

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LORENZO FOSSELMAN, JR.,

CASE NO. 1:11-CV-00575-AWI-MJS PC

Plaintiff,

v.

ORDER DENYING PLAINTIFF'S
OBJECTION TO MAGISTRATE'S ORDER
TO DISMISS COMPLAINT

R. HIDALGO, et al.,

(ECF No. 9)

Defendants.

On April 8, 2011, Plaintiff Lorenzo Fosselman Jr., a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The Court issued its Order Dismissing Plaintiff's Complaint with Leave to Amend on February 14, 2012. (ECF No. 8) Plaintiff has not yet filed an amended complaint. The court gave him until March 19, 2012 to do so.

Before the Court is Plaintiff's March 5, 2012, Objection to Magistrate Judge's Order to Dismiss Complaint. (ECF No. 9.) Plaintiff's Objection, which the Court construes as a motion for reconsideration of its February 14th Order,¹ is on grounds that (1) Plaintiff has not consented to Magistrate Judge jurisdiction, (2) Plaintiff, as a pro se, is entitled to liberal construal of his Complaint and, so construed, it states valid claims,

¹ Plaintiff's Objection is neither timely nor sufficient as a request for reconsideration by a district court judge. Fed. R. Civ. P. 72; United States District Court for the Eastern District, Local Rule 303(c).

1 (3) the Court made findings of fact not appropriate at screening, and (4) the Court did
2 not screen state law claims.

3 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason
4 that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to
5 prevent manifest injustice and is to be utilized only where extraordinary circumstances
6 ... ” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008). The moving party “must
7 demonstrate both injury and circumstances beyond his control” Id. In seeking
8 reconsideration of an order, Local Rule 230(j) requires Plaintiff to show “what new or
9 different facts or circumstances are claimed to exist which did not exist or were not
10 shown upon such prior motion, or what other grounds exist for the motion.”

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

19 Plaintiff has not provided grounds or arguments supporting a motion for
20 reconsideration.

21 The Court’s February 14th Order is non-dispositive and within Magistrate
22 Judges’s jurisdiction notwithstanding Plaintiff’s declination of all-purpose Magistrate
23 jurisdiction.² He has not shown clear error or other meritorious grounds for relief from
24 the February 14th Order. His access to court claim placed in issue the docket in Evans

28 ² 28 U.S.C. § 636(a-b); United States District Court for the Eastern District, Local Rule 302-303.

1 and Gibbs, the predicate actions in which he claims he was denied meaningful access.³
2 A court “may take [judicial] notice of proceedings in other courts, both within and without
3 the federal judicial system, if those proceedings have a direct relation to matters at
4 issue.”⁴ A court may take judicial notice of court records.⁵ See McCree v. Grisson, 657
5 F.3d 623, 624 (7th Cir. 2011) (district court properly dismissed access to court claim
6 without leave to amend at screening where judicial notice of the record in the action in
7 which meaningful access allegedly was denied belies such contention). His purported
8 state law claims will not be considered as a matter of supplemental jurisdiction absent a
9 cognizable federal claim. 28 U.S.C. § 1367; Herman Family Revocable Trust v. Teddy
10 Bear, 254 F.3d 802, 805 (9th Cir. 2001).

11 Plaintiff has not met his burden as a party moving for reconsideration. Marlyn
12 Nutraceuticals, Inc., 571 F.3d at 880.

13 Accordingly, for the foregoing reasons, it is ordered that Plaintiff’s Objection to
14 Magistrate Judge’s Order to Dismiss Complaint (ECF No. 9) is DENIED.

15
16
17 IT IS SO ORDERED.

18 Dated: March 14, 2012
ci4d6

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

19
20
21
22
23
24
25 ³ Docket Report in Fosselman v. Evans, U.S.D.C. E.D. Cal. Case
No. 1:07-cv-00812-JLO-GSA; Docket Report in Fosselman v. Gibbs et al., U.S.D.C. N. D. Cal.
Case No. 4:06-cv-00375-PJH.

26 ⁴ U .S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir.
27 1992).

28 ⁵ Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.1994); MGIC Indem. Co. v. Weisman, 803 F.2d
500, 504 (9th Cir.1986).