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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOSHUA J. CANTU,

Plaintiff,

vs.

M. GARCIA, et al.,

Defendants.

) 1:09cv00177 AWI DLB PC  
)  
) ORDER GRANTING PLAINTIFF’S  
) MOTION FOR RECONSIDERATION  
) AND GRANTING PLAINTIFF’S MOTION  
) TO COMPEL IN PART  
) (Document 81)  
)  
) ORDER EXTENDING DEADLINES

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Plaintiff Joshua J. Cantu (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. He filed a First Amended Complaint on July 26, 2010, and the Court found cognizable Eighth Amendment claims against Defendant M. Garcia and three Doe Defendants. Defendant Garcia filed an answer on December 20, 2011. The deadline to amend is currently April 15, 2013, and the dispositive motion deadline is May 28, 2013.

On February 15, 2013, the Court denied Plaintiff’s motion to compel without prejudice, explaining that Plaintiff did not attach the discovery at issue and the Court was therefore unable to review it.

1 On March 4, 2013, Plaintiff filed a motion seeking reconsideration of the February 15,  
2 2013, order. Defendant did not file an opposition.

3 **LEGAL STANDARD**

4 Rule 60(b)(6) allows the Court to relieve a party from a final judgment, order, or  
5 proceeding for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an  
6 equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary  
7 circumstances ...” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir.2008). The moving party  
8 “must demonstrate both injury and circumstances beyond his control....” Id. In seeking  
9 reconsideration of an order, Local Rule 230(j) requires a party to identify the motion or order in  
10 issue and when it was made, and show “what new or different facts or circumstances are claimed  
11 to exist which did not exist or were not shown upon such prior motion, or what other grounds  
12 exist for the motion.”

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

21  
22 Motions to reconsider are committed to the discretion of the trial court. Combs v. Nick  
23 Garin Trucking, 825 F.2d 437, 441 (D.C.Cir.1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th  
24 Cir.1983). To succeed, a party must set forth facts or law of a strongly convincing nature to  
25 induce the court to reverse its prior decision. See e.g., Kern–Tulare Water Dist. v. City of  
26 Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal.1986), aff’d in part and rev’d in part, 828 F.2d 514  
27 (9th Cir.1987).

1 **DISCUSSION**

2 In the Court’s February 15, 2013, order, the Court explained that although Plaintiff cited  
3 to Exhibits A and B, neither were attached to the motion. Moreover, because the discovery had  
4 not been filed with any previous motions, the Court was unable to review it. The Court therefore  
5 denied Plaintiff’s motion without prejudice.

6 In Plaintiff’s March 4, 2013, motion for reconsideration, he states that the Clerk’s Office  
7 sent the exhibits back to him. For unknown reasons, the Clerk’s Office determined that the  
8 discovery was not part of a motion and returned it pursuant to Local Rule 250.3. Therefore,  
9 because Plaintiff *did* send in his exhibits with the motion, the Court GRANTS his motion for  
10 reconsideration.  
11

12 Plaintiff’s motion to compel seeks further responses to Requests for Production, Set  
13 Two, numbers 2, 4, 5, 6 and 7.

14 *Request Number 2*

15 Plaintiff seeks the names, ranks, titles and addresses of any and all CDCR staff that were  
16 on the bus with Plaintiff on March 13, 2008. In response, Defendant states that this is not a  
17 request for an identifiable document and that he is not required to create a document in response.  
18

19 While Defendant is not required to create a document, the response is not sufficient to  
20 determine whether a document exists. It is highly unlikely that Defendant has no records to  
21 identify staff members who were on the bus with Plaintiff. Accordingly, Plaintiff’s request is  
22 GRANTED and Defendant must supplement his response to provide additional information.

23 *Request Number 4*

24 Plaintiff seeks the address and locations of stops made by the bus, including the starting  
25 and ultimate stopping location. Although Plaintiff does not explain why he needs this  
26 information, it is likely relevant in assisting Plaintiff in locating inmate witnesses.  
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1 In the Court's February 15, 2013, order, Defendant was ordered to provide the names of  
2 inmates on the bus on March 13, 2008, at the time of the alleged incident. It is therefore possible  
3 that Plaintiff will obtain the needed information from this production and this request is therefore  
4 DENIED WITHOUT PREJUDICE.

5 *Request Numbers 5 and 6*

6 Number 5 seeks "any current or prior staff complaints against you by inmates or non-  
7 inmates," and Number 6 seeks "any and all documents of training for use of force or use of  
8 restraints, you have had." Such information is relevant to Plaintiff's claims, but the Court agrees  
9 with Defendant that the requests are too broad and vague. Accordingly, Plaintiff's request is  
10 GRANTED IN PART. If Plaintiff desires, he may rephrase the request so that it is limited in  
11 time and scope. If Plaintiff chooses to do so, the April 15, 2013, discovery deadline will be  
12 extended solely for this discovery.  
13

14 *Request Number 7*

15 This request seeks documents that Defendant "agreed to and signed as to being employed  
16 with CDCR." Such information is irrelevant because there is no question that Defendant was  
17 employed by CDCR at the time of the incident. Accordingly, Plaintiff's request is DENIED.  
18

19 **ORDER**

20 Based on the above, Plaintiff's motion for reconsideration is GRANTED. Plaintiff's  
21 January 15, 2013, motion to compel is GRANTED IN PART and DENIED IN PART:

- 22 1. Within thirty (30) days of the date of service of this order, Defendant must  
23 supplement his response to Request Number 2;
- 24 2. If Plaintiff chooses to rephrase Requests Numbers 5 and 6, he must do so within  
25 fifteen (15) days of the date of service of this order. Defendant's responses shall be due within  
26 thirty (30) days of the date of service of the requests. The April 15, 2013, discovery deadline is  
27 extended for this discovery only.  
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