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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

STEWART MANAGO,  
Plaintiff,  
v.  
S.F. GONZALEZ, former warden; *et al.*,  
Defendants.

Case No. 1:11-cv-01269-LJO-SMS  
  
ORDER DENYING RECONSIDERATION  
OF ORDER DISMISSING CASE AS TO  
DEFENDANTS GUTIERREZ AND CANTU  
  
(Doc. 87)

Plaintiff Stewart Manago moves for reconsideration, pursuant to F.R.Civ.P. 59(e), of this Court's February 20, 2014 order dismissing this § 1983 civil rights case as to Defendants Gutierrez and Cantu<sup>1</sup> as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff maintains that, contrary to the Court's conclusions of law, his action for damages should stand despite the fact that favorable resolution of the only remaining claim in this case, that Plaintiff was erroneously validated as a BGF gang member in violation of his first amendment rights, would necessarily change the duration of Plaintiff's imprisonment. The Court denies Plaintiff's reconsideration motion.

Since the factual and procedural background of this case was fully set forth in the Magistrate Judge's findings and recommendations, it will not be repeated here. In summary,

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<sup>1</sup> The other Defendants in this matter were dismissed by a December 11, 2013 order. Doc. 66.

1 following screening, only one issue remained against Defendants W. Gutierrez and Cantu: whether  
2 Defendants Turmezei, Adame, Sigston, Steadman, Bryant, Stelfer, W. Gutierrez, and A. Cantu  
3 violated Plaintiff's First Amendment right by validating Plaintiff as a BGF member in retaliation for  
4 Plaintiff's filing of grievance complaints against staff and untoward prison conditions. Docs. 42  
5 and 47. Plaintiff sought monetary damages and expungement of his allegedly false validation as a  
6 member of the BGF. Doc. 42. The gang validation, a disciplinary action, increased Plaintiff's term  
7 of imprisonment, delaying his anticipated release date from June 2013 to October 2016.  
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9       Because the requested expungement of the BGF gang validation would necessarily have  
10 shortened the term of Plaintiff's imprisonment and resulted in his immediate release, the only  
11 appropriate remedy was a writ of habeas corpus. *See Heck*, 512 U.S. at 486-87. If a prison  
12 disciplinary action "aris[es] out of the same facts stands and is fundamentally inconsistent with the  
13 unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed."  
14 *Cunningham v. Gates*, 312 F.3d 1148, 1153 (9<sup>th</sup> Cir. 2002), *cert. denied*, 538 U.S. 960 (2003),  
15 *quoting Smithart v. Towery*, 79 F.3d 951, 952 (9<sup>th</sup> Cir. 1996).  
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17       Reconsideration of a court's order is an "extraordinary remedy to be employed sparingly in  
18 the interests of finality and conservation of scarce judicial resources." *Kona Enterprises, Inc. v.*  
19 *Estate of Bishop*, 229 F.3d 877, 890 (9<sup>th</sup> Cir. 2000), *quoting* 12 James Wm. Moore, Moore's Federal  
20 Practice § 59.30[4] (3d ed. 2000). "[A] motion for reconsideration should not be granted, absent  
21 highly unusual circumstances, unless the district court is presented with newly discovered evidence,  
22 committed clear error, or if there is an intervening change in controlling law." *Kona Enterprises,*  
23 *229 F.3d at 890, quoting 389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9<sup>th</sup> Cir. 1999).  
24

25       Plaintiff does not contend that reconsideration is merited based on new evidence or an  
26 intervening change in law. He merely reargues the dismissal motion, asserting that his request for  
27 an injunction ordering removal of his gang validation, is an exception the *Heck* bar. His argument  
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1 is incorrect. *Heck* bars a prisoner's suit under § 1983 whenever nullification of disciplinary  
2 procedures would result in a reduction of the length of the prisoner's confinement. *Wilkinson v.*  
3 *Dotson*, 544 U.S. 74, 83-84 (2005).

4 "[A] motion for reconsideration is properly denied when the movant fails to establish any  
5 reason justifying relief." *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9<sup>th</sup> Cir. 1985). Using a  
6 reconsideration motion to reargue the points that the judge rejected in the original order is  
7 improper. *American Ironworks & Erectors, Inc. v. North American Constr. Corp.*, 248 F.3d 892,  
8 899 (9<sup>th</sup> Cir. 2001). A party cannot have relief merely because he or she is unhappy with the  
9 judgment. *See, e.g., Khan v. Fasano*, 194 F.Supp.2d 1134, 1136 (S.D.Cal. 2001).  
10

11 Accordingly, Plaintiff's motion for reconsideration is hereby DENIED.

12 **SO ORDERED**

13 **Dated: May 29, 2014**

14 /s/ Lawrence J. O'Neill  
15 **United States District Judge**