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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JOSHUA J. CANTU,

12 Plaintiff,

13 v.

14 M. GARCIA, et al.,

15 Defendants.  
16

No. 1:09-cv-00177-DAD-GSA

ORDER DENYING MOTION FOR  
RECONSIDERATION

(Doc. No. 201)

17 Plaintiff Joshua J. Cantu is a state prisoner proceeding *pro se* with this civil rights action  
18 pursuant to 42 U.S.C. § 1983. On April 10, 2017, the parties filed a stipulation to voluntarily  
19 dismiss this case with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Doc. No.  
20 199.) On May 22, 2017, the court issued an order acknowledging the stipulated dismissal of the  
21 action with prejudice under Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure and  
22 directing the Clerk of the Court to close the case. (Doc. No. 200.)

23 On June 5, 2017, Plaintiff filed what he styled as a “Motion Not to Close Case” which the  
24 court construes as a motion for reconsideration of the court’s May 22, 2017 order. (Doc No.  
25 201.) Defendants have not filed a response to plaintiff’s motion.<sup>1</sup>

26 <sup>1</sup> Moreover, plaintiff has not filed anything with the court since submitting his motion which was  
27 received on June 5, 2017. It is quite possible that plaintiff’s motion has been rendered moot since  
28 its filing by defendants’ subsequent performance as anticipated by the parties’ settlement  
agreement.

1 Federal Civil Procedure Rule 60(b) provides that “[o]n motion and upon such terms as are  
2 just, the court may relieve a party. . . from a final judgment, order, or proceeding for the  
3 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any other  
4 reason justifying relief from the operation of the judgment.” “The law in this circuit is that errors  
5 of law are cognizable under Rule 60(b).” *Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 441 (9th  
6 Cir. 1982).

7 Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest  
8 injustice and is to be utilized only where extraordinary circumstances” exist. *Harvest v. Castro*,  
9 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted) (addressing  
10 reconsideration under Rule 60(b)(1)–(5)). The moving party “must demonstrate both injury and  
11 circumstances beyond his control.” *Id.* (internal quotation marks and citation omitted). Further,  
12 Local Rule 230(j) requires, in relevant part, that in moving for reconsideration of an order  
13 denying or granting a prior motion, a party must show “what new or different facts or  
14 circumstances are claimed to exist which did not exist or were not shown” previously, “what  
15 other grounds exist for the motion,” and “why the facts or circumstances were not shown” at the  
16 time the substance of the order which is objected to was considered.

17 “A motion for reconsideration should not be granted, absent highly unusual  
18 circumstances, unless the district court is presented with newly discovered evidence, committed  
19 clear error, or if there is an intervening change in the controlling law,” and it “may not be used to  
20 raise arguments or present evidence for the first time when they could reasonably have been  
21 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571  
22 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted).

23 In his pending motion, plaintiff claims that he has not received any money pursuant to the  
24 parties’ settlement agreement. Plaintiff requests the court to void the settlement agreement and  
25 reopen the case, so he can proceed with discovery.

26 Federal courts are courts of limited jurisdiction, possessing only that power authorized by  
27 Constitution and statute. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994.) A claim  
28 for breach of contract or a settlement agreement, even if part of the consideration for it is

1 dismissal of a federal case, will not provide the basis for federal court jurisdiction. *Id.* at 381.  
2 This limited jurisdiction cannot be expanded by judicial decree. *Id.* at 377 (citing *Am. Fire &*  
3 *Cas. Co. v. Finn*, 341 U.S. 6, 17-18 (1951)). Lack of jurisdiction is to be presumed and the  
4 burden of proving jurisdiction rests with the party asserting jurisdiction. *Kokkonen*, 511 U.S. at  
5 377.

6 Enforcement of a settlement agreement is “more than a continuation or renewal of the  
7 dismissed suit, and hence requires its own basis for jurisdiction.” *Id.* at 378. A district court  
8 lacks jurisdiction to enforce a settlement agreement following a dismissal of the action unless the  
9 district judge either: (1) expressly in the dismissal order, retains jurisdiction over the settlement  
10 agreement; or (2) incorporates the terms of the settlement agreement in the dismissal order. *See*  
11 *id.* at 381; *see also K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014). Under  
12 those circumstances, a breach of the agreement would be a violation of a court order and the  
13 district court would have ancillary jurisdiction to enforce the agreement. *Id.* Absent those  
14 circumstances, however, remedying any breach of the settlement agreement requires initiation of  
15 a new lawsuit to enforce the contract. If the court does not retain jurisdiction to enforce the  
16 settlement agreement, the vehicle for the enforcement of the settlement agreement is a breach of  
17 contract claim in another proceeding, where “part of the consideration [for the contract] was  
18 dismissal of an earlier federal suit.” *Id.*

19 Here, the parties filed a stipulation for voluntary dismissal with prejudice, pursuant to  
20 Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Doc. No. 199.) Under Rule 41(a)(1)(A)(ii),  
21 “the plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal  
22 signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Plaintiff filed a  
23 stipulation of dismissal signed by all parties who appeared in this case. The dismissal of this  
24 case therefore took effect on the date the stipulation was filed, without a court order. The court’s  
25 order of May 22, 2017, only acknowledged the parties’ stipulation and closed the case. (Doc. No.  
26 200.) The undersigned neither expressly retained jurisdiction over the parties’ settlement  
27 agreement, nor incorporated the terms of the settlement agreement in the order closing the case.

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1 Absent such action, “enforcement of the settlement agreement is for state courts.” *Kokkonen*, 511  
2 U.S. at 382.

3 Because plaintiff has not made the requisite showing of “extraordinary circumstances”  
4 that would justify relief under Rule 60, plaintiff’s motion to void the settlement agreement (Doc.  
5 No. 201) is denied.

6 IT IS SO ORDERED.

7 Dated: **October 12, 2017**

  
UNITED STATES DISTRICT JUDGE