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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONTE ROLANDO HARRIS,

 Plaintiff,

 v.

H.A. RIOS, et al.,

 Defendants.

CASE No. 1:09-cv-00781-MJS (PC)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(ECF No. 155)

Plaintiff is a federal prisoner proceeding pro se in this civil rights action filed pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). On August 20 2015, the matter proceeded to a bench trial on Plaintiff's First and Fifth Amendment claims against Defendants Estrada, Gonzaga, Cobb, Zaragoza, and Valero for interference with Plaintiff's mail. (ECF No. 148.) During trial, judgment was granted as to Defendants Estrada, Gonzaga, and Valero pursuant to Federal Rule of Civil Procedure 52(c). On December 3, 2015, the Court issued a memorandum of decision and judgment in favor of Defendants Cobb and Zaragoza. (ECF No. 153.)

Before the Court is Plaintiff's December 21, 2015 motion for reconsideration of the judgment in favor of Cobb and Zaragoza. (ECF No. 155.) Defendants filed an opposition. (ECF No. 156.) Plaintiff filed no reply. The matter is submitted. Local Rule 230(l).

1 **I. LEGAL STANDARD**

2 “A motion for reconsideration should not be granted, absent highly unusual
3 circumstances, unless the district court is presented with newly discovered evidence,
4 committed clear error, or if there is an intervening change in the controlling law.” Marlyn
5 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).
6 “A motion for reconsideration may not be used to raise arguments or present evidence
7 for the first time when they could reasonably have been raised in earlier litigation.” Id.
8 Moreover, “recapitulation of the cases and arguments considered by the court before
9 rendering its original decision fails to carry the moving party's burden.” U.S. v. Westlands
10 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony
11 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)
12 requires that a party seeking reconsideration show that “new or different facts or
13 circumstances are claimed to exist which did not exist or were not shown upon such
14 prior motion, or what other grounds exist for the motion”

15 Additionally, Rule 60(b) allows the Court to relieve a party from a final judgment or
16 order on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
17 discovered evidence . . . ; (3) fraud . . . , misrepresentation, or misconduct by an
18 opposing party; (4) the judgment is void; (5) the judgment has been satisfied . . . ; it is
19 based on an earlier judgment that has been reversed or vacated; or applying it
20 prospectively is no longer equitable; or (6) any other reason that justifies relief.” Fed. R.
21 Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
22 manifest injustice and is to be utilized only where extraordinary circumstances” exist.
23 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
24 citation omitted). The moving party bears the burden of demonstrating that relief under
25 Rule 60(b) is appropriate. Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988).

26 **II. DISCUSSION**

27 Plaintiff first argues that Defendant Cobb’s testimony at trial should not be
28 credited. According to Plaintiff, Defendant Cobb testified that he had no reason to

1 believe specified mail at issue in this case was contraband. Furthermore, according to
2 Plaintiff, Cobb admitted during discovery that he confiscated this mail.

3 These facts do not present grounds for reconsideration and, in any event,
4 misrepresent the evidence before the Court. Contrary to Plaintiff's argument, Cobb
5 testified that he believed the specified mail was contraband. The admissions referred to
6 by Plaintiff are not before the Court.¹ According to Defendant, Defendant Cobb admitted
7 during discovery that the mail was contraband, but did not admit that he personally
8 confiscated it. In this regard, Cobb's testimony appears to be consistent with his
9 discovery responses. The Court finds no basis for reconsideration of the judgment with
10 respect to Defendant Cobb.

11 Plaintiff next argues that Defendant Zaragoza's testimony that certain of Plaintiff's
12 mail constituted contraband should not be credited. He points to exhibits that he believes
13 contradict Zaragoza's testimony. These arguments were raised and considered at trial.
14 Ultimately, the Court did not credit Plaintiff's contrary testimony regarding the items at
15 issue. Plaintiff's reiteration of this argument does not present a basis for reconsideration.

16 **III. CONCLUSION AND ORDER**

17 Based on the foregoing, Plaintiff's motion for reconsideration is HEREBY
18 DENIED.

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20 IT IS SO ORDERED.

21 Dated: March 22, 2016

22 /s/ Michael J. Seng
23 UNITED STATES MAGISTRATE JUDGE

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28 ¹ The Court received mail from Plaintiff on August 24, 2015, indicating that the admissions were enclosed.
(ECF No. 149.) However, no exhibits or attachments were included with Plaintiff's letter.