

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PETER R. TIA, #A1013142,)	CIV. NO. 13-00157 LEK/KSC
)	
Plaintiff,)	
)	ORDER DENYING MOTION FOR RULE
vs.)	60(b) RELIEF
)	
RUSSELL A. SUZUKI, et al.,)	
)	
Defendants.)	
_____)	

ORDER DENYING MOTION FOR RULE 60(b) RELIEF

On April 12, 2013, the court screened and dismissed Plaintiff's prisoner civil rights Complaint pursuant to 28 U.S.C. §§ 1915A(b) and 1915(e), with leave granted to amend. See Order, ECF No. 11. Plaintiff seeks relief from that Order pursuant to Federal Rule of Civil Procedure 60(b), based on his allegations that the court committed fraud when reviewing and screening the Complaint. Motion, ECF No. 16.

I. MOTION FOR RECONSIDERATION

A motion for reconsideration must (1) "demonstrate reasons why the court should reconsider its prior decision" and (2) "must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Hele Ku KB, LLC v. BAC Home Loans Serv., LP*, 873 F. Supp.2d 1268, 1289 (D. Haw. 2012). Three grounds justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th

Cir. 2004). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (citation omitted).

Rule 60(b)(3) allows the court to provide relief on the basis of fraud if the fraud was not discoverable by due diligence before or during the proceeding, and was materially related to the submitted issue. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004); *United States v. Tanoue*, 165 F.R.D. 96, 98 (D. Haw. 1995) (citing *Pac. & Arctic Ry. & Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1988)).

II. DISCUSSION

Plaintiff's Complaint alleges that a person his weight and height is considered underweight by the the National Institutes of Health ("NIH") weight and body mass index ("BMI") standards and charts. Plaintiff alleges this court committed fraud by relying on "fraudulent" NIH charts when it dismissed his Complaint without a hearing. See Tia Decl., ECF No. 16-1.

First, a judge may take judicial notice of undisputed matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Rule 201 of the Federal Rules of Evidence provides that "a judicially noticed fact must be one not

subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b) (West 2006). The NIH weight and BMI standards are government documents publicly available on the Internet, and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Moreover, the court did not notice the NIH charts for the accuracy of their statements concerning obesity, but only for the weight and BMI categories they present, as cited by Plaintiff. Thus, it was appropriate to take judicial notice of these charts.

Second, the court may properly consider documents whose contents are alleged in a complaint but not attached, if their authenticity is not questioned. *Lee*, 250 F.3d at 688. Plaintiff referred to the NIH standards in his Complaint and based his claimed constitutional violations on those purported standards. The court is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint." *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998).

Third, Plaintiff either willfully misrepresented the NIH chart's data in his TRO Motion and Complaint, or simply misunderstands the chart's guidelines, recommendations, and import. Under NIH guidelines, Plaintiff is not underweight, regardless of whether the court refers to the 1998 NIH chart (to

which Plaintiff allegedly cites),¹ or to the current 2013 chart.² Plaintiff's clearly incorrect assertions regarding the NIH standards do not present a legitimate dispute. While the court must liberally construe a *pro se* litigant's pleadings, it is not required to blindly accept frivolous, inaccurate statements as fact. Plaintiff's unfounded belief that he is underweight pursuant to his mistaken perception of the NIH weight and BMI standards does not make it so, and the court need not accept his claims without regard to the truth.

Finally, Plaintiff presents no newly discovered evidence, intervening change in controlling law, or manifest error in the decision to dismiss his Complaint with leave granted to amend. Plaintiff provides no other reason justifying relief and his Motion under Rule 60(b) is DENIED.

IT IS SO ORDERED.

¹ See Evidence Report of Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults, 1998. NIH/National Heart, Lung, and Blood Institute (NHLBI).

² See http://www.nhlbi.nih.gov/guidelines/obesity/bmi_tbl (last accessed and dated April 29, 2013).

DATED: Honolulu, Hawaii, May 10, 2013.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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