

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOWARD YOUNG,

1:07-cv-01121-GSA-PC

Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION, WITH PREJUDICE,
AND REQUIRING PLAINTIFF TO COMPLY
WITH SECOND SCREENING ORDER
WITHIN THIRTY DAYS

v.

CALIFORNIA DEPARTMENT
OF CORRECTIONS AND
REHABILITATION, et al.,

(Doc. 68.)

Defendants.

I. BACKGROUND

Plaintiff Howard Young is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the original Complaint on August 2, 2007. (Doc. 1.) On August 15, 2007, Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), and no other parties have made an appearance. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the Magistrate Judge shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On August 31, 2007, Plaintiff filed the First Amended Complaint. (Doc. 9.) On March 5, 2009, the Court screened the First Amended Complaint and issued a Screening Order requiring Plaintiff to either file a Second Amended Complaint or notify the court of his willingness to proceed

1 on the claim found cognizable by the Court, within thirty days. (Doc. 19.) On March 19, 2009,
2 Plaintiff objected to the Screening Order and filed a motion to proceed with service of the First
3 Amended Complaint. (Docs. 20, 22.) On April 24, 2009, the Court denied Plaintiff's motion for
4 service and ordered him to comply with the Screening Order within thirty days. (Doc. 26.) On May
5 4, 2009, Plaintiff objected to the Screening Order and again requested service of process. (Doc. 27.)
6 On June 12, 2009, the Court denied service and again ordered Plaintiff to comply with the Screening
7 Order within thirty days. (Doc. 33.) After requesting an extension of time, Plaintiff filed the Second
8 Amended Complaint on August 31, 2009. (Doc. 42.)

9 On June 21, 2010, the Court issued a Second Screening Order, requiring Plaintiff to either
10 file a Third Amended Complaint or notify the Court that he is willing to proceed on the claim found
11 cognizable by the Court. (Doc. 55.) On July 1, 2010, Plaintiff filed a motion for reconsideration of
12 the Second Screening Order, and on July 2, 2010, Plaintiff filed a Notice of Appeal which was
13 forwarded to the Ninth Circuit. (Docs. 61, 62.) On July 12, 2010, the Court denied Plaintiff's
14 motion for reconsideration. (Doc. 63.) On August 12, 2010, Plaintiff filed another motion for
15 reconsideration of the Second Screening Order, pursuant to Rule 60(b), which is now before the
16 Court.¹ (Doc. 68.)

17 **II. RULE 60(b) AND RECONSIDERATION**

18 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies
19 relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent manifest injustice
20 and is to be utilized only where extraordinary circumstances . . ." exist. Harvest v. Castro, 531 F.3d
21 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The moving party "must
22 demonstrate both injury and circumstances beyond his control . . ." Id. (internal quotation marks
23 and citation omitted). In seeking reconsideration of an order, Local Rule 230(k) requires Plaintiff
24 to show "what new or different facts or circumstances are claimed to exist which did not exist or
25 were not shown upon such prior motion, or what other grounds exist for the motion."

26
27 ¹ Federal Rule of Civil Procedure 72(a), which provides that the district judge must consider timely
28 objections to the magistrate judge's order, is not applicable. This is a consent case, and therefore, Plaintiff is not
entitled to have his objections reviewed by a district judge. Appendix A(k)(4) of the Local Rules of the Eastern
District of California.

