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

JEREMY GILMORE and DANA  
GILMORE,

Case No. 09-02180-JAM-DAD  
ORDER DENYING PLAINTIFFS'  
MOTION FOR RECONSIDERATION

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY,  
DENNIS MAGURES, JOHN PARKER,  
CAROLYN M. WILL, ANDREW RIBBING  
and LEO MARIN and DOES 1-10,  
inclusive,

Defendants.

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This matter comes before the Court on Plaintiffs' Jeremy  
Gilmore ("Jeremy") and Dana Gilmore ("Dana") (collectively  
"Plaintiffs'") Motion for Reconsideration, pursuant to Federal  
Rule of Civil Procedure 60(b) and Eastern District Local Rule  
230(j). Plaintiffs ask the Court to reconsider its dismissal  
with prejudice of Plaintiffs third, sixth and eighth claims for

1 relief brought in Plaintiffs' Complaint ("Complaint").  
2 Defendants Union Pacific Railroad Company, Dennis Magures, John  
3 Parker, Carolyn M. Will, Andrew Ribbing and Leo Marin  
4 (collectively "Defendants"), oppose the motion.<sup>1</sup>  
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7 I. FACTUAL AND PROCEDURAL BACKGROUND

8 Plaintiffs' Complaint alleged a claim for relief for  
9 violation of the Federal Employers Liability Act ("FELA"), 45  
10 U.S.C. §51 et seq., and seven state law claims for relief,  
11 stemming from Defendants' discipline and dismissal of Plaintiffs  
12 from their jobs. Defendants brought a motion to dismiss the  
13 seven state law claims, as well as a motion to strike. The Court  
14 granted in part and denied in part the motion to dismiss, and  
15 denied the motion to strike. Specifically, the Court denied the  
16 motion to dismiss with respect to Plaintiffs' claims for  
17 wrongful discharge and invasion of privacy, and granted the  
18 motion to dismiss with respect to Plaintiff's claims for marital  
19 status discrimination and intentional infliction of emotional  
20 distress.  
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23 Plaintiffs were granted leave to amend their marital status  
24 discrimination claim, but their three claims for intentional  
25 infliction of emotional distress were dismissed with prejudice.  
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28 <sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L. R. 230(g).

1 The Court found that it lacked jurisdiction to decide the  
2 intentional infliction of emotional distress claims, as they  
3 were preempted by the Railway Labor Act ("RLA"), 45 U.S.C. §151  
4 et seq.

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6 Defendants' motion to dismiss did not raise the issue of  
7 RLA preemption of the intentional infliction of emotional  
8 distress claims. However, Defendants raised RLA preemption in  
9 their reply brief, arguing that the Court lacked jurisdiction to  
10 decide the claims for intentional infliction of emotional  
11 distress. Because the Court has an independent obligation to  
12 consider subject matter jurisdiction at any stage of the  
13 litigation, see Dittman v. California, 191 F.3d 1020, 1025 (9th  
14 Cir. 1999), the Court considered the jurisdictional arguments  
15 raised in the reply. For the reasons set forth below, the Court  
16 declines to reconsider its previous order dismissing the  
17 intentional infliction of emotional distress claims with  
18 prejudice.  
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## 21 II. OPINION

### 22 A. Legal Standard

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24 Federal Rule of Civil Procedure 60(b) states that "on  
25 motion and just terms, the court may relieve a party or its  
26 legal representative from a final judgment, order or proceeding  
27 for the following reasons: (1) mistake, inadvertence, surprise  
28 or excusable neglect; (2) newly discovered evidence that, with  
reasonable diligence, could not have been discovered in time to

1 move for a new trial under Rule 59(b); (3) fraud (whether  
2 previously called intrinsic or extrinsic, misrepresentation, or  
3 misconduct by an opposing party; (4) the judgment is void;  
4 (5) the judgment has been satisfied, released or discharged; it  
5 is based on an earlier judgment that has been reversed or  
6 vacated; or applying it prospectively is no longer equitable; or  
7 (6) any other reason that justifies relief."

8         Additionally, Eastern District Local Rule 230(j) requires  
9 that a party moving for reconsideration show "what new or  
10 different facts or circumstances are claimed to exist which did  
11 not exist or were not shown upon such prior motion, or what  
12 other grounds exist for motion, and why the fact or  
13 circumstances were not shown at the time of the prior motion."  
14 E.D. Cal. L.R. 230(j). This rule applies to "whenever a motion  
15 has been granted or denied in whole or in part, and a subsequent  
16 motion for reconsideration is made upon the same or any alleged  
17 different set of facts." Id. To prevail, "a party must set forth  
18 facts or law of a strongly convincing nature to induce the court  
19 to reverse its prior decision." Hansen v. Schubert, 459  
20 F.Supp.2d 973, 998 (E.D. Cal. 2006).

21         Plaintiffs also raise Federal Rule of Civil Procedure 7 and  
22 Fifth Amendment Due Process rights as grounds for  
23 reconsideration. Plaintiffs argue that Rule 7 requires that a  
24 motion state with particularity the grounds for seeking the  
25 order, and Defendants violated this rule by not including RLA  
26 preemption in the motion to dismiss. Plaintiffs further argue  
27 that the Court's consideration of the jurisdictional issue  
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1 raised in Defendants' reply brief denied Plaintiffs their Fifth  
2 Amendment due process rights.

3       However, a court "ha[s] an independent obligation to  
4 address sua sponte whether [it] has subject-matter  
5 jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th  
6 Cir. 1999); accord Grupo Dataflux v. Atlas Global Group, L.P.,  
7 541 U.S. 567, 593, 124 S.Ct. 1920, 1937, 158 L.Ed.2d 866 (2004)  
8 (citations omitted) ("[I]t is the obligation of [the] district  
9 court . . . to be alert to jurisdictional requirements.").

### 12 13 B. RLA Preemption

14       The Court found that it lacked jurisdiction to decide the  
15 intentional infliction of emotional distress claims due to RLA  
16 preemption. The Court cited Saridakis v. United Airlines, 166  
17 F.3d 1272, 1278 (9th Cir. 1999) as the basis for its decision.  
18 The Court in Saridakis explained that because a claim of  
19 intentional infliction of emotional distress requires plaintiffs  
20 to prove that an employer's conduct is "outrageous," this  
21 requires an interpretation of the collective bargaining  
22 agreement (CBA) and is therefore not an independent claim. The  
23 RLA preempts claims which require interpretation of the CBA. Id.  
24 at 1276.

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27       Plaintiffs cite numerous cases in their motion for  
28 reconsideration. They argue that the Court should have followed

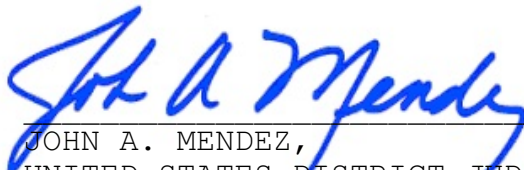
1 the cases which they cite rather than following Saridakis.  
2 However, most of the cases Plaintiffs cite are factually  
3 distinguishable. Plaintiffs urge the Court to follow cases in  
4 which intentional infliction of emotional distress claims were  
5 premised on verbal harassment or physical assault, though  
6 Plaintiffs' Complaint alleges neither. Plaintiffs also rely on a  
7 non-citable case and out of circuit cases. Accordingly, the  
8 Court does not find that the law cited by Plaintiffs warrants  
9 reconsideration of the Court's previous order.  
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13 III. ORDER

14 For the reasons set forth above, the Court declines to  
15 reconsider its previous order dismissing with prejudice  
16 Plaintiffs' third, sixth and eighth claims for relief for  
17 intentional infliction of emotional distress. Plaintiffs' Motion  
18 for Reconsideration is hereby DENIED.  
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21 IT IS SO ORDERED.

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24 Dated: May 3, 2010

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27 JOHN A. MENDEZ,  
28 UNITED STATES DISTRICT JUDGE