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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ARTHUR JULIUS-GREENE BERAHA,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:17-cv-00366-MMD-VPC

ORDER

**I. DISCUSSION**

On June 15, 2018, this Court entered a screening order on the First Amended Complaint (“FAC”). (ECF Nos. 10, 12.) The Court permitted multiple claims to proceed to mediation. (ECF No. 12 at 12-13.) In Count I, the Court interpreted Plaintiff’s allegations challenging Dzurenda’s statutory authority to modify an administrative regulation as a state law claim rather than a federal due process claim. (*Id.* at 5.) The Court permitted the state law claim to proceed against Dzurenda. (*Id.*)

On June 27, 2018, Plaintiff filed a motion for partial reconsideration. (ECF No. 13.) Plaintiff challenges the Court’s decision to *sua sponte* construe a portion of his Count I federal due process claim as a state statutory challenge. (*Id.* at 1.) Plaintiff argues that he is attempting to address the federal constitutionality of the state law and explains why he does not want his claim to proceed as a state law challenge. (*Id.* at 2-4.) Plaintiff requests that the Court modify its Order to permit the federal due process claim to proceed based on Dzurenda’s lack of statutory authority. (*Id.* at 3.)

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

10 The Court grants Plaintiff’s motion for partial reconsideration. After reviewing  
11 Plaintiff’s FAC and motion, it is clear that Plaintiff intended to allege a federal due process  
12 claim against Dzurenda in Count I rather than a state law claim. As such, the Court no  
13 longer interprets a portion of Count I as a state law claim. Plaintiff’s federal due process  
14 claim may proceed against Dzurenda.

15 **II. CONCLUSION**

16 For the foregoing reasons, it is ordered that the motion for partial reconsideration  
17 (ECF No. 13) is granted.

18 It is further ordered that Count I, as addressed in the original screening order (ECF  
19 No. 12), is vacated.

20 It is further ordered that, based on this Order and the original screening order, the  
21 claims in the FAC will proceed as follows:

- 22 • Count I, alleging federal due process claims for property violations and statutory  
23 authority, will proceed against Defendant Dzurenda;
- 24 • Count II, alleging free exercise, RLUIPA, and equal protection violations, will  
25 proceed against Defendants Dzurenda, Filson, and Byrne;
- 26 • The portion of Count III, alleging federal telecommunications violations, will  
27 proceed against Defendants Century Link, EPSI, and ICS. The portion of Count III  
28 alleging state law violations of Nevada’s Deceptive Trade Practices Act and NRS

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§§ 41.130 and 41.600 will proceed against Defendants Century Link, EPSI, and ICS based on supplemental jurisdiction; and

- Count IV, alleging free exercise, RLUIPA, and equal protection violations, will proceed against Defendants Dzurenda, Filson, Byrne, and Baker.

It is further ordered that all deadlines set forth in the original screening order (ECF No. 12 at 13-14) will reset from the date of this Order.

It is further ordered that the Clerk of the Court electronically serve a copy of this Order on the Office of the Attorney General of the State of Nevada, by adding the Attorney General of the State of Nevada to the docket sheet. This does not indicate acceptance of service.

DATED THIS 9<sup>th</sup> day of July 2018.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE