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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 BENJAMIN W. ESPINOSA,

7 Plaintiff

8 v.

9 FILSON, *et al.*,

10 Defendants.

Case No. 3:18-cv-00298-MMD-CBC

ORDER ON MOTION FOR
RECONSIDERATION (ECF No. 49)

11
12 **I. DISCUSSION**

13 On May 6, 2019, this Court issued a screening order on the first amended
14 complaint ("FAC"). (ECF No. 46). On May 10, 2019, Plaintiff filed an objection to the order
15 which the Court construes as a motion for reconsideration. (ECF No. 49). Plaintiff
16 "objects" to the Court's screening of the equal protection and due process claims in Count
17 II, Nevada constitutional claim in Count IV, Nevada Revised Statutes claim against
18 Dzurenda in Count V, and the denial of the motion for appointment of counsel. (*Id.* at 2-
19 6.)

20 A motion to reconsider must set forth "some valid reason why the court should
21 reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to
22 persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F. Supp.
23 2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is
24 presented with newly discovered evidence, (2) committed clear error or the initial decision
25 was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist.*
26 *No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration
27 is not an avenue to re-litigate the same issues and arguments upon which the court
28 already has ruled." *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev.
2005).


1 The Court denies the motion in part and grants the motion in part. All arguments
2 with the exception of Count V and Dzurenda are denied. The Court grants the motion for
3 reconsideration with respect to Count V and Dzurenda. Plaintiff argues that he is only
4 suing Dzurenda in his official capacity for injunctive relief. (ECF No. 49 at 5–6). Upon
5 review of the FAC, it is clear that Plaintiff is suing prison officials for prospective relief as
6 to his mental health treatment in prison and the use of restraints on mentally ill inmates.
7 (ECF No. 47 at 23–24); see *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962, 974 (9th Cir.
8 2015). As such, Count V may proceed against Dzurenda for prospective injunctive relief
9 under the NRS § 209 claims.

10 **II. CONCLUSION**

11 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF
12 No. 49) is granted in part and denied in part.

13 It is further ordered that the FAC’s Count V will proceed against Defendant
14 Dzurenda for prospective injunctive relief under the NRS § 209 claims for screening
15 purposes.

16 DATED THIS 18th day of July 2019.

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19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
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