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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

Plaintiff,

v.

J. MARTINEZ, et al.,

Defendants.

CASE NO. 1:08-cv-01812-AWI-GBC (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR INJUNCTIVE RELIEF  
(Doc. 49)

ORDER DENYING PLAINTIFF’S MOTION  
FOR RECONSIDERATION  
(Doc. 52)

PLAINTIFF TO PAY FILING FEE IN FULL  
WITHIN THIRTY DAYS

**I. Plaintiff’s Motion for Reconsideration**

A. Procedural History

Plaintiff Bryan E. Ransom, (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis (“IFP”) in this civil rights action seeking relief under 42 U.S.C. § 1983. On August 9, 2010, Defendants submitted a motion to revoke Plaintiff’s IFP status pursuant to 28 U.S.C. § 1915(g). (Doc. 24). On December 6, 2010, the Court submitted Findings and Recommendations in which the Court recommended that Plaintiff’s IFP status be revoked pursuant to 28 U.S.C. § 1915(g) and directed Plaintiff to pay filing fee or else action would be dismissed. (Doc. 41). On December 15, 2010, Plaintiff appealed, on February 11, 2011, the District Court adopted the Magistrate Court’s Findings and Recommendations and on February 22, 2011, United States Court of Appeals for the Ninth Circuit processed the appeal. (Docs. 44, 45, 47). On March 7, 2011, Plaintiff filed a motion for emergency injunction and a motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (Docs. 49, 52). On April 20, 2011, the Ninth Circuit dismissed Plaintiff’s

1 appeal. (Doc. 53). The court now addresses the pending motions.

2 B. Preliminary Injunction

3 “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v.*  
4 *Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 376 (2008) (citation omitted). “A plaintiff  
5 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is  
6 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips  
7 in his favor, and that an injunction is in the public interest.” *Id.* at 374 (citations omitted). An  
8 injunction may only be awarded upon a *clear showing* that the plaintiff is entitled to relief. *Id.* at 376  
9 (citation omitted) (emphasis added). Federal courts are courts of limited jurisdiction and in  
10 considering a request for preliminary injunctive relief, the Court is bound by the requirement that  
11 as a preliminary matter, it have before it an actual case or controversy. *City of Los Angeles v. Lyons*,  
12 461 U.S. 95, 102 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and*  
13 *State, Inc.*, 454 U.S. 464, 471 (1982). Furthermore, the Court must have personal jurisdiction over  
14 the parties in order to issue an injunction against any individual and the Court may not enjoin  
15 individuals who are not yet served or before the court. *Zepeda v. United States I.N.S.*, 753 F.2d 719,  
16 727 (9th Cir. 1983).

17 As this case involves claims arising under the First, Fourteenth and RLUIPA, the Court does  
18 not have jurisdiction over Plaintiff’s emergency injunctive request to be prevented from being  
19 released into the general population yard. Therefore, Plaintiff’s motion for emergency injunctive  
20 relief is DENIED.

21 C. Reconsideration

22 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the  
23 district court. The Rule permits a district court to relieve a party from a final order or judgment on  
24 grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud . . . of an adverse  
25 party, . . . or (6) any other reason justifying relief from the operation of the judgment.” Fed. R. Civ.  
26 P. 60(b). The motion for reconsideration must be made within a reasonable time, in any event “not  
27 more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

28 Motions to reconsider are committed to the discretion of the trial court. *Combs v. Nick Garin*

1 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983)  
2 (*en banc*). To succeed, a party must set forth facts or law of a strongly convincing nature to induce  
3 the court to reverse its prior decision. *See e.g., Kern-Tulare Water Dist. v. City of Bakersfield*, 634  
4 F.Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part and rev'd in part on other grounds*, 828 F.2d 514  
5 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015 (1988). The Ninth Circuit has stated that “[c]lause  
6 60(b)(6) is residual and ‘must be read as being exclusive of the preceding clauses.’” *Corex Corp. v.*  
7 *United States*, 638 F.2d 119 (9th Cir. 1981); *accord LaFarge Conseils et Etudes, S.A. v. Kaiser*  
8 *Cement*, 791 F.2d 1334, 1338 (9th Cir. 1986). Accordingly, “the clause is reserved for  
9 ‘extraordinary circumstances.’” *Id.* When filing a motion for reconsideration, Local Rule 230(j)(3)  
10 & (4) requires a party to show the “new or different facts or circumstances are claimed to exist which  
11 did not exist for the motion; and . . . why the facts or circumstances were not shown at the time of  
12 the prior motion.”

13 In his motion for reconsideration, Plaintiff argues that he has demonstrated through his  
14 request for emergency injunctive relief and argues that the Court erred in denying Plaintiff’s motion  
15 to amend his complaint to add an imminent danger claim and erred in striking his amended  
16 opposition and surreply which added an imminent danger claim. (Doc. 52). As discussed above,  
17 the Court lacks the jurisdiction over Plaintiff’s additional claim in his request for emergency  
18 injunctive relief. Moreover, Plaintiff fails both to show new or different facts or circumstances  
19 which did not exist at the time the Court granted Defendants’ motion to revoke IFP. Plaintiff also  
20 fails to present any arguments and/or authority to show that the Court erred in denying his motion  
21 to amend his opposition and erred in striking Plaintiff’s surreply which added an imminent danger  
22 claim. Plaintiff’s presented no imminent danger claim in his original complaint which argues that  
23 Plaintiff is being denied bodily privacy by being forced to undergo strip searches in front of women  
24 staff, “notorious homosexuals, voyors [sic] and masterbaters.” (Doc. 1 at ¶¶ 12, 21). The complaint  
25 only mentions a threat of using pepper spray to obtain compliance with the strip search and never  
26 mentioned the use of pepper spray. (Doc. 1 at ¶¶ 27-33). Plaintiff simply fails to present any basis  
27 to justify reconsideration of this Court’s order granting revocation of Plaintiff’s IFP status.

28 In Plaintiff’s motion for reconsideration, he attaches an amended complaint which adds an

1 imminent danger claim, however, Plaintiff failed to seek leave of the court to amend. Fed. R. Civ.  
2 P. 15(a)(2). Even if the Court were to allow Plaintiff to amend his opposition to add an imminent  
3 danger claim, Plaintiff's imminent danger claim still fails. In Plaintiff's proposed amended  
4 opposition (Doc. 33), Plaintiff's argues that he is in imminent danger of being pepper sprayed if he  
5 does not comply with the strip searches in the future. "Frequent filers sometimes allege that they are  
6 in imminent danger so they can avoid paying a filing fee." *Ciarpaglini v. Saini*, 352 F.3d 328, 330  
7 (7th Cir. 2003). Threat of being pepper sprayed for failure to comply with a strip search does not  
8 amount to imminent danger. *See Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3rd Cir.2001) (finding  
9 that being sprayed with pepper spray once does not constitute imminent danger).

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this  
11 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
12 Court finds its order adopting the Findings and Recommendations to grant revocation of Plaintiff's  
13 IFP status is supported by the record and by proper analysis.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion for injunctive relief, filed March 7, 2011, is DENIED;
- 16 2. Plaintiff's motion for reconsideration, filed March 7, 2011, is DENIED; and
- 17 3. Plaintiff is required to pay the \$350.00 filing fee in full within thirty (30) days or  
18 this action will be dismissed, without prejudice.

19 IT IS SO ORDERED.

20 Dated: September 29, 2011

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22 CHIEF UNITED STATES DISTRICT JUDGE  
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