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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ARTEMIO RAMIREZ,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:08-cv-01513-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR RECONSIDERATION

(ECF No. 20)

Plaintiff Artemio Ramirez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 14, 2011, an order issued dismissing this action for failure to state a claim. (ECF No. 16.) On May 31, 2011, Plaintiff filed a motion for reconsideration. (ECF No. 20.) Plaintiff states that his complaint was sufficient to state a claim. Plaintiff argues that he is not required to include detailed factual allegations, but mere conclusory statements and the possibility of misconduct are sufficient to state a cognizable claim for relief. However, while “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” ” Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555).

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, “[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following

1 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence .
2 .. (3) fraud . . . ; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged;
3 . . . or (6) any other reason that justifies relief.” Fed. R. Civ. Proc. 60(b). Where none of these
4 factors is present the motion is properly denied. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th
5 Cir. 1991).

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

15 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
16 unless the district court is presented with newly discovered evidence, committed clear error, or if
17 there is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or
18 present evidence for the first time when they could reasonably have been raised earlier in the
19 litigation.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.
20 2009) (internal quotations marks and citations omitted) (emphasis in original).

21 Plaintiff’s motion is devoid of any grounds entitling Plaintiff to reconsideration of the Court’s
22 order and is HEREBY DENIED.

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25 IT IS SO ORDERED.

26 **Dated: June 24, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE