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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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7 VALENTINE UNDERWOOD,

8 Plaintiff,

9 vs.

10 M. NORTHCUTT, et al.,

11 Defendants

Case No. 1:08 cv 00986 GSA PC

ORDER RE PLAINTIFF'S MOTION FOR
RECONSIDERATION

(ECF NO. 154)

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13 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights
14 action pursuant to 42 U.S.C. § 1983. The parties have consented to magistrate judge jurisdiction
15 pursuant to 28 U.S.C. § 636(c). Pending before the Court is Plaintiff's motion for
16 reconsideration of the March 26, 2015, order granting in part and denying in part Defendants'
17 motion for summary judgment.

18 The motion for summary judgment addressed Plaintiff's claims of excessive force and
19 retaliation against Defendants Northcutt and Martin. Summary Judgment was granted in
20 Defendants' favor on the retaliation claim and denied on the excessive force claim. Plaintiff
21 alleges that he was assaulted On November 21, 2006, in retaliation for an inmate appeal he filed
22 the previous day and that Defendant Northcutt confiscated his mail in retaliation for the
23 November 21, 2006, assault. On February 4, 2007, Plaintiff filed an inmate appeal after having
24 his incoming and outgoing mail disappear, and after finding that Defendant Northcutt had been
25 reassigned to the mailroom after the November 21, 2006, incident.

26 Summary judgment was denied on the excessive force claim on the ground that although
27 Defendants presented evidence that the initial use of force (the basis for Plaintiff's retaliation

1 claim) was used to maintain order or restore discipline, Defendants used force on Plaintiff once
2 he was subdued. The Court found that there was a triable issue of fact as to whether the initial
3 use of pepper-spray was provoked. There was no evidence, however, that the use of force was
4 motivated by the filing of an inmate grievance. The Court also found that Defendants submitted
5 evidence that established that they had no involvement in the handling of Plaintiff's mail.

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

15 "A motion for reconsideration should not be granted, absent highly unusual
16 circumstances, unless the district court is presented with newly discovered evidence, committed
17 clear error, or if there is an intervening change in the controlling law." Marlyn Nutraceuticals,
18 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)(internal quotation marks
19 and citations omitted), and "[a] party seeking reconsideration must show more than a
20 disagreement with the Court's decision, and recapitulation . . . of that which was already
21 considered by the Court in rendering its decision,: U.S. v. Westlands Water Dist., 134 F. Supp.
22 2d 111, 1131 (E. D. Cal. 2001). To succeed, a party must set forth facts or law of a strongly
23 convincing nature to induce the court to reverse its prior decision. See Kern-Tulare Water Dist.
24 V. City of Bakersfield, 634 F. Supp. 646, 665 (E. D. Cal. 1986), affirmed in part and reversed in
25 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

26 Plaintiff argues that there is evidence that, just prior to the use of force, he advised
27 Defendants that he had spoken with Lt. Whitehead and, therefore, Defendants were aware of the

1 grievance. Taking that fact as true, Plaintiff has not come forward with evidence of a triable
2 issue of fact as to whether force was used in retaliation for filing a grievance. The fact that
3 Defendants were aware of the grievance does not establish evidence of retaliation. Plaintiff also
4 argues that there are affidavits of other inmates that he submitted in opposition to the motion for
5 summary judgment indicating that they had problems with their mail. Plaintiff argues that his
6 evidence establishes that C/O Northcutt was assigned to the mailroom during the time Plaintiff
7 had problems with his mail. Such evidence does not create a triable issue of fact as to whether
8 Northcutt interfered with Plaintiff's mail in retaliation for the filing of an inmate grievance.
9 Northcutt's declaration establishes that he was assigned to the mailroom, but did not handle any
10 of Plaintiff's mail.

11 Plaintiff has not set forth facts or law of a strongly convincing nature in his motion for
12 reconsideration to induce the Court to reverse its prior decision. Therefore, the motion for
13 reconsideration should be denied. Accordingly, IT IS HEREBY ORDERED that Plaintiff's
14 motion for reconsideration of the order granting in part and denying in part Defendants' motion
15 for summary judgment is denied.

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17 IT IS SO ORDERED.

18 Dated: July 9, 2015

19 /s/ Gary S. Austin

20 UNITED STATES MAGISTRATE JUDGE
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