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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE VASQUEZ,  
Plaintiff,  
v.  
PAM AHLIN, et al.,  
Defendants.

No. 1:10-cv-01973-DAD-JDP

ORDER DENYING MOTION FOR  
RECONSIDERATION

(Doc. No. 87)

Plaintiff George Vasquez is a former civil detainee at the Coalinga State Hospital (“CSH”) proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. On September 30, 2019, the undersigned issued an order adopting in full the assigned magistrate judge’s September 11, 2019 findings and recommendations recommending that plaintiff’s complaint be dismissed (1) as moot and (2) due to his failure to file an amended complaint. (Doc. No. 83.) On October 17, 2019, plaintiff moved this court for reconsideration of the September 30, 2019 order. (Doc. No. 57.)

Federal Rule of Civil Procedure 60(b) provides that “[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any other reason justifying relief from the operation of judgment.” Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where

1 extraordinary circumstances” exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)  
2 (internal quotations marks and citation omitted) (addressing reconsideration under Rules  
3 60(b)(1)-(5)). The moving party “must demonstrate both injury and circumstances beyond his  
4 control.” *Id.* (internal quotation marks and citation omitted). Further, Local Rule 230(j) requires,  
5 in relevant part, that plaintiff show “what new or different facts or circumstances are claimed to  
6 exist which did not exist or were not shown” previously, “what other grounds exist for the  
7 motion,” and “why the facts or circumstances were not shown” at the time the substance of the  
8 order which is objected to was considered. “A motion for reconsideration should not be granted,  
9 absent highly unusual circumstances, unless the district court is presented with newly discovered  
10 evidence, committed clear error, or if there is an intervening change in the controlling law,” and it  
11 “may *not* be used to raise arguments or present evidence for the first time when they could  
12 reasonably have been raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos*  
13 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations  
14 omitted).

15 Here, the pending motion falls far short of meeting these standards. Plaintiff argues that  
16 he was not able to timely object to the September 11, 2019 findings and recommendations  
17 because he did not receive them until September 13, 2019 and that “his volunteer assistant,” who  
18 apparently received his own copy of the findings and recommendations on September 19, 2019,  
19 was not able to work on plaintiff’s objections until after the deadline to file objections had passed.  
20 (Doc. No. 87 at 1.) Plaintiff’s arguments in this regard fail to show mistake, inadvertence,  
21 surprise, or excusable neglect; nor do they reveal the existence of either newly discovered  
22 evidence or fraud; nor do they establish that the judgment is either void or satisfied; nor do they  
23 present any other reasons justifying relief from judgment. Moreover, pursuant to the court’s  
24 Local Rules, plaintiff has not shown “new or different facts or circumstances claimed to exist  
25 which did not exist or were not shown upon such prior motion, or what other grounds exist for the  
26 motion.” Local Rule 230(j). In the pending motion for reconsideration plaintiff essentially states  
27 that he did not object to the findings and recommendations in a timely fashion because the person  
28 he relied on for help was not available until after the deadline to object had passed. Plaintiff,

1 however, cites to no authority in support of his position that him requiring assistance in litigating  
2 this action can form the basis of his motion for reconsideration of the court’s September 30, 2019  
3 order. Indeed, “regardless of whether [plaintiff’s ‘volunteer assistant’] was acting as his  
4 ‘jailhouse lawyer’ here, plaintiff, as a *pro se* litigant, still bears the responsibility of prosecuting  
5 his own case,” *Oster v. Clarke*, No. C07-5508RJB-KLS, 2009 WL 279056, at \*3 (W.D. Wash.  
6 Feb. 2, 2009), which includes complying with court orders and timely filing objections to a  
7 magistrate judge’s findings and recommendations to a district court judge. *See Nicklas v.*  
8 *Giordano*, No. CV 12-2918-VAP AS, 2014 WL 3405833, at \*8 (C.D. Cal. July 10, 2014) (“[P]ro  
9 se prisoner litigants do not enjoy an absolute right to have a jailhouse lawyer assist with legal  
10 representation, make appearances on their behalf, or file papers with the court as the litigant’s  
11 legal representative.”).

12 Finally, the court notes that neither the pending motion for reconsideration , nor plaintiff’s  
13 pending (and untimely) motion for extension of time to file objections to the September 11, 2019  
14 findings and recommendations (Doc. No. 86) or his untimely objections themselves (Doc. No.  
15 85), meaningfully dispute the magistrate judge’s findings that his claims have been rendered moot  
16 and, separately, that the action should be dismissed due to his failure to file an amended  
17 complaint. The California Department of State Hospitals (“DSH”) regulation that plaintiff is  
18 challenging in his complaint was amended while this action was pending, rendering plaintiff’s  
19 complaint moot. (Doc. No. 82 at 1.) The court afforded plaintiff an opportunity to file an  
20 amended complaint to assert any additional challenge he might have wished to assert against the  
21 then-newly amended regulation. (*Id.* at 1.) This he did not do. After several months had passed  
22 and plaintiff did not file an amended complaint, the court issued two orders to show cause  
23 requiring plaintiff to show why the case should not be dismissed as moot and due to plaintiff’s  
24 failure to file an amended complaint. Plaintiff’s response to those orders did not dispute that his  
25 complaint has been rendered moot in light of the DSH’s amended regulation.

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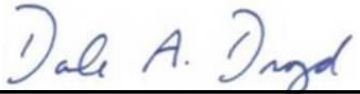
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Accordingly,

1. Plaintiff's motion for reconsideration (Doc. No. 87) is denied;
2. Plaintiff's motion for extension of time to file objections (Doc. No. 86) is denied;  
and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: January 13, 2020

  
UNITED STATES DISTRICT JUDGE