



1 to dismiss the action with prejudice based on Plaintiff's failure to state a claim, failure to  
2 obey a court order, and failure to prosecute. (ECF No. 21.) Plaintiff failed to file  
3 objections within the requisite time period, and the undersigned adopted the Findings  
4 and Recommendation and closed the case on May 4, 2015. (ECF Nos. 22 & 23.) On  
5 that same date, the Court received Plaintiff's objections to the Findings and  
6 Recommendation. (ECF No. 24.) The Court will therefore construe Plaintiff's objections  
7 as a motion for reconsideration.

## 8 **II. LEGAL STANDARD**

9 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from  
10 an order for any reason that justifies relief. Rule 60(b)(6) "is to be 'used sparingly as an  
11 equitable remedy to prevent manifest injustice and is to be utilized only where  
12 extraordinary circumstances'" exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)  
13 (*quoting Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).  
14 The moving party "must demonstrate both injury and circumstances beyond his control."  
15 *Latshaw*, 452 F.3d at 1103. In seeking reconsideration of an order, Local Rule  
16 230(j) requires a party to show "what new or different facts or circumstances are claimed  
17 to exist which did not exist or were not shown upon such prior motion, or what other  
18 grounds exist for the motion."

19 "A motion for reconsideration should not be granted, absent highly unusual  
20 circumstances, unless the . . . court is presented with newly discovered evidence,  
21 committed clear error, or if there is an intervening change in the controlling law," *Marlyn*  
22 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009),  
23 and "[a] party seeking reconsideration must show more than a disagreement with the  
24 Court's decision, and 'recapitulation . . .'" of that which was already considered by the  
25 court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111,  
26 1131 (E.D. Cal. 2001) (*quoting Bermingham v. Sony Corp. of Am., Inc.*, 820 F. Supp.  
27 834, 856 (D. N.J. 1992)).

1 **III. ANALYSIS**

2 Plaintiff objects to the Magistrate Judge’s screening order and Findings and  
3 Recommendation to dismiss the case after Plaintiff refused to file an amended complaint  
4 in accordance with that order. Plaintiff seeks a new review of his Complaint based on  
5 the Magistrate Judge incorrectly screening it in the following regards:

6 Plaintiff argues that he properly alleged that Defendants Saldivar and Jackson are  
7 mandated reporters, he was not asserting an access to courts claim against them, but  
8 rather a state law and due process claim, and he properly alleged his compliance with  
9 the California Tort Claims Act.

10 Plaintiff titles his cause of action against these Defendants as “Refusal of  
11 Mandatory Reporter to Report Abuse,” but fails to specifically allege facts to demonstrate  
12 that Defendants are in fact mandated reporters under the California Welfare and  
13 Institutions Code. Even if his caption to the cause of action is sufficient to allege that  
14 element of his claim, Plaintiff failed to allege that either Defendant knew or observed of  
15 any incident that qualifies as “elder abuse” under the Code, and therefore did not state a  
16 claim against them. To the extent that Plaintiff did not wish to proceed on an access to  
17 courts claim against these Defendants, he did not need to include the claim in an  
18 amended complaint should he have complied with the Court order to file one. It is not  
19 entirely clear from Plaintiff’s Complaint that by his allegations regarding submitting a  
20 claim to the “California State Board of Control,” (ECF No. 1 at 2.), that he in fact  
21 submitted all of his state tort claims to the California Victim Compensation and  
22 Government Claims Board and otherwise complied with the California Tort Claims Act.  
23 The screening order properly advised Plaintiff in this regard.

24 Next, Plaintiff contends that the Magistrate Judge failed to address his  
25 constitutional claim against Defendant Adams for the violation of his Fourteenth  
26 Amendment right to be kept safe. From a review of Plaintiff’s Complaint, it appears that  
27 Plaintiff intended only to allege a state law claim against this Defendant based on his  
28

1 threat to kill him. The Magistrate Judge properly addressed the deficiencies in Plaintiff's  
2 state claims against Defendant Adams. To the extent that Plaintiff was stating a  
3 constitutional claim against Defendant Adams based on his threat to kill him, Plaintiff  
4 would have needed to allege a specific harm and how the threat amounted to a violation  
5 of his due process rights. *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982) (holding that  
6 due process requires that a civil detainee receive care that is professionally acceptable).  
7 Plaintiff did not do so and refused to file an amended complaint.

8 Finally, Plaintiff argues that the Magistrate Judge failed to address every alleged  
9 fact with respect to his privacy claim and incorrectly concluded that the law in the area of  
10 privacy within a civil detainee's room is not well settled. The Court reviewed the  
11 Magistrate Judge's order and Plaintiff's Complaint and finds that the Magistrate Judge  
12 properly cited the law and addressed Plaintiff's claim.

13 Plaintiff has not shown clear error or other meritorious grounds for relief from the  
14 Court's screening order of dismissal with leave to amend or order dismissing the case  
15 based on Plaintiff's failure to obey a court order, failure to state a claim, and failure to  
16 prosecute.

17 **IV. CONCLUSION AND ORDER**

18 Based on the foregoing, it is HEREBY ORDERED that:

19 Plaintiff's objections to the Magistrate Judge's Findings and Recommendations as  
20 construed as a motion for reconsideration (ECF No. 24.) are DENIED.

21  
22 IT IS SO ORDERED.

23 Dated: May 7, 2015

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE