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

REGINALD RAY YORK,  
  
                    Plaintiff,  
  
          v.  
  
JEFFREY BEARD, et al.,  
  
                    Defendants.

Case No. 1:14-cv-01234 LJO DLB PC  
  
**ORDER DENYING PLAINTIFF’S MOTION  
FOR RECONSIDERATION**  
  
[ECF No. 38]

Plaintiff Reginald Ray York (“Plaintiff”), a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 12132 (Title II of the Americans with Disabilities Act (“ADA”)) on August 6, 2014.

On January 21, 2016, Defendants filed a motion for an order requiring Plaintiff to post security before the matter proceeded. Local Rule 151(b); Cal. Civ. Proc. § 391.1. On March 11, 2016, Magistrate Judge Dennis L. Beck denied Defendants’ motion. On March 25, 2016, Defendants filed a motion for reconsideration. Plaintiff filed an opposition on April 15, 2016, and Defendants filed a reply to the opposition on April 22, 2016.

On May 4, 2016, Magistrate Judge Sandra M. Snyder issued Findings and Recommendation that recommended Defendants’ motion for reconsideration be granted and the action be dismissed with prejudice for lack of standing. On June 8, 2016, the undersigned conducted a de novo review of the case and adopted the Findings and Recommendation in full. The case was dismissed and

1 judgment was entered.

2 On June 30, 2016, Plaintiff filed the instant motion for reconsideration. Defendants did not  
3 file an opposition.

#### 4 DISCUSSION

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

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

27 Here, Plaintiff complains that Magistrate Judge Dennis L. Beck issued the initial order  
28 denying Defendants’ motion for Plaintiff to post security. Thereafter, Defendants filed a motion for

1 reconsideration and Magistrate Judge Sandra M. Snyder issued a Findings and Recommendation  
2 which recommended the motion be granted. Plaintiff argues that Magistrate Judge Beck was  
3 assigned to the case and Plaintiff was never informed that the case had been reassigned to Magistrate  
4 Judge Snyder. In fact, the case was not reassigned to Magistrate Judge Snyder. Magistrate Judge  
5 Beck was on an extended leave of absence and Magistrate Judge Snyder temporarily assisted the  
6 Court with Magistrate Judge Beck's cases. Regardless, the issue of which magistrate judge issued  
7 the Findings and Recommendation is inconsequential since the undersigned conducted a *de novo*  
8 review of the entire case pursuant to 28 U.S.C. § 636(b)(1) and then granted the Defendants' motion  
9 for reconsideration thereby dismissing the case.

10 Plaintiff also argues that the Court erred by dismissing the entire case along with his claims  
11 for damages when it determined that his claim for injunctive relief had become moot. As correctly  
12 stated in the Findings and Recommendation, only injunctive relief is available to Plaintiff. Plaintiff  
13 is proceeding on his Second Amended Complaint against Defendants in their official capacities.  
14 (ECF No. 21 at 1.) Since Plaintiff is suing Defendants in their official capacities, he is not entitled to  
15 monetary damages. Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) ("The  
16 Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and  
17 state officials in their official capacities."). Therefore, the Court did not commit clear error in  
18 dismissing the case.

19 Next, Plaintiff complains that the Court did not consider his objections prior to issuing the  
20 order dismissing the case. The Findings and Recommendation was issued May 4, 2016, and  
21 objections were due on June 3, 2016. The undersigned issued the order dismissing the case on June  
22 8, 2016. Plaintiff's objections were not received by the Court until June 10, 2016. The proof of  
23 service is dated May 30, 2016, so under the mailbox rule, the objections were timely. The Court has  
24 reviewed the objections and finds no reason to modify the order adopting the Findings and  
25 Recommendation.

26 Finally, Plaintiff seeks an order directing Kern Valley State Prison to undo its decision to  
27 deactivate 240 cells which he states runs afoul of the Administrative Procedures Act. Plaintiff  
28 further complains that KVSP reactivated 240 cells in violation of the Supreme Court's ruling in

