein.

19 On January 4, 2011, the court dismissed this case with prejudice, on the basis that plaintiff has not
20 stated a claim for violation of his due process rights, because Washington's tort claims provisions, RCW
21 4.92 and RCW 72.02.045 provide a damages remedy to persons who have suffered from the tortious
22 conduct of the State or its political subdivisions. Dkt. 27. The court further noted that plaintiff had not
23 shown that the only named defendant in this case, Eldon Vail personally participated in the events
24 alleged. Dkt. 27. Finally, the court noted that the claim would be barred by the statute of limitations.
25 Dkt. 27.

26 On January 14, 2011, plaintiff filed a motion for reconsideration, contending that he has stated a
27 claim for violation of his right to due process; he has been trying to obtain proof of documents related to
28 his claim from the State of Florida; and he named Eldon Vail as the defendant in this case because he was

1 unable to determine who actually caused the deprivation. Dkt. 29. Plaintiff requests that the court
2 reconsider its order adopting the Report and Recommendation of the magistrate judge and dismissing his
3 case.

4 Local Rule CR 7(h)(1) provides as follows:

5 Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the
6 absence of a showing of manifest error in the prior ruling or a showing of new facts or legal
authority which could not have been brought to its attention earlier with reasonable diligence.

7 Plaintiff has not shown that his inability to obtain documents from Florida changes the result in this
8 case. Plaintiff has not stated a due process claim because he had an adequate post deprivation remedy
9 under state law. This is so, even if he were able to name another defendant to who personally participated
10 in the events alleged. Petitioner has not shown that the court's decision was a manifest error, and he has
11 not shown any new facts or legal authority that could not have been brought to the court's attention earlier
12 with reasonable diligence. This motion is without merit.

13 Therefore, it is hereby

14 **ORDERED** that plaintiff's Motion for Reconsideration (Dkt. 29) is **DENIED**.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
16 party appearing *pro se* at said party's last known address.

17 DATED this 20th day of January, 2011.

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21 Robert J Bryan
22 United States District Judge
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