

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS W. HYSELL,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, et
al,

Defendants.

1:10-cv-01233-AWI-GBC (PC)

ORDER GRANTING PLAINTIFF'S
REQUEST FOR EXTENSION OF TIME
AND DENYING PLAINTIFF'S REQUEST
FOR RECONSIDERATION

(ECF No. 11)

AMENDED COMPLAINT DUE WITHIN
THIRTY DAYS

Plaintiff is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 4, 2011, Plaintiff filed a motion requesting an extension of time to file an amended complaint and requesting that the Court reconsider its Screening Order dismissing Plaintiff's Complaint, with leave to amend, for failure to state a claim.

Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ." exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The moving party "must demonstrate both injury and circumstances beyond his control . . ." Id. (internal quotation marks and citation omitted). Further, Local Rule 230(j) requires, in relevant

1 part, that Plaintiff show “what new or different facts or circumstances are claimed to
2 exist which did not exist or were not shown upon such prior motion, or what other
3 grounds exist for the motion,” and “why the facts or circumstances were not shown at
4 the time of the prior motion.”

5 “A motion for reconsideration should not be granted, absent highly unusual
6 circumstances, unless the district court is presented with newly discovered evidence,
7 committed clear error, or if there is an intervening change in the controlling law,” and it
8 “may *not* be used to raise arguments or present evidence for the first time when they
9 could reasonably have been raised earlier in the litigation.” Marlyn Nutraceuticals, Inc.
10 v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations
11 marks and citations omitted) (emphasis in original).

12 Plaintiff states that his Complaint should have been screened using the
13 Racketeering Influence Corruption Organization Act and not Section 1983 standards.
14 In it’s Screening Order, the Court did analyze Plaintiff’s RICO claim using the RICO
15 standard. (ECF No. 10, pp. 18-20.) The Court then proceeded to analyze Plaintiff’s
16 other claims using the applicable standards. Plaintiff merely stating that the Court
17 used the wrong standard to screen his complaint does not make it so. Plaintiff fails to
18 cite any authority for his proposition that the Court should re-screen his Complaint
19 using only the RICO standard.

20 Accordingly, the Court HEREBY finds that:

- 21 1. Plaintiff’s Motion for Reconsideration is DENIED;
- 22 2. Plaintiff’s request for an extension of time is GRANTED; and
- 23 3. Plaintiff’s Amended Complaint is due within thirty days of the date of
24 service of this Order.

25 IT IS SO ORDERED.

26 Dated: August 11, 2011

27 
28 UNITED STATES MAGISTRATE JUDGE