

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

7 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
8 unless the district court is presented with newly discovered evidence, committed clear error, or if there
9 is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or present
10 evidence for the first time when they could reasonably have been raised earlier in the litigation.”
11 Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.2009)
12 (internal quotations marks and citations omitted) (emphasis in original).

13 B. Discussion

14 On November 4, 2013, Plaintiff filed a motion seeking the appointment of an expert witness
15 regarding CDCR’s use of force policies. Plaintiff believed that an expert was necessary to “refute the
16 Defendants[’] testimony” and “add credibility to plaintiff’s claims that the force was unreasonable and
17 excessive.” (ECF No. 195, p. 2.)

18 On August 8, 2014, the Magistrate Judge denied Plaintiff’s motion for the appointment of an
19 expert pursuant to Federal Rule of Evidence 706(a). The Magistrate Judge determined that Rule
20 706(a) did not contemplate court appointment of an expert witness to advocate for Plaintiff at trial.
21 (ECF No. 210, p. 2.) The Magistrate Judge also determined that Plaintiff’s allegations of excessive
22 force were not so complicated as to require the appointment of a neutral expert witness to assist the
23 court and/or a jury. (ECF No. 210, p. 3.)

24 Plaintiff now contends that the Magistrate Judge’s ruling was contrary to law and an abuse of
25 discretion. In particular, Plaintiff disagrees with the Magistrate Judge’s determination that the “trier of
26 fact does not require scientific, technical or specialized knowledge regarding CDCR’s use of force
27 policies and procedures” to determine whether Defendants subjected Plaintiff to excessive force in
28 violation of the Eighth Amendment. (ECF No. 217, p. 1.) Plaintiff argues that the Magistrate Judge

1 erred in finding that the use of force policies are not relevant to claims of excessive force. (ECF No.
2 217, p. 2.) Plaintiff asserts that an expert witness is the “only way I can show that at the time
3 Defendant Martinez pepper sprayed me while I was on the cell floor, that he did so in violation of
4 CDCR’s regulations in effect at the time of the incident.” (ECF No. 217, pp. 2-3.)

5 Contrary to Plaintiff’s apparent assertion, the Magistrate Judge did not deny appointment of a
6 neutral expert witness based on the relevance of any CDCR use of force policy. Rather, the
7 Magistrate Judge correctly determined that Rule 706 could not be used to appoint an expert to serve as
8 an advocate for Plaintiff. See, e.g., Manriquez v. Huchins, 2012 WL 5880431, *14 (E.D. Cal. 2012);
9 Brooks v. Tate, 2013 WL 4049043, *1 (E.D. Cal. Aug. 7, 2013) (avoiding bias or otherwise assisting
10 one party is not the purpose of Rule 706); Gorrell v. Sneath, 2013 WL 3357646, * 1 (E.D. Cal. Jul. 3,
11 2013) (purpose of court-appointed expert is to assist the trier of fact, not to serve as an advocate for a
12 particular party). The Magistrate Judge also correctly determined that Plaintiff’s allegations of
13 excessive force are not so complicated as to require an expert witness and that the trier of fact does not
14 require scientific, technical or specialized knowledge regarding CDCR’s use of force policies and
15 procedures to determine whether Defendants applied force in a good-faith effort to maintain or restore
16 discipline or maliciously and sadistically for the purpose of causing harm. Hudson v. McMillian, 503
17 U.S. 1, 6-7 (1992).

18 **III. Conclusion and Order**

19 Based on the foregoing, Plaintiff’s motion for reconsideration, filed on August 20, 2014, is
20 HEREBY DENIED with prejudice.

21
22 IT IS SO ORDERED.

23 Dated: November 15, 2014

24 
25 SENIOR DISTRICT JUDGE