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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE SWEARINGTON,

Petitioner,

No. CIV S-06-1407 GEB CKD P

vs.

WEDELL, et al.,

Respondents.

ORDER

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On October 26, 2012, plaintiff filed a motion asking this court to reconsider its May 10, 2011 order adopting the magistrate judge’s findings and recommendations of April 12, 2011, thereby dismissing this action for plaintiff’s failure to prosecute.

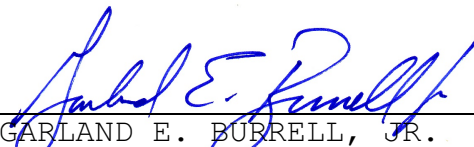
A district court may reconsider a ruling under either Federal Rule of Civil Procedure 59(e) or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). “Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” Id. at 1263.

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1 Plaintiff does not present newly discovered evidence suggesting this matter should
2 not be dismissed, nor does he demonstrate an intervening change in the law. Furthermore, the
3 court finds that, after a de novo review of this case, the March 1, 2012 order adopting the
4 December 1, 2011 findings and recommendations is neither manifestly unjust nor clearly
5 erroneous.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's October 26, 2012 motion
7 for reconsideration (Dkt. No. 104) is DENIED.

8 Dated: October 31, 2012

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GARLAND E. BURRELL, JR.
Senior United States District Judge