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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATWAHN McELROY,

1:08-cv-01221-LJO-GSA-PC

Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 130.)

v.

ROY COX, et al.,

Defendants.

I. BACKGROUND

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Latwahn McElroy, a state prisoner proceeding pro se and in forma pauperis. This case is scheduled for jury trial to commence on June 19, 2012 at 8:30 a.m. before District Judge Lawrence J. O’Neill.

On April 16, 2012, the court entered an order denying Plaintiff’s motion to correspond with his inmate witness housed at another correctional facility. (Doc. 123.) On May 2, 2012, Plaintiff filed a motion for the court to reconsider its decision. (Doc. 130.)

II. MOTION FOR RECONSIDERATION

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 utilized only where extraordinary circumstances . . .” exist. Harvest v. Castro, 531 F.3d

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

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

13 Plaintiff argues that he will be disadvantaged if he is unable to communicate with witnesses
14 in confidence, and that as an incarcerated litigant, he is not being provided the same rights as an
15 unincarcerated litigant.

16 Plaintiff was informed in the Court's prior order that the Court lacks jurisdiction to issue an
17 order allowing Plaintiff to correspond with his witnesses. Plaintiff has not demonstrated that the
18 Court committed clear error, or presented the Court with new information of a strongly convincing
19 nature, to induce the Court to reverse its prior decision. Therefore, the motion for reconsideration
20 shall be denied.

21 **III. CONCLUSION**

22 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s motion for
23 reconsideration, filed on May 2, 2012, is DENIED.

24 IT IS SO ORDERED.

25 **Dated: May 7, 2012**

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