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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 LOUIS BRANCH,

9 Plaintiff,

10 vs.

11 N. GRANNIS, et al.,

12 Defendants.
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1:08-cv-01655-AWI-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 153.)

15 **I. BACKGROUND**

16 Louis Branch (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
17 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
18 commencing this action on July 7, 2008. (Doc. 1.) This action now proceeds on the Third
19 Amended Complaint, filed by Plaintiff on July 10, 2013, against defendants Umphenour,
20 Szalai, and Alvarez (“Defendants”) for deliberate indifference to a serious risk to Plaintiff’s
21 safety in violation of the Eighth Amendment, and against defendant Umphenour for retaliation
22 in violation of the First Amendment. (Doc. 94.)

23 On November 14, 2014, Plaintiff filed an objection to the court’s order striking
24 Plaintiff’s surreply, issued on October 30, 2014. (Doc. 149.) The court construes Plaintiff’s
25 objections as a motion for reconsideration of the court’s October 30, 2014 order.

26 **II. MOTION FOR RECONSIDERATION**

27 Rule 60(b) allows the Court to relieve a party from an order for “(1) mistake,
28 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with

1 reasonable diligence, could not have been discovered in time to move for a new trial under
2 Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
3 misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that justifies
4 relief.” Fed. R. Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to
5 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .”
6 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
7 citation omitted). The moving party “must demonstrate both injury and circumstances beyond
8 his control” Id. (internal quotation marks and citation omitted). In seeking
9 reconsideration of an order, Local Rule 230(k) requires Plaintiff to show “what new or different
10 facts or circumstances are claimed to exist which did not exist or were not shown upon such
11 prior motion, or what other grounds exist for the motion.”

12 “A motion for reconsideration should not be granted, absent highly unusual
13 circumstances, unless the district court is presented with newly discovered evidence, committed
14 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,
15 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations
16 marks and citations omitted, and “[a] party seeking reconsideration must show more than a
17 disagreement with the Court’s decision, and recapitulation” of that which was already
18 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134
19 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a
20 strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare
21 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and
22 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

23 Here, Plaintiff argues that his surreply should not have been stricken, because he was
24 replying to a new argument made by Defendants in their reply.¹ Plaintiff asserts that

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26 ¹ On September 2, 2014, Defendants filed a motion for summary judgment. (Doc. 138.) Plaintiff filed
27 an opposition to the motion on September 29, 2014. (Doc. 142.) On October 6, 2014, Defendants filed a reply to
28 Plaintiff’s opposition. (Doc. 145.) On October 27, 2014, Plaintiff filed a surreply titled “Objection to Defendants’
Reply to Plaintiff’s Summary Judgment Opposition.” (Doc. 147.) On October 30, 2014, the court issued an order
striking Plaintiff’s surreply. (Doc. 149.)

1 Defendants raised the issue of the untimeliness of Plaintiff's exhaustion of administrative
2 remedies, which is a new argument not addressed in their reply to Plaintiff's opposition.

3 Plaintiff's argument is not persuasive. Plaintiff did not make any argument addressing
4 the court's reason for striking the surreply, which was that "[t]he Court neither requested a
5 surreply nor granted a request on behalf of Plaintiff to file one." (Order, Doc. 149 at 2:14-16.)
6 Moreover, Plaintiff's surreply was not limited to the untimeliness issue. Plaintiff has not
7 presented facts or law of a strongly convincing nature to induce the court to reverse its prior
8 decision. Therefore, the motion for reconsideration shall be denied.

9 **III. CONCLUSION**

10 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
11 reconsideration, filed on November 14, 2014, is DENIED.

12 IT IS SO ORDERED.

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14 Dated: April 3, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE