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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,

CASE NO. 1:09-cv-01628-OWW-GBC (PC)

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTIONS  
FOR RECONSIDERATION

v.

COHEN, et al.,

(Docs. 36, 37)

Defendants.

**I. Plaintiff’s Motion for Reconsideration**

**A. Procedural History**

Lamont Shepard (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On January 25, 2011, the Court submitted Findings and Recommendations in which the Magistrate Judge recommended granting Defendants’ unenumerated 12(b) motion to dismiss due to Plaintiff’s failure to exhaust administrative remedies. (Doc. 28). On February 28, 2011, the Court adopted the Findings and Recommendations and dismissed the action for failure to exhaust administrative remedies. On March 9, 2011, Plaintiff filed a “motion to Reopen Case Sua Sponte,” and “Motion for Reconsideration.” (Docs. 36, 37). The Court shall address both motions as a motion for reconsideration.

**B. Standards for Reconsideration**

Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the district court. The Rule permits a district court to relieve a party from a final order or judgment on

1 grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud . . . of an adverse  
2 party, . . . or (6) any other reason justifying relief from the operation of the judgment.” Fed. R. Civ.  
3 P. 60(b). The motion for reconsideration must be made within a reasonable time, in any event “not  
4 more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

5 Motions to reconsider are committed to the discretion of the trial court. *Combs v. Nick Garin*  
6 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983)  
7 (*en banc*). To succeed, a party must set forth facts or law of a strongly convincing nature to induce  
8 the court to reverse its prior decision. *See e.g., Kern-Tulare Water Dist. v. City of Bakersfield*, 634  
9 F.Supp. 656, 665 (E.D. Cal. 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514  
10 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015 (1988). The Ninth Circuit has stated that “[c]ause  
11 60(b)(6) is residual and ‘must be read as being exclusive of the preceding clauses.’” *Corex Corp. v.*  
12 *United States*, 638 F.2d 119 (9th Cir. 1981); *accord LaFarge Conseils et Etudes, S.A. v. Kaiser*  
13 *Cement*, 791 F.2d 1334, 1338 (9th Cir. 1986). Accordingly, “the clause is reserved for  
14 ‘extraordinary circumstances.’” *Id.* When filing a motion for reconsideration, Local Rule 230(j)(3)  
15 & (4) requires a party to show the “new or different facts or circumstances are claimed to exist which  
16 did not exist for the motion; and . . . why the facts or circumstances were not shown at the time of  
17 the prior motion.”

18 In his motions for reconsideration, Plaintiff argues that although administrative remedies  
19 were exhausted after he filed the action, the action should still proceed so as to conserve judicial  
20 resources. (Docs. 36, 37). However, as the Magistrate Judge observed in the Findings and  
21 Recommendations which the Court adopted, the Court must dismiss a case without prejudice *even*  
22 *when there is exhaustion while the suit is pending.* *Lira v. Herrera*, 427 F.3d 1164, 1170 (9th Cir.  
23 2005). Plaintiff fails both to show new or different facts or circumstances which did not exist at the  
24 time the Court dismissed the action for failure to exhaust administrative remedies.

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this  
26 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
27 Court finds its order adopting the Findings and Recommendations to dismiss Plaintiff’s action for  
28 failure to exhaust administrative remedies is supported by the record and by proper analysis.

1           Accordingly, IT IS HEREBY ORDERED that Plaintiff's motions for reconsideration (Docs.  
2 36, 37), filed March 9, 2011, is DENIED.

3           IT IS SO ORDERED.

4 **Dated:**   May 20, 2011  

          /s/ Oliver W. Wanger            
UNITED STATES DISTRICT JUDGE

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