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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 EDWARD DEMERSON, CASE NO. 1:08-cv-00144-LJO-SKO PC
10 Plaintiff, ORDER DENYING MOTION FOR
11 v. RECONSIDERATION OF SCREENING
12 JEANNE S. WOODFORD, et al., (Doc. 135)
13 Defendants.
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15 **I. Procedural History**

16 Plaintiff Edward Demerson, a state prisoner proceeding pro, filed this civil rights action
17 pursuant to 42 U.S.C. § 1983 on January 29, 2008. This action is proceeding on Plaintiff's second
18 amended complaint, filed on June 24, 2009, against Defendants Phillips, Campos, Amaro, Clausing,
19 Bardonnex, Munoz, and Cartagina for using excessive physical force against Plaintiff, and against
20 Defendants Munoz, Cartagina, Gregory, and Hillard for acting with deliberate indifference toward
21 Plaintiff's resulting injuries, in violation of the Eighth Amendment of the United States Constitution.

22 On June 26, 2012, Plaintiff filed a motion seeking leave to amend to add due process and
23 conditions-of-confinement claims arising from his placement on strip cell/management cell status
24 for ten days, his Security Housing Unit (SHU) term, and deficiencies in the inmate appeals process.¹
25 Defendants filed an opposition on July 12, 2012.

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28 ¹ The deadline to amend the pleadings was June 21, 2012, but Plaintiff's motion was timely under the prison mailbox rule. Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009).

1 **II. Legal Standard**

2 In general, “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice
3 so requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006)
4 (quoting Fed. R. Civ. P. 15(a)). However, as Plaintiff recognizes in his motion, he is seeking leave
5 to amend to add claims which were dismissed by the Court on June 22, 2010, with prejudice, for
6 failure to state a claim, and to amend, Plaintiff must be relieved from the screening order.

7 Under Federal Rule of Civil Procedure 60(b)(6), Plaintiff may seek relief from the screening
8 order for any reason that justifies relief, but Rule 60(b)(6) is to be used sparingly as an equitable
9 remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances
10 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (quotations marks and citation omitted).
11 The moving party must demonstrate both injury and circumstances beyond his control. Id. (quotation
12 marks and citation omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show
13 “what new or different facts or circumstances are claimed to exist which did not exist or were not
14 shown upon such prior motion, or what other grounds exist for the motion,” and “why the facts or
15 circumstances were not shown at the time of the prior motion.”

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

23 **III. Discussion and Order**

24 The Court previously reviewed Plaintiff’s claims, determined that the relevant claims were
25 not viable, and dismissed them with prejudice more than two years ago. The Court specifically
26 found that Plaintiff failed to demonstrate the existence of a protected liberty interest in remaining
27 free from strip cell/management cell status or the SHU, Wilkinson v. Austin, 545 U.S. 209, 221
28 (2005); Sandin v. Conner, 515 U.S. 472, 484 (1995), and that Plaintiff did not have a protected

1 liberty interest at stake with respect to the inmate appeals process, Ramirez v. Galaza, 334 F.3d 850,
2 860 (9th Cir. 2003); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). The Court also found that
3 Plaintiff failed to allege facts supporting an Eighth Amendment conditions-of-confinement claim.
4 Farmer v. Brennan, 511 U.S. 825, 847 (1994).

5 Reconsideration is not a vehicle by which to obtain a second bite at the apple based on mere
6 disagreement with a ruling; it is reserved for extraordinary circumstances. Westlands Water Dist.,
7 134 F.Supp.2d at 1131; see also In re Pacific Far East Lines, Inc., 889 F.2d 242, 250 (9th Cir. 1989)
8 (Rule 60(b)(6) may provide relief where parties were confronted with extraordinary circumstances
9 but it does not provide a second chance for parties who made deliberate choices). Plaintiff's motion
10 is devoid of any showing that there exist extraordinary circumstances entitling him to relief from the
11 screening order. Because there is no entitlement to relief from the screening order, the Court does
12 not reach the four factors considered in determining whether amendment should be permitted under
13 Rule 15. In re Korean Airlines Co., Ltd., 642 F.3d 685, 701 (9th Cir. 2011).

14 Accordingly, Plaintiff's motion for reconsideration of the screening order, filed on June 26,
15 2012, is HEREBY ORDERED DENIED, with prejudice.

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17 IT IS SO ORDERED.

18 **Dated: August 18, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE