



1 The Court has ordered service on the remaining Defendants (ECF No. 26) who  
2 have filed Answers. (ECF Nos. 35, 42.)

3 Plaintiff filed, on April 20, 2011, in conjunction with his First Amended Complaint,  
4 a motion for a preliminary injunction that is pending before the Court. (ECF No. 13.)

5 Now before the Court are (1) Plaintiff's Motion/Request to Vacate or Modify the  
6 Court's Order Denying Emergency Injunction (ECF No. 23), (2) Plaintiff's Motion and  
7 Order for Preliminary Injunction filed October 7, 2011 (ECF No. 24), and (3) Plaintiff's  
8 Motion to Alter or Amend the Court's Order Denying Emergency Injunction and the  
9 Court's Order Dismissing Claims and Defendants (ECF No. 27.).

## 10 **II. ANALYSIS**

### 11 **A. Motions to Vacate, Modify, Alter, or Amend**

12 The Court construes the Motions to vacate, modify, alter, or amend (ECF No. 23,  
13 27) as seeking reconsideration of the Order Denying Emergency Injunction and the  
14 Order Dismissing Claims and Defendants.

15 "A motion for reconsideration should not be granted, absent highly unusual  
16 circumstances, unless the ... court is presented with newly discovered evidence,  
17 committed clear error, or if there is an intervening change in the controlling law," Marlyn  
18 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),  
19 and "[a] party seeking reconsideration must show more than a disagreement with the  
20 Court's decision, and recapitulation ..." of that which was already considered by the  
21 Court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,  
22 1131 (E.D.Cal. 2001).

23 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a  
24 party to show the "new or different facts or circumstances claimed to exist which did not  
25 exist or were not shown upon such prior motion, or what other grounds exist for the  
26 motion." Motions to reconsider are committed to the discretion of the trial court. Combs  
27 v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C.Cir.1987); Rodgers v. Watt, 722 F.2d  
28 456, 460 (9th Cir.1983). To succeed, a party must set forth facts or law of a strongly

1 convincing nature to induce the court to reverse its prior decision. See e.g.,  
2 Kern–Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal.1986),  
3 aff'd in part and rev'd in part, 828 F.2d 514 (9th Cir.1987).

4 Plaintiff has failed to meet this standard. He has not shown “mistake,  
5 inadvertence, surprise, or excusable neglect,” provided newly discovered evidence,  
6 shown the judgment to be either void or satisfied, or provided any other reasons  
7 justifying relief from judgment. Moreover, pursuant to the Court's Local Rules, Petitioner  
8 has not provided “new or different facts or circumstances claimed to exist which did not  
9 exist or were not shown upon such prior motion, or what other grounds exist for the  
10 motion.” Local Rule 230(j).

11 Plaintiff did not object to the underlying Findings and Recommendations prior to  
12 adoption. He does not now argue the merits, present evidence, or demonstrate error or  
13 change in the law. Rather he appears concerned that his motion for injunctive relief is  
14 no longer before the Court, eliminated by the Orders Denying Emergency Injunction  
15 and Dismissing Claims and Defendants. This is not the case. Plaintiff’s motion for a  
16 preliminary injunction (ECF No. 13) filed on April 20, 2011 in conjunction with his  
17 operative First Amended Complaint remains pending before the Court with Defendants’  
18 response due by March 15, 2012. (ECF No. 38.)

19 **B. October 7, 2011 Motion and Order for Preliminary Injunction**

20 Plaintiff’s Motion and Order for Preliminary Injunction filed October 7, 2011 (ECF  
21 No. 24) is duplicative of his pending Motion filed April 20, 2011 (ECF NO. 13) and on  
22 this basis is denied.

23 **III. ORDER**

24 Accordingly, for the foregoing reasons, it is ORDERED that 1) Plaintiff’s  
25 Motion/Request to Vacate or Modify the Court’s September 22, 2011 Order Denying  
26 Emergency Injunction (ECF No. 23), (2) Plaintiff’s Motion and Order for preliminary  
27 injunction filed October 7, 2011 (ECF No. 24), and (3) Plaintiff’s Motion to Alter or  
28 Amend the Court’s September 22, 2011 Order Denying Emergency Injunction and the

1 Court's October 13, 2011 Order Dismissing Claims and Defendants (ECF No. 27), are  
2 DENIED.

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IT IS SO ORDERED.

Dated: March 5, 2012

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE