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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

CASE NO. 1:09-cv-00205-LJO-SMS PC

Plaintiff,

ORDER OVERRULING OBJECTIONS
AND DENYING MOTION
FOR RECONSIDERATION

v.

ADAMS, et al.,

(Doc. 124)

Defendants.

I. Order

A. Plaintiff’s Motion for Reconsideration

This civil rights action was filed pursuant to 42 U.S.C. § 1983. Plaintiff, Barry Louis Lamon (“Plaintiff”) is proceeding in this action against Defendants Buenos, Lee, Ponce, and Purvis (“Defendants”) for Eighth Amendment excessive use of force and deliberate indifference to a threat to Plaintiff’s safety and for retaliation in violation of the First Amendment.

On June 8, 2011, Plaintiff filed a motion seeking an order issue “establishing a date and time for a hearing and show cause by the parties to (potential) relationship between actions proceeding separately in the Eastern District Court” (“Motion for Hearing”). (Doc. 119, p. 1.) Plaintiff apparently filed that motion subsequent to being ordered, in case number 1:07-cv-01390-LJO-GBC PC *Lamon v. Adams* to show cause why it should not be dismissed as duplicative of case number 1:07-cv-000493-AWI-DLB PC *Lamon v. Tilton*. Plaintiff’s Motion for Hearing was denied. (Doc. 120.) On July 5, 2011, Plaintiff filed a document entitled

1 “Plaintiff’s Objections to Court’s Order (Doc. 120), Rule 59(e), Fed. R. Civ. P., Motion to
2 Vacate the Order.” (Doc. 124.) This document is construed as a motion for reconsideration.¹

3 B. Standards for Reconsideration

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

15 Motions to reconsider are committed to the discretion of the trial court. *Combs v. Nick*
16 *Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th
17 Cir. 1983) (*en banc*). To succeed, a party must set forth facts or law of a strongly convincing
18 nature to induce the court to reverse its prior decision. *See e.g., Kern-Tulare Water Dist. v. City*
19 *of Bakersfield*, 634 F.Supp. 656, 665 (E.D. Cal. 1986), *aff’d in part and rev’d in part on other*
20 *grounds*, 828 F.2d 514 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015 (1988). The Ninth Circuit
21 has stated that “[c]lause 60(b)(6) is residual and ‘must be read as being exclusive of the
22 preceding clauses.’” *Corex Corp. v. United States*, 638 F.2d 119 (9th Cir. 1981); *accord*
23 *LaFarge Conseils et Etudes, S.A. v. Kaiser Cement*, 791 F.2d 1334, 1338 (9th Cir. 1986).
24 Accordingly, “the clause is reserved for ‘extraordinary circumstances.’” *Id.* Further, when filing
25 a motion for reconsideration, Local Rule 230(j)(3) & (4) requires a party to show the “new or
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27 ¹ While Plaintiff cites Fed. R. Civ. P. 59, there has not been a judgment entered in this matter to be altered
28 or amended. Accordingly, this motion is properly evaluated as a request for reconsideration under Fed. R. Civ. P.
60. Further, this motion is being ruled on without affording Defendants the opportunity to file an opposition as they
will not be prejudiced since the motion is being denied.

1 different facts or circumstances are claimed to exist which did not exist for the motion; and . . .
2 why the facts or circumstances were not shown at the time of the prior motion.”

3 Plaintiff has not shown any new or different facts or circumstances, newly discovered
4 evidence, or an intervening change of law to support his motion. Plaintiff also fails to present
5 any arguments and/or authority to show that this Court erred in denying his Motion for Hearing
6 and to Show Cause Concerning Related Cases in Separate Actions, or that any extraordinary
7 circumstances exist so as to justify the relief he seeks. Plaintiff’s mere disagreement with the
8 Court’s evaluation of his evidence and arguments and ruling thereon, which is all that is shown
9 in the instant motion, is not grounds for reconsideration. Further, while holding a hearing such
10 as Plaintiff desires might prove helpful to Plaintiff in sorting through his actions and claims
11 against numerous defendants, it would clearly not be the most efficient use of limited Court
12 resources.

13 Having carefully considered this matter, the Court finds its Order Denying Plaintiff’s
14 Motion for Hearing and to Show Cause Concerning Related Cases in Separate Actions to be
15 supported by the record and by proper analysis.

16 Accordingly, IT IS HEREBY ORDERED that, to the extent that the document Plaintiff
17 filed on July 5, 2011 objects to the Order Denying Plaintiff’s Motion for Hearing and to Show
18 Cause Concerning Related Cases in Separate Actions, it is OVERRULED; and to the extent that
19 the document Plaintiff filed on July 5, 2011 seeks reconsideration of the Order Denying
20 Plaintiff’s Motion for Hearing and to Show Cause Concerning Related Cases in Separate
21 Actions, it is DENIED.

22 IT IS SO ORDERED.

23 **Dated: July 12, 2011**

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