

AUG 04 2016

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJAMIN A. GIBBS,

Plaintiff-Appellant,

v.

C. HERNANDEZ, Officer, individual &  
official capacity,

Defendant-Appellee.

No. 15-55462

D.C. No. 5:13-cv-00382-CAS-KK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Christina A. Snyder, District Judge, Presiding

Submitted July 26, 2016\*\*

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Benjamin Gibbs, a federal prisoner, appeals pro se from the district court's order denying his motion for reconsideration in his action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971),

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

alleging constitutional violations in connection with a contraband search. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we affirm.

The district court did not abuse its discretion in denying Gibbs's motion for reconsideration because Gibbs failed to set forth any grounds for relief. *See id.* at 1262-63; *see also Schikore v. BankAmerica Supplemental Retirement Plan*, 269 F.3d 956, 961 (9th Cir. 2001) ("The mailbox rule provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time. It is a settled feature of the federal common law.").

Gibbs's evidence regarding his outgoing mail, raised for the first time in his reply brief, is unpersuasive.

**AFFIRMED.**