

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JOHNNY GAVINO BRIONES,

12 Plaintiff,

13 vs.

14 PLEASANT VALLEY STATE PRISON,
15 et al.,

16 Defendants.
17
18
19

1:14-cv-00750-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION AS MOOT
(Doc. 13.)

ORDER DENYING REQUEST FOR FREE
COPIES
(Doc. 12.)

20 **I. RELEVANT PROCEDURAL HISTORY**

21 Johnny Gavino Briones ("Plaintiff") is a state prisoner proceeding pro se and in forma
22 pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the
23 Complaint commencing this action on May 19, 2014. (Doc. 1.)

24 On July 10, 2014, the court entered findings and recommendations to dismiss this action
25 for Plaintiff's failure to comply with the court's order to submit a signed application to proceed
26 in forma pauperis. (Doc. 6.) On August 4, 2014, Plaintiff filed objections to the findings and
27 recommendations. (Doc. 8.) On August 5, 2014, the court issued an order striking Plaintiff's
28 objections for lack of signature. (Doc. 9.)

1 On August 20, 2014, Plaintiff filed a motion for reconsideration of the court's order
2 striking Plaintiff's objections. (Doc. 13.) Plaintiff also filed a request for the court to provide
3 him with a free copy of the objections, so that he can ascertain whether the objections were
4 signed. (Doc. 12.)

5 Plaintiff's motion for reconsideration and request for copies are now before the court.

6 **II. MOTION FOR RECONSIDERATION**

7 Rule 60(b) allows the Court to relieve a party from an order for "(1) mistake,
8 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with
9 reasonable diligence, could not have been discovered in time to move for a new trial under
10 Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
11 misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that justifies
12 relief." Fed. R. Civ. P. 60(b). Rule 60(b)(6) "is to be used sparingly as an equitable remedy to
13 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ." exist.
14 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
15 citation omitted). The moving party "must demonstrate both injury and circumstances beyond
16 his control . . ." Id. (internal quotation marks and citation omitted). In seeking
17 reconsideration of an order, Local Rule 230(k) requires Plaintiff to show "what new or different
18 facts or circumstances are claimed to exist which did not exist or were not shown upon such
19 prior motion, or what other grounds exist for the motion."

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

1 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and
2 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

3 Plaintiff contends that he did not submit unsigned objections. Plaintiff argues that if the
4 court's order striking the objections stands, he will be severely prejudiced because he will have
5 lost the opportunity to seek justice by proceeding with this action. Plaintiff requests to be
6 allowed to re-submit the objections.

7 Plaintiff's motion for reconsideration is moot, because on August 18, 2014, Plaintiff
8 submitted a signed application to proceed in forma pauperis, and on August 21, 2014, the court
9 vacated the findings and recommendations and granted Plaintiff's application to proceed in
10 forma pauperis. (Docs. 10, 11.) Thus, the fact that Plaintiff's objections were stricken does not
11 affect Plaintiff's ability to litigate this action. Moreover, because the findings and
12 recommendations were vacated, it would be futile for Plaintiff to re-submit his objections at
13 this stage of the proceedings. Plaintiff suffers no prejudice as a result of the court's order
14 striking his objections. Therefore, Plaintiff's motion for reconsideration shall be denied.

15 **III. REQUEST FOR FREE COPIES**

16 Plaintiff requests a free copy of his objections. In light of the court's ruling herein, and
17 the fact that the court's findings and recommendations were vacated, Plaintiff does not require
18 a copy of his objections to support his motion for reconsideration or oppose the findings and
19 recommendations. Based on these facts, the court finds no good cause to provide Plaintiff with
20 a free copy of his objections.

21 Plaintiff is advised that the Clerk does not ordinarily provide free copies of case
22 documents to parties. The Clerk charges \$.50 per page for copies of documents. See 28 U.S.C.
23 § 1914(a). Copies of up to twenty pages may be made by the Clerk's Office at this Court upon
24 written request and prepayment of the copy fees. The fact that the Court has granted leave for
25 Plaintiff to proceed in forma pauperis does not entitle him to free copies of documents from the
26 Court. Under 28 U.S.C. § 2250, the Clerk is not required to furnish copies without cost to an
27 indigent petitioner except by order of the judge.

28 ///

1 To request a copy of the objections at this juncture, Plaintiff must submit a request in
2 writing to the Clerk, a self-addressed envelope affixed with sufficient postage, and prepayment
3 of copy costs to the Clerk. The objections, Document No. 8 on the court's docket, are two
4 pages long. Plaintiff is advised that in the future, he should keep a copy of any document he
5 submits to the Court.

6 Accordingly, Plaintiff's request for free copies shall be denied.

7 **IV. CONCLUSION**

8 Based on the foregoing, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion for reconsideration, filed on August 20, 2014, is DENIED as
10 moot; and
- 11 2. Plaintiff's request for free copies, filed on August 20, 2014, is DENIED.

12 IT IS SO ORDERED.

13 Dated: August 28, 2014

14 /s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE