



1 **II.**

2 **DISCUSSION**

3 The court construes Plaintiff's objections to the March 4, 2022 order as a motion for  
4 reconsideration. Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, "[o]n motion and just  
5 terms, the court may relieve a party ... from a final judgment, order, or proceeding for the following  
6 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence ... (3)  
7 fraud ...; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; ... or (6)  
8 any other reason that justifies relief." Fed. R. Civ. Proc. 60(b). Where none of these factors is present  
9 the motion is properly denied. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir.1991).

10 "A motion for reconsideration should not be granted, absent highly unusual circumstances,  
11 unless the district court is presented with newly discovered evidence, committed clear error, or if there  
12 is an intervening change in the controlling law," and it "may *not* be used to raise arguments or present  
13 evidence for the first time when they could reasonably have been raised earlier in the litigation."  
14 Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.2009)  
15 (internal quotations marks and citations omitted) (emphasis in original).

16 In his March 16, 2022 objections, Plaintiff argues that Rule 25(d) applies in cases where state  
17 officials are being sued in their official capacities, and have the responsibility to prevent "ongoing  
18 constitutional violations." (ECF No. 73 at 1.) Plaintiff also points out that she requested injunctive  
19 relief in her second amended complaint. (Id.; ECF No. 24 at 22.) Plaintiff further argues that the  
20 Court improperly construed her official capacity claims as asserting municipal liability under Monell  
21 v. Dept. of Soc. Serv., 436 U.S. 658 (1978). (ECF No. 73 at 2.)

22 In denying Plaintiff's motion for substitution of the Chief Medical Officer, the Court found  
23 that Plaintiff could not proceed on her claims against Defendants in their official capacities because  
24 Plaintiff had not sufficiently alleged that a custom or policy was the moving force behind the alleged  
25 violation. (ECF No. 70.)

26 The Eleventh Amendment bars suits for money damages in federal court against state officials  
27 in their official capacity. Aholelei v. Department of Public Safety, 488 F.3d 1144, 1147 (9th Cir.  
28 2007). However, it does not bar official capacity suit for prospective relief, Wolfson v. Brammer, 616

1 F.3d 1045, 1065-66 (9th Cir. 2010); nor does it bar suit for damages against state officials in their  
2 personal capacities. Hafer v. Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th  
3 Cir. 2003).

4 “Personal-capacity suits...seek to impose individual liability upon a government officer for  
5 actions taken under color of state law.” Hafer, 502 U.S. at 25; Suever v. Connell, 579 F.3d 1047,  
6 1060-61 (9th Cir. 2009). Where a plaintiff is seeking damages against a state official and the  
7 complaint is silent as to capacity, a personal capacity suit is presumed given the bar against  
8 an official capacity suit. Shoshone-Bannock Tribes v. Fish & Game Comm'n, 42 F.3d 1278, 1284 (9th  
9 Cir. 1994); Price v. Akaka, 928 F.2d 824, 828 (9th Cir. 1991). A claim for prospective relief against a  
10 state official in his official capacity is not barred by the Eleventh Amendment provided the official has  
11 authority to implement the requested relief. Will v. Michigan Dept. of State Police, 491 U.S. 58, 92  
12 (1989); accord Rouser v. White, 707 F. Supp. 2d 1055, 1066 (E.D. Cal. 2010) (proper defendant for  
13 injunctive relief in suit seeking implementation of CDCR policy is the CDCR Secretary in his official  
14 capacity). Since Plaintiff’s claim for medical treatment is prospective, official capacity claims would  
15 be allowed.

16 Federal Rule of Civil Procedure 25(d), allows an officer's successor to be substituted when the  
17 original “public officer who is a party in an official capacity ... ceases to hold office while the action is  
18 pending.” Fed. R. Civ. P. 25(d). “The officer’s successor is automatically substituted as a party.” (Id.)

19 Liberally construed and based on further review of the operative complaint and Plaintiff’s  
20 motions, the Court agrees that Plaintiff may proceed against the current Chief Medical Officer, Doctor  
21 Ola, in his/her official capacity for any prospective injunctive relief based on the ongoing and  
22 continued denial of lumbar fusion revision surgery. Plaintiff has alleged that she was denied revision  
23 surgery despite the medical need and failure to follow the policy as to the applicable criteria. Drawing  
24 all reasonable inferences in favor of Plaintiff, the Court finds that she has pleaded sufficient facts to  
25 allow the Court to reasonably infer that official policies or customs played a part in the constitutional  
26 violations she alleges. Accordingly, Plaintiff may substitute the acting Chief Medical Officer, Doctor  
27 Ola, as a Defendant, in place of Doctor Mitchell, in his/her official capacity for prospective injunctive  
28

1 relief only. Fed. R. Civ. P. 25(d). Doctor Mitchell remains a Defendant in his/her personal capacity  
2 for monetary damages.

3 **III.**

4 **CONCLUSION AND ORDER**

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

- 6 1. Plaintiff's motion for reconsideration (ECF No. 73) is granted;
- 7 2. Plaintiff's motions to substitute current Chief Medical Officer, Doctor Ola (ECF Nos.  
8 72, 112) are granted;
- 9 3. Plaintiff's motion to stay the proceedings (ECF No. 111) is denied as moot;
- 10 4. The Clerk of Court is directed to add Chief Medical Officer, Doctor Ola, as a  
11 Defendant in this action in place of Defendant Mitchell in his/her official capacity only;  
12 and
- 13 5. The action shall continue to proceed against Defendant Mitchell in his/her personal  
14 capacity.

15  
16 IT IS SO ORDERED.

17 Dated: July 29, 2022



18 UNITED STATES MAGISTRATE JUDGE