

1 *Motion*. (Doc. 59.) On November 8, 2010, the Court denied Plaintiff's motion, without prejudice.
2 (Doc. 60.) On November 29, 2010, Plaintiff filed an opposition to Defendants' *Motion*. (Doc. 62.)

3 On December 2, 2010, Defendants filed a motion for reconsideration of the Court's order of
4 November 8, 2010, and a motion to strike Plaintiff's opposition to their *Motion*. (Doc. 64.) Defendants'
5 motions are now before the Court.

6 **II. MOTION FOR RECONSIDERATION**

7 The Court has discretion to reconsider and vacate a prior order. Barber v. Hawaii, 42 F.3d 1185,
8 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th Cir. 1992). Motions
9 to reconsider are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825 F.2d
10 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To succeed
11 with a motion for reconsideration, a party must set forth facts or law of a strongly convincing nature to
12 induce the court to reverse its prior decision. See Kern-Tulare Water Dist. v. City of Bakersfield, 634
13 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in part on other grounds, 828 F.2d 514
14 (9th Cir. 1987). When filing a motion for reconsideration, Local Rule 230(j) requires a party to show
15 the "new or different facts or circumstances claimed to exist which did not exist or were not shown upon
16 such prior motion, or what other grounds exist for the motion." L.R. 230(j).

17 Defendants request the Court to reconsider its order of November 8, 2010, which denied
18 Plaintiff's motion to require Defendants to re-serve a complete copy of their *Motion* upon Plaintiff.
19 Defendants present evidence that service of their *Motion* upon Plaintiff on October 12, 2010 was
20 unsuccessful due to misdelivery by the U.S. Postal Service. Defendants assert that on December 1,
21 2010, they received a large packet of documents in the mail containing the exhibits and declarations
22 offered in support of their *Motion*, along with a notice by the Postal Service indicating that the
23 documents were found loose in the mail and/or damaged by automated equipment, resulting in
24 misdelivery. (Declaration of J. Devencenzi, Doc. 64-1, and Exh. A-1.) Defendants have also submitted
25 a Proof of Service dated December 2, 2010, showing they re-served a complete copy of their *Motion*
26 upon Plaintiff. (Id. at Exh. A-2.) Based on this new evidence, Defendants' motion for reconsideration
27 shall be granted, and Plaintiff's motion requesting re-service shall be denied as moot.

1 **III. MOTION TO STRIKE**

2 Defendants also request the Court to strike Plaintiff's November 29, 2010 opposition to their
3 *Motion*, to allow Plaintiff the opportunity to file a new opposition following re-service of the *Motion*.
4 In lieu of striking Plaintiff's opposition, the Court shall grant Plaintiff leave to file an amended
5 opposition within thirty days, if he so wishes.

6 **IV. CONCLUSION**

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

- 8 1. Defendants' motion for reconsideration of the Court's order of November 8, 2010 is
9 GRANTED;
- 10 2. Plaintiff's motion of November 3, 2010, requesting re-service of Defendants' Motion to
11 Declare Plaintiff a Vexatious Litigant and Requiring Security ("*Motion*"), is DENIED
12 as moot;
- 13 3. Defendants' motion to strike Plaintiff's November 29, 2010 opposition to Defendants'
14 *Motion* is DENIED;
- 15 4. Plaintiff is GRANTED leave to file an amended opposition to Defendants' *Motion* within
16 thirty days from the date of service of this order, if he so wishes.

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18 IT IS SO ORDERED.

19 **Dated: December 15, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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