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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

LOUIS RICHARD FRESQUEZ,

1:04-cv-05123-AWI-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION  
FOR RECONSIDERATION  
(Doc. 85.)

vs.

LIEUTENANT PIETER MOERDYK,

ORDER GRANTING PLAINTIFF FINAL  
OPPORTUNITY TO COMPLY WITH  
COURT'S ORDER OF JULY 28, 2011  
(Doc. 84.)

Defendant.

THIRTY DAY DEADLINE TO FILE SECOND  
AMENDED COMPLAINT

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**I. BACKGROUND**

Louis Richard Fresquez (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action alleging that prison officials violated the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”). On December 10, 2010, Plaintiff filed objections to the undersigned’s order entered on July 28, 2011, which adopted the Magistrate Judge's findings and recommendations, denied Plaintiff's motion for default judgment, and dismissed the Amended Complaint with leave to amend. (Doc. 84.) The Court construes Plaintiff's objections as a motion for reconsideration.

**II. MOTION FOR RECONSIDERATION**

Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest injustice

1 and is to be utilized only where extraordinary circumstances . . .” exist. Harvest v. Castro, 531 F.3d  
2 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The moving party “must  
3 demonstrate both injury and circumstances beyond his control . . . .” Id. (internal quotation marks  
4 and citation omitted). In seeking reconsideration of an order, Local Rule 230(k) requires Plaintiff  
5 to show “what new or different facts or circumstances are claimed to exist which did not exist or  
6 were not shown upon such prior motion, or what other grounds exist for the motion.”

7 “A motion for reconsideration should not be granted, absent highly unusual circumstances,  
8 unless the district court is presented with newly discovered evidence, committed clear error, or if  
9 there is an intervening change in the controlling law,” Marlyn Nutraceuticals, Inc. v. Mucos Pharma  
10 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted,  
11 and “[a] party seeking reconsideration must show more than a disagreement with the Court’s  
12 decision, and recapitulation . . . .” of that which was already considered by the Court in rendering its  
13 decision,” U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

14 The basis for Plaintiff’s motion for reconsideration is his disagreement with the Court’s  
15 decision entered on July 28, 2011. Plaintiff objects to the order on the ground that the Court  
16 "refuses to acknowledge the facts of the case presented." (Objections, Doc. 85 at 2.) Plaintiff argues  
17 that his Amended Complaint should not have been dismissed, because he stated a prima facie case  
18 for violation of the Americans with Disabilities Act. Plaintiff also argues that the Court erred in  
19 denying his motion for entry of default judgment. Plaintiff has not shown clear error or other  
20 meritorious grounds for relief, and has therefore not met his burden as the party moving for  
21 reconsideration. Marlyn Nutraceuticals, Inc., 571 F.3d at 880. Plaintiff’s disagreement is not  
22 sufficient grounds for relief from the order. Westlands Water Dist., 134 F.Supp.2d at 1131.

23 **III. CONCLUSION**

24 Based on the foregoing, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff’s motion for reconsideration, filed on August 31, 2011 is DENIED;
- 26 2. Plaintiff is granted one, final opportunity to comply with the Court's order of July 28,  
27 2011;

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- 3. Within thirty days from the date of service of this order, Plaintiff shall file a Second Amended Complaint as directed by the Court's order of July 28, 2011; and
- 4. Failure to file a Second Amended Complaint in compliance with the Court's order of July 28, 2011 shall result in the dismissal of this action with prejudice, for failure to state a claim, without further notice.

IT IS SO ORDERED.

Dated: November 9, 2011

  
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CHIEF UNITED STATES DISTRICT JUDGE