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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Scott Douglas Nordstrom,

10 Plaintiff,

11 v.

12 Charles L. Ryan, Director of the Arizona
13 Department of Corrections; James O'Neil
14 Warden, ASPC Eyman; and Staci Fay,
Deputy Warden, Browning Unit,

15 Defendants.
16

CV15-02176-PHX-DGC

ORDER

17 Before the Court is death-sentenced inmate Ruben Garza Jr.'s motion to reconsider
18 the Court's ruling on his third-party motion to enforce a settlement agreement between
19 Plaintiff Scott Nordstrom and Defendants Arizona Department of Corrections ("ADOC")
20 and others. Doc. 111. For the reasons that follow, the Court will deny the motion.

21 **I. Background.**

22 In October 2015, Plaintiff Nordstrom, a death-sentenced inmate in state custody,
23 brought an action against Defendants for violations of the Eighth and Fourteenth
24 Amendments related to death row conditions. Doc. 1. Having already planned to make
25 death row inmates eligible for reclassification to close-custody housing, ADOC settled
26 with Plaintiff on March 3, 2017 ("the Settlement"). Doc. 39. Based on this settlement, the
27 Court dismissed Mr. Nordstrom's action, incorporated the Settlement terms in its order,
28 and retained jurisdiction to enforce the agreement. Doc. 45.

1 In 2019, seven death-sentenced inmates, including Mr. Garza, filed motions to
2 enforce the Settlement, asserting standing as third-party beneficiaries under Rule 71.
3 Docs. 71, 75, 76, 80, 81, 85, 86. In a May 15, 2019 order, the Court found that the seven
4 inmates lacked standing because they were not recognized as the Settlement’s primary
5 parties in interest and were not privy to the promise of the Settlement. Doc. 110.

6 **II. Legal Standard.**

7 Motions for reconsideration are disfavored and should be granted only in rare
8 circumstances. *See Stetter v. Blackpool*, No. CV 09-1071-PHX-DGC, 2009 WL 3348522,
9 at *1 (D. Ariz. Oct. 15, 2009). A motion for reconsideration will be denied “absent a
10 showing of manifest error or a showing of new facts or legal authority that could not have
11 been brought to [the Court’s] attention earlier with reasonable diligence.” LRCiv 7.2(g)(1);
12 *see Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). Mere disagreement with an
13 order is an insufficient basis for reconsideration. *See Ross v. Arpaio*, No. CV 05-4177-
14 PHX-MHM, 2008 WL 1776502, at *2 (D. Ariz. 2008). Nor should reconsideration be used
15 to ask the Court to rethink its analysis. *Id.*; *see N.W. Acceptance Corp. v. Lynnwood Equip.,*
16 *Inc.*, 841 F.2d 918, 925-26 (9th Cir. 1988).

17 **III. Discussion.**

18 Garza asserts that the Settlement affected all death row inmates, not just Mr.
19 Nordstrom and created a vehicle for all death-sentenced inmates to be reclassified to close
20 custody. Doc. 111 at 6. Mr. Garza seems to argue that because all death-sentenced inmates
21 benefitted from the Settlement, they should all have standing to enforce it. *Id.* at 7. He
22 further argues that because the Settlement mentions all death-sentenced inmates as a group,
23 they were the intended third-party beneficiaries. *Id.*

24 Mr. Garza’s arguments are all addressed by the Court’s previous order. While the
25 Settlement mentions all death-sentenced inmates as a group, the underlying case was only
26 between Mr. Nordstrom and Defendants. As stressed in the previous order, Mr. Nordstrom
27 never took steps to represent interests other than his own, and the Settlement was the result
28 of an agreement between Mr. Nordstrom and ADOC only. Further, under Arizona law it

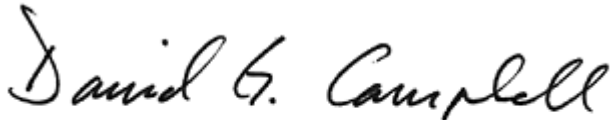
1 is not enough that the inmates are affected by the Settlement or that it operates to their
2 benefit. See *Sherman v. First Am. Title Ins.*, 38 P.3d 1229, 1232 (Ariz. Ct. App. 2002).
3 The death-sentenced inmates must be the intended, primary parties in interest, which they
4 were not. *Basurto v. Utah Const. & Mining Co.*, 485 P.2d 859, 863 (Ariz. Ct. App. 1971).

5 Garza also argues that if the death-sentenced inmates do not have standing to
6 enforce the Settlement, then Plaintiff Nordstrom would not have had standing to originally
7 assert his claims. This clearly is incorrect. To assert standing in the underlying suit, Mr.
8 Nordstrom needed to show that he suffered an injury and the injury could be redressed by
9 the Court's favorable opinion. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561
10 (1992). As a party to the underlying suit and the Settlement, Mr. Nordstrom's continues
11 to have standing to enforce the Settlement. Doc. 72 at 4-5. But as nonparties, Garza and
12 the other death-sentenced inmates need third-party beneficiary status to have standing to
13 enforce the Settlement. *Sherman*, P.3d at 1232. As discussed in the Court's previous order,
14 they do not.

15 Garza also does not address the Court's alternative ground for dismissing the death-
16 sentenced inmates' motions – that none of the inmates asserted claims are covered by the
17 terms of the Settlement. Doc. 110 at 6-8. Specifically for Mr. Garza, the Court found that
18 the Settlement does not address disciplinary procedures for death-sentenced inmates
19 following reclassification. *Id.* at 7. Thus, even if the Court agreed that the inmates have
20 standing, the May 2019 order would not change.

21 **IT IS ORDERED** that Mr. Garza's motion to reconsider (Doc. 111) is **denied**.

22 Dated this 30th day of May, 2019.

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26 David G. Campbell
27 Senior United States District Judge
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