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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN JOSEPH NOBLE IV,)
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 Plaintiff,)
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 vs.)
)
 LT. V. J. GONZALEZ,)
)
 Defendant.)
 _____)

1:07-cv-01111-LJO-GSA-PC
ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 46.)

I. BACKGROUND

Steven Joseph Noble IV ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 31, 2007. (Doc. 1.) This action now proceeds on the First Amended Complaint against defendant Lieutenant V. J. Gonzalez ("Defendant"), for retaliation in violation of the First Amendment. (Doc. 16.)

On January 14, 2013, Plaintiff filed a motion for reconsideration of the Court's order of March 8, 2012, which denied Defendant's motion for summary judgment as moot. (Doc. 46.)

II. MOTION FOR RECONSIDERATION

A. Legal Standard

Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be

1 utilized only where extraordinary circumstances . . .” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th
2 Cir. 2008) (internal quotations marks and citation omitted). The moving party “must demonstrate both
3 injury and circumstances beyond his control . . .” Id. (internal quotation marks and citation omitted).
4 In seeking reconsideration of an order, Local Rule 230(k) requires Plaintiff to show “what new or
5 different facts or circumstances are claimed to exist which did not exist or were not shown upon such
6 prior motion, or what other grounds exist for the motion.”

7 “A motion for reconsideration should not be granted, absent highly unusual circumstances, unless
8 the district court is presented with newly discovered evidence, committed clear error, or if there is an
9 intervening change in the controlling law,” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,
10 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted, and “[a] party
11 seeking reconsideration must show more than a disagreement with the Court’s decision, and
12 recapitulation . . .” of that which was already considered by the Court in rendering its decision,” U.S.
13 v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

14 **B. Plaintiff’s Motion**

15 Plaintiff requests reconsideration of the Court’s order of March 8, 2012, which adopted in part
16 the Magistrate Judge’s findings and recommendations, dismissed Plaintiff’s due process claim without
17 leave to amend, denied Defendant’s motion for summary judgment as moot, and referred the case back
18 to the Magistrate Judge to screen the First Amended Complaint for a retaliation claim. (Doc. 33.)
19 Plaintiff argues it was unnecessary to re-screen the First Amended Complaint, because the Court had
20 already found a retaliation claim in its screening order of November 24, 2009, and the Court should not
21 have found Defendant’s motion for summary judgment moot merely because the due process claim was
22 dismissed. Plaintiff asserts that he “spent countless hours and hundreds of dollars in preparing, filing
23 and serving [his] ‘Opposition to the defendant’s motion for summary judgment,’” and the Court should
24 consider his arguments and rule on the merits of the motion for summary judgment. (Motion, Doc. 46
25 at 5¶15.)

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C. Discussion

Plaintiff's argument is not persuasive. There is no evidence in the Court's order of November 24, 2009 that the Court found the First Amended Complaint stated a claim for retaliation. Plaintiff contends that the Court implied in the order that Plaintiff stated a claim for retaliation by citing Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004). (Doc. 16 at 1:19-22.) However, the Court did not state, and did not intend to imply by citing Austin, that the Court had found a claim for retaliation. There is no evidence in subsequent court proceedings indicating that the Court had found a retaliation claim; in fact, the Court indicated in subsequent orders that the case only proceeded on Plaintiff's due process claim. (Doc. 28 at 1:24-26; Doc. 29 at 1:20-22.)

Based on these facts, it would be a waste of judicial resources for the Court to consider the merits of Defendant's prior motion for summary judgment at this stage of the proceedings. This case now proceeds only on Plaintiff's retaliation claim, and Defendant's motion for summary judgment did not address a claim for retaliation. (Doc. 15 ¶C; Doc. 24.) Plaintiff has not demonstrated that the Court committed clear error, or presented the Court with new information of a strongly convincing nature, to induce the Court to reverse its prior decision. Therefore, the motion for reconsideration shall be denied.

III. CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration, filed on January 14, 2013, is DENIED.

IT IS SO ORDERED.

Dated: January 16, 2013 /s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE