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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

 Plaintiff,

 v.

I. BAROYA, et al.,

 Defendants.

Case No. 1:05-cv-01247-SAB-PC

ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION

(ECF NO. 222)

Plaintiff Hendon is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s objection which the Court construes as a motion for reconsideration of the January 6, 2016 order granting Defendants’ motion for summary judgment.

I.
PROCEDURAL HISTORY

This action proceeds on the June 26, 2008 second amended complaint. On September 23, 2014, the District Court partially granted Defendants’ motion for summary judgment. (ECF No. 134.)

After the parties consented to magistrate judge jurisdiction, a trial date was set.¹ The

¹ Plaintiff filed a consent to proceed before a magistrate judge on October 17, 2005. (ECF No. 4.) Defendant Pham filed a consent on March 17, 2015. (ECF No. 155.) Defendants Baroya, Hoppe, Nguyet and Riedman filed a consent on March 19, 2015. (ECF No. 158.)

1 Court granted Defendants’ request to file a motion for summary judgment regarding whether
2 Plaintiff had exhausted his administrative remedies. On January 6, 2016, an order was entered,
3 granting Defendants’ motions for summary judgment and entering Judgment in Defendants’
4 favor. (ECF No. 210.) On January 21, 2016, Plaintiff filed a Notice of Appeal of the order
5 granting Defendants’ motion for summary judgment and objections to the order granting
6 Defendants’ motion for summary judgment. (ECF No. 222.)

7 On February 22, 2016, an order was entered by the U.S. Court of Appeals for the Ninth
8 Circuit, holding proceedings in that court in abeyance pending a ruling by this Court whether
9 Plaintiff’s January 21, 2016, filing is a motion listed in Federal Rule of Appellate Procedure
10 4(a)(4) and if so, this Court’s resolution of the motion. (ECF No. 226.) Federal Rule of
11 Appellate Procedure 4(a)(4)(A)(vi) provides for relief under Federal Rule of Civil Procedure 60
12 if the motion is filed within 28 days after judgment is entered. The Court therefore construes
13 Plaintiff’s objections as a motion for relief from judgment pursuant to Federal Rule of Civil
14 Procedure 60.

15 II.

16 LEGAL STANDARD

17 As noted, the Court construes the Plaintiff’s objections as a motion for reconsideration.
18 The motion for reconsideration is governed by Rule 60 of the Federal Rules of Civil Procedure
19 and Rule 230 of the Local Rules of the United States District Court, Eastern District of
20 California. Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that
21 justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest
22 injustice and is to be utilized only where extraordinary circumstances . . . exist.” Harvest v.
23 Castro, 531 F.3d 737, 749 (9th Cir. 2008)(internal quotation marks omitted). The moving party
24 “must demonstrate both injury and circumstances beyond his control” Id. (internal
25 quotation marks and citation omitted). In seeking reconsideration of an order, Local Rule 230(j)
26 requires Plaintiff to show “what new or different facts or circumstances are claimed to exist or
27 were not shown upon such prior motion, or what other grounds exist for the motion.”

28 “A motion for reconsideration should not be granted, absent highly unusual

1 circumstances, unless the district court is presented with newly discovered evidence, committed
2 clear error, or if there is an intervening change in controlling law.” Marlyn Nutraceuticals, Inc.,
3 v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)(internal quotation marks and
4 citations omitted), and “[a] party seeking reconsideration must show more than a disagreement
5 with the court’s decision, and recapitulation . . . of that which was already considered by the
6 court in rendering its decision,” U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D.
7 Cal. 2001). To succeed, a party must set forth facts or law of a strongly convincing nature to
8 induce the court to reverse its prior decision. See Kern-Tulare Water Dist. v. City of Bakersfield,
9 634 F.Supp. 646, 665 (E.D. Cal. 1986), affirmed in part and reversed in part on other grounds,
10 828 F.2d 514 (9th Cir. 1987).

11 III.

12 ANALYSIS

13 In his motion for relief from judgment, Plaintiff sets forth five separate grounds for relief.
14 Plaintiff’s arguments center on the contradictory declaration filed by Plaintiff in his earlier case.
15 The Court considered that declaration in finding that Plaintiff did not exhaust his administrative
16 remedies regarding the conditions of confinement on the OHU on October 4, 2002.

17 A. Procedural History of this Action

18 Plaintiff refers to the earlier lawsuit in which he filed the contradictory declaration at
19 issue. Plaintiff argues that he did not refer to his earlier case because it would have confused the
20 issue. Plaintiff contends that “the magistrate judge misunderstood the declaration before the
21 court as contradicting plaintiff’s earlier declaration.” (ECF No. 222 at 2.) Plaintiff essentially
22 argues that the other lawsuit is irrelevant to this lawsuit. In deciding Defendants’ current motion
23 for summary judgment, the Court considered the issue that Plaintiff identified in his declaration
24 filed in the earlier case. That declaration contradicted Plaintiff’s unsubstantiated declaration in
25 this case. Judgment was therefore proper. Plaintiff’s motion for relief from judgment is
26 therefore denied on this ground.

27 B. Defendants’ Reply

28 Plaintiff contends that “[t]he defendants’ reply raised new arguments or introduced new

1 evidence. In their reply, as noted, defendants argue that plaintiff's declaration is contradicted by
2 a previously sworn statement. Defendants now attempt to introduce new evidence, raising new
3 arguments that has never been at issue, and the magistrate judge allowed them to introduce it."
4 (ECF No. 222 at 2.)

5 The central issue in Defendants' motion for summary judgment was whether Plaintiff
6 exhausted his available administrative remedies regarding the conditions of confinement in the
7 OHU on October 4, 2002. Plaintiff's declaration in another case that he filed a grievance
8 challenging his removal from OHU on October 4, 2002 is central to Defendants' argument that
9 Plaintiff did not file a grievance regarding the conditions in the OHU. Defendants did not raise
10 any new issues in their reply.

11 Plaintiff also appears to argue that Defendant Pham's exhibit was improper because it
12 was first offered in Defendant Pham's reply. Federal Rule of Civil Procedure 56(c)(1)(A)
13 provides that summary judgment may be based on the pleadings, discovery and disclosure
14 documents on file, and any affidavits or extrinsic evidence submitted in connection with the
15 motion. Plaintiff made no evidentiary objections to the declaration in his surreply, and the Court
16 properly took judicial notice of it. Plaintiff's motion for relief from judgment is therefore
17 denied on this ground.

18 **C. Plaintiff's Evidence**

19 Plaintiff argues that, prior to 2011, prison procedures permitted inmates to include more
20 than one issue on a grievance form. Plaintiff argues that "the correct inquiry would have been to
21 determine whether plaintiff had included both issues (claims) on the same grievance form."
22 (ECF No. 222 at 5.) Plaintiff contends that the Court "discredited" his declaration. (Id.)

23 Plaintiff is incorrect that prior to 2011 inmates were allowed to include more than one
24 issue on a grievance form. While the regulations did change in 2011 to require inmates to list all
25 staff members involved on the appeal, Cal. Code Regs. tit 15, §3084.2(a)(1)-(4) (2011), the
26 regulations in 2002 did not allow for multiple issues in the same appeal. It did, however, refer to
27 multiple appeals of the same issue, referring to "more than one appeal of the same issue." Cal.
28 Admin. Code, tit. 15, § 3084.2(g) (2002). Further, even if the regulations allowed for the appeal

1 of more than one issue in the same grievance, as the Court found, there is no evidence that
2 Plaintiff included the conditions of his confinement in his grievance. Plaintiff's motion for relief
3 from judgment is therefore denied on this ground.

4 **D. Plaintiff's Contention that his Grievance Could Have Been Screened Out**

5 Plaintiff argues that "the correct inquiry would have been to determine whether Plaintiff's
6 unanswered and unreturned October 4, 2002 grievance was one of those screened out." (ECF No
7 222 at 4.) Plaintiff argues, without reference to the record, that his argument is supported by
8 ample evidence in the record. Plaintiff appears to argue that because he **could have** filed a
9 grievance regarding the conditions of confinement in OHU, he established a triable issue of fact
10 as to whether he filed a grievance regarding the conditions of confinement in OHU on October 4,
11 2002.

12 In deciding the motion for summary judgment, the Court found that Defendants came
13 forward with evidence that Plaintiff did not establish a triable issue of material fact. The
14 evidence at summary judgment consisted of a contradictory declaration filed by Plaintiff.
15 Plaintiff appears to argue that because he "could have" filed a grievance regarding the conditions
16 of confinement in the OHU, summary judgment should be denied. Under Rule 56, a nonmovant
17 must point to "more than mere speculation, conjecture, or fantasy." National Steel Corp. v.
18 Golden Eagle Ins. Co., 121 F.3d 496, 502 (9th Cir. 1997). Conclusory allegations, without
19 factual support, are insufficient to defeat summary judgment. Id. Plaintiff's motion for relief
20 from judgment is therefore denied on this ground.

21 **E. The Posture of the Magistrate Judge's Conclusion and Order**

22 Plaintiff makes a vague argument that the Magistrate Judge made up his own facts, and
23 that his conclusion that Plaintiff failed to meet his burden on summary judgment is unsupported
24 by the facts. The crux of Plaintiff's argument is that he disagrees with the order granting
25 Defendant's motion for summary judgment. Plaintiff offers no legal or evidentiary support for
26 his contention. Plaintiff's motion for relief from judgment is therefore denied on this ground.

1 IV.

2 CONCLUSION AND ORDER

3 Plaintiff has not met the high burden of coming forward with facts or law of such a
4 strongly convincing nature as to induce the Court to reverse the order granting Defendants'
5 motion for summary judgment. Plaintiff's central claims are that it was improper for the Court
6 to consider his contradictory declaration and that, because there was a possibility that he filed an
7 inmate grievance regarding the conduct at issue, summary judgment should have been denied.

8 As noted, Defendants came forward with competent evidence that clearly established that
9 Plaintiff did not file a grievance regarding the conditions of confinement in the OHU on October
10 4, 2002. Plaintiff's unsubstantiated declaration, contradicted by his earlier declaration, and his
11 conclusory argument that he could have filed a grievance, did not establish a triable issue of fact
12 as to whether he exhausted his available administrative remedies prior to filing suit. Plaintiff has
13 not set forth any grounds for relief from the order granting Defendants' motion for summary
14 judgment.

15 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for relief from judgment
16 filed on January 21, 2016, is DENIED.

17 IT IS SO ORDERED.

18 Dated: February 25, 2016

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20 _____
21 UNITED STATES MAGISTRATE JUDGE