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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EMERY I. FRANKLIN,

CASE No. 1:10-cv-00142-LJO-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S REQUEST
FOR RECONSIDERATION

v.

(ECF No. 60)

UNITED STATES,

Defendant..

_____ /

On January 20, 2010, Plaintiff Emery I. Franklin, a federal prisoner proceeding pro se and in forma pauperis, filed this civil action pursuant to the Federal Tort Claims Act ("FTCA"). (ECF No. 1.) The action proceeds on Plaintiff's Second Amended Complaint for negligence against the United States. (ECF No. 13.) Defendant filed its Answer on April 19, 2012. (ECF No. 22.)

Plaintiff filed a Motion for Summary Judgment on January 30, 2013. (ECF No. 53.) On February 5, 2013, Defendant filed an Ex Parte Request to Extend Time to Respond to the Motion. (ECF No. 56.) The Court on February 6, 2013 granted Defendant's request and extended to March 11, 2013, Defendant's deadline to respond to Plaintiff's Motion. (ECF No. 57.)

1 Pending before the Court is Plaintiff's February 19, 2013 Response to
2 Defendant's Ex Parte Request. (ECF No. 60.) The Court construes this as a request for
3 reconsideration of its February 6, 2013 Order.

4 Rule 60(b)(6) allows the Court to relieve a party from an order and judgment for
5 any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable
6 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
8 moving party "must demonstrate both injury and circumstances beyond his control . . ."
9 Id. In seeking reconsideration of an order, Local Rule 230(j) requires a party to identify
10 the motion or order in issue and when it was made, and show "what new or different
11 facts or circumstances are claimed to exist which did not exist or were not shown upon
12 such prior motion, or what other grounds exist for the motion."

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

21 Plaintiff's request for reconsideration shall be denied.

22 Plaintiff argues Defendant has engaged in discovery and other delaying tactics.
23 He has not identified any new facts, or legal or factual error, or any other reasonable
24 grounds to justify reconsideration of the Court's Order. Indeed, requests for extension
25 of time made before the deadline has passed normally should be and usually are
26 granted absent of bad faith or prejudice to the adverse party. Fed. R. Civ. P. 6(b)(1);
27 Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1259 (9th Cir. 2010). The Court
28 sees no evidence of bad faith or prejudice.

1 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's Response to the
2 Ex Parte Request for Extension of Time construed as a request for reconsideration of
3 the Court's February 6, 2013 Order (ECF No. 60) is DENIED.
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8 IT IS SO ORDERED.

9 Dated: February 28, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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