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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DEREK KIRK,

Plaintiff,

v.

EUGENE MURGUIA,

Defendant.

Case No. 3:15-cv-00067-MMD-WGC

ORDER

**I. DISCUSSION**

On July 6, 2015, this Court issued a screening order dismissing Plaintiff's complaint in its entirety, with prejudice, for failure to state a claim. (Dkt. no. 7 at 6.) This Court found that Plaintiff failed to allege claims for violations of his Fourteenth Amendment due process rights. (*Id.* at 5.) Specifically, the Court found that Plaintiff failed to sufficiently allege a deprivation of a constitutionally protected liberty interest but noted that, even if Plaintiff had been deprived of a constitutionally protected liberty interest, he failed to allege sufficient facts establishing he was deprived of due process. (*Id.* at 6.) The Court's order explained how Plaintiff's allegations established that "some evidence" supported the prison disciplinary board's decision and, thus, satisfied due process. (*Id.*)

On July 24, 2015, Plaintiff filed a motion for reconsideration. (Dkt. no. 10 at 1.) In the motion, Plaintiff explains why he was deprived of a liberty interest. (*Id.* at 2-4.) Plaintiff also reiterates his arguments as to why Defendant violated his due process

1 rights. (*Id.* at 4-6.) Plaintiff requests that the Court vacate its final judgment and grant  
2 him leave to amend. (*Id.* at 6.)


3 A motion to reconsider must set forth “some valid reason why the court should  
4 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to  
5 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256  
6 F.Supp.2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is  
7 presented with newly discovered evidence, (2) committed clear error or the initial  
8 decision was manifestly unjust, or (3) if there is an intervening change in controlling  
9 law.” *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for  
10 reconsideration is not an avenue to re-litigate the same issues and arguments upon  
11 which the court already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280,  
12 1288 (D. Nev. 2005).

13 The Court denies Plaintiff’s motion for reconsideration. As discussed in the  
14 screening order, even if Plaintiff had sufficiently alleged a liberty interest, the Court  
15 would still have dismissed the complaint for failure to sufficiently allege due process  
16 violations. Thus, even if Plaintiff were to amend to include a liberty interest, the Court  
17 would still dismiss the complaint. Additionally, Plaintiff’s motion re-litigates the same  
18 due process arguments he made in his original complaint. As such, the Court denies  
19 Plaintiff’s motion for reconsideration.

20 **II. CONCLUSION**

21 For the foregoing reasons, it is ordered that the motion for reconsideration (dkt.  
22 no. 10) is denied.

23 DATED THIS 16<sup>th</sup> day of October 2015.

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25 \_\_\_\_\_  
26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
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