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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HERVE GUERRIER,  
#1036378 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT LEGRAND, *et al.*, )  
 )  
Defendants. )  
/

3:10-cv-00752-LRH-RAM

**ORDER**

On April 7, 2011, the court dismissed with prejudice plaintiff’s amended *pro se* civil rights complaint (docket #11). Judgment was entered on April 8, 2011 (docket #12). Before the court is plaintiff’s motion for reconsideration and for production of documents (docket #s 13 and 14).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

1 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
2 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
3 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
4 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
5 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of the Federal  
6 Rules of Civil Procedure provides that any “motion to alter or amend a judgment shall be filed no later  
7 than 28 days after entry of the judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should  
8 not be granted, absent highly unusual circumstances, unless the district court is presented with newly  
9 discovered evidence, committed clear error, or if there is an intervening change in the controlling law.”  
10 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,  
11 1255 (9<sup>th</sup> Cir. 1999).

12 In the order of April 7, 2011, the court dismissed the complaint, which challenges plaintiff’s  
13 inmate classification, for failure to state a claim for which relief may be granted (docket #11). Plaintiff  
14 has failed to make an adequate showing under either Rule 60(b) or 59(e) that this court’s order  
15 dismissing the action should be reversed.

16 **IT IS THEREFORE ORDERED** that plaintiff’s motion for reconsideration of the Screening  
17 Order and for production of documents (docket #s 13 and 14) is **DENIED**.

18 **IT IS FURTHER ORDERED** that plaintiff’s motion for extension of time to pay the \$32.29  
19 initial installment of the filing fee (docket #15) is **DENIED**.

20 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. §1915, as amended by the Prisoner  
21 Litigation Reform Act of 1996, **the Nevada Department of Corrections shall immediately pay to the**  
22 **Clerk of the United States District Court, District of Nevada, the \$32.29 initial installment of the**  
23 **filing fee, if sufficient funds exist in the account of Herve Guerrier, Inmate No. 1036378.**

24 Thereafter, as previously set forth in this court’s Order dated March 3, 2011 (docket #7), the Nevada  
25 Department of Corrections shall pay the Clerk of the United States District Court, District of Nevada,  
26 20% of the preceding month’s deposits to plaintiff’s account (in months that the account exceeds  
27 \$10.00), until the full \$350 filing fee has been paid for this action. **The Clerk shall send a copy of this**  
28 **order to Albert G. Peralta, Chief of Inmate Services, Nevada Department of Prisons, P.O. Box**

1 **7011, Carson City, NV 89702.**

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3 Dated this 12th day of May, 2011.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

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