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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UDI FISHMAN,

Plaintiff,

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

1:14-cv-00708-GSA-PC

ORDER GRANTING PLAINTIFF’S MOTION  
FOR RECONSIDERATION  
(Docs. 11, 12.)

ORDER DIRECTING CLERK TO REOPEN  
CASE

ORDER DENYING REQUEST FOR  
PRELIMINARY INJUNCTIVE RELIEF

ORDER FOR CLERK TO SEND PLAINTIFF  
A CIVIL RIGHTS COMPLAINT FORM

ORDER GRANTING THIRTY-DAY  
EXTENSION OF TIME TO FILE FIRST  
AMENDED COMPLAINT

**I. BACKGROUND**

Udi Fishman (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 12, 2014. (Doc. 1.) On July 14, 2014, Plaintiff consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and no other parties have appeared in this action. (Doc. 5.)

The court screened the Complaint pursuant to 28 U.S.C. § 1915A and entered an order on September 5, 2014, dismissing the Complaint for failure to state a claim, with leave to file

1 an amended complaint within thirty days. (Doc. 6.) The thirty-day deadline expired, and  
2 Plaintiff failed to file an amended complaint or otherwise respond to the court’s order. On  
3 October 16, 2014, the court issued an order dismissing this action for Plaintiff’s failure to state  
4 a claim, and judgment was entered. (Docs. 7, 8.)

5 On October 30, 2014 and November 11, 2014, Plaintiff filed motions for  
6 reconsideration of the court’s order dismissing this case, requested an extension of time to file  
7 an amended complaint, and requested preliminary injunctive relief. (Docs. 11, 12.)

## 8 **II. MOTION FOR RECONSIDERATION**

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

18 “A motion for reconsideration should not be granted, absent highly unusual  
19 circumstances, unless the district court is presented with newly discovered evidence, committed  
20 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,  
21 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations  
22 marks and citations omitted), and “[a] party seeking reconsideration must show more than a  
23 disagreement with the Court’s decision, and recapitulation . . . .” of that which was already  
24 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134  
25 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a  
26 strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare  
27 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and  
28 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

1           **A. Plaintiff's Motion**

2           Plaintiff requests reconsideration of the court's order dismissing this case, which was  
3 based on Plaintiff's failure to comply with the court's September 5, 2014 order which required  
4 him to file an amended complaint within thirty days. Plaintiff declares under penalty of perjury  
5 that he did not receive the court's September 5, 2014 order until October 14, 2014, nine days  
6 after the deadline for filing the amended complaint had passed. (Decl. of Pltf., Doc. 12 at 3.)  
7 Plaintiff declares that on August 26, 2014, he was involuntarily transferred from Shafter  
8 Community Correctional Facility (SCCF) in Shafter, California, to Wasco State Prison (WSP)  
9 in Wasco, California, without any of his legal documents, court addresses, case numbers,  
10 forms, or stationeries. (Id. at 8 ¶16.) Plaintiff was detained at WSP Reception until October 8,  
11 2014, and during this time his mail was withheld at SCCF. (Id. ¶17.) On October 14, 2014,  
12 after Plaintiff was returned to SCCF, the court's September 5, 2014 order was delivered to him.  
13 (Id. ¶18.) Plaintiff promptly responded by sending a request for extension of time to the court  
14 on October 17, 2014. (Id.) On October 23, 2014, Plaintiff received the court's order  
15 dismissing this action. (Id. ¶20.) On October 27, 2014, Plaintiff sent a motion to the court for  
16 "extension of time to file amended complaint, objection to Magistrate's order, and request for  
17 appealability." (Id. ¶19.) On November 5, 2014, Plaintiff received the court's order denying  
18 his October 17, 2014 request for extension of time as moot. (Id. ¶21.)

19           Plaintiff also requests a court order for a preliminary injunction, barring his emergency  
20 transfer to another facility.

21           **B. Discussion**

22           Plaintiff has set forth facts of a strongly convincing nature to induce the court to reverse  
23 its prior decision dismissing this case. Plaintiff has shown evidence that he was prevented from  
24 responding to the court's September 5, 2014 order because on August 26, 2014, he was  
25 involuntarily transferred from SCCF to WSP, without his legal documents, court addresses,  
26 case numbers, forms, or stationeries, and detained there until October 8, 2014, during which  
27 time his mail was withheld at SCCF. (Decl. of Pltf., Doc. 9.) Plaintiff has shown evidence that  
28 he did not receive the court's September 5, 2014 order until October 14, 2014, after the

1 deadline for filing the amended complaint had expired. (Id.) Based on Plaintiff’s assertions  
2 under penalty of perjury, the court finds that Plaintiff used due diligence in attempting to  
3 comply with the court’s order, but his efforts were thwarted by denial of access to his legal and  
4 personal property, and a delay in his mail delivery, both which were out of his control.  
5 Therefore, Plaintiff’s motion for reconsideration shall be granted, and this case shall be  
6 reopened. The court also finds good cause to grant Plaintiff an extension of time to file the  
7 amended complaint.

8 With respect to Plaintiff’s request for a temporary injunction barring his emergency  
9 transfer to another facility, the court lacks jurisdiction to grant the relief sought by Plaintiff.  
10 There is presently no case or controversy before the court, because Plaintiff’s Complaint was  
11 dismissed on September 5, 2014, and he has not filed an amended complaint. See Zepeda v.  
12 United States Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985); City of Los Angeles v.  
13 Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams.  
14 United for Separation of Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58  
15 (1982). Without a complaint on file, the Court lacks jurisdiction to grant injunctive relief, and  
16 Plaintiff’s request must be denied.

17 **III. CONCLUSION AND ORDER**

18 The court finds that Plaintiff has shown evidence that this case should be reopened.  
19 Plaintiff shall also be granted thirty days in which to file an amended complaint, pursuant to the  
20 court’s order of September 5, 2014.

21 The amended complaint should be brief, but must state what each named defendant did  
22 that led to the deprivation of Plaintiff’s constitutional or other federal rights. Fed. R. Civ. P.  
23 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 676, 129 S.Ct. 1937, 1948-49 (2009); Jones v. Williams,  
24 297 F.3d 930, 934 (9th Cir. 2002). There is no *respondeat superior* liability, and each  
25 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 676. Plaintiff must  
26 set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’” Id. at 677  
27 (quoting Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must also  
28 demonstrate that each defendant *personally* participated in the deprivation of his rights. Jones,

1 297 F.3d at 934 (emphasis added). In order to hold an individual defendant liable, Plaintiff  
2 must name the individual defendant, describe where that defendant is employed and in what  
3 capacity, and explain how that defendant acted under color of state law. Plaintiff should state  
4 clearly, in his or her own words, what happened. Plaintiff must describe what each defendant,  
5 *by name*, did to violate the particular right described by Plaintiff.

6 Plaintiff is advised that a short and simple statement of his claim will speed the  
7 screening of his case, and will help the litigation proceed in a more efficient manner. Plaintiff  
8 should carefully review the court's September 5, 2014 order and only include the claims he  
9 believes are cognizable. Plaintiff should note that although he has been given the opportunity  
10 to amend, it is not for the purpose of adding new defendants for unrelated issues. Plaintiff may  
11 not change the nature of this suit by adding new, unrelated claims in his amended complaint.  
12 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

13 Plaintiff is reminded that an amended complaint supercedes the original complaint,  
14 Lacey v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be  
15 complete in itself without reference to the prior or superceded pleading, Local Rule 220.  
16 Therefore, in an amended complaint, as in an original complaint, each claim and the  
17 involvement of each defendant must be sufficiently alleged. Plaintiff is warned that "[a]ll  
18 causes of action alleged in an original complaint which are not alleged in an amended  
19 complaint are waived." King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (citing to London v.  
20 Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth v. Humana, 114 F.3d  
21 1467, 1474 (9th Cir. 1997). The amended complaint should be clearly and boldly titled "First  
22 Amended Complaint," refer to the appropriate case number, and be an original signed under  
23 penalty of perjury.

24 Based on the foregoing, it is **HEREBY ORDERED** that:

- 25 1. Plaintiff's motions for reconsideration, filed on October 30, 2014 and November  
26 17, 2014, are GRANTED;
- 27 2. The Clerk of Court is directed to REOPEN this case;
- 28 3. Plaintiff's request for preliminary injunctive relief is DENIED;

