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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 KEVIN E. FIELDS,

12 Plaintiff,

13 vs.

14 P. PATTERSON, et al.,

15 Defendants.
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1:10-cv-01700-LJO-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 39.)

THIRTY DAY DEADLINE TO FILE MOTION
FOR LEAVE TO AMEND, AS INSTRUCTED
BY THIS ORDER

18 **I. BACKGROUND**

19 Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se in this civil rights
20 action filed pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff's First
21 Amended Complaint filed on May 31, 2013, against defendant C/O Patterson for use of
22 excessive force; against defendants C/O Patterson and Sgt. Molina for retaliation; and against
23 defendants Sgt. Molina and Lt. Finley for failure to comply with state law. (Doc. 16.)

24 On June 10, 2014, the court issued a scheduling order in this action establishing pretrial
25 deadlines for the parties, including a deadline of February 10, 2015 for the completion of
26 discovery. (Doc. 31.) Thus, this case is presently in the discovery phase.

27 On September 10, 2014, Defendants filed a motion for partial summary judgment,
28 which is pending. (Doc. 35.)

1 On November 3, 2014, Plaintiff filed a motion for re-screening of the First Amended
2 Complaint. (Doc. 39.) The court construes this motion as a motion for reconsideration of the
3 court's screening order of February 5, 2014. Plaintiff's motion for reconsideration is now
4 before the court.

5 **II. MOTION FOR RECONSIDERATION**

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

15 "A motion for reconsideration should not be granted, absent highly unusual
16 circumstances, unless the district court is presented with newly discovered evidence, committed
17 clear error, or if there is an intervening change in the controlling law," Marlyn Nutraceuticals,
18 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations
19 marks and citations omitted, and "[a] party seeking reconsideration must show more than a
20 disagreement with the Court's decision, and recapitulation . . ." of that which was already
21 considered by the Court in rendering its decision," U.S. v. Westlands Water Dist., 134
22 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a
23 strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare
24 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and
25 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

26 **III. DISCUSSION**

27 Plaintiff requests the court to reconsider its findings in the screening order of February
28 5, 2014. Plaintiff argues that the court failed to recognize all of his claims for retaliation and

1 found a state law claim that he did not intend to bring. Plaintiff asserts that when he agreed to
2 proceed on the claims found cognizable by the court, he was being treated with Morphine,
3 Lisinopril, Amlodipine, and Metoprolol Tartrate, medications which have many side effects.

4 Plaintiff appears to argue that he misinterpreted the court's screening order because he
5 was under the influence of medications on or about February 18, 2014, when he notified the
6 court he was willing to proceed with the claims found cognizable by the court. As evidence,
7 Plaintiff has submitted copies of documents dated July 15, 2014, instructing Plaintiff about the
8 effects of taking Morphine Sulfate Oral tablets, Lisinopril Oral tablets, Metoprolol Tartrate
9 Oral tablets, and Amlodipine Besylate Oral tablets. (Exhibits, Doc. 39 at 13-24.) These
10 documents do not support Plaintiff's assertion that he was taking morphine on February 18,
11 2014. Moreover, Plaintiff has not described what effects he experienced from the medications
12 that clouded his judgment. Further, Plaintiff has not explained why he waited eight months to
13 bring a motion for reconsideration, why he notified the court again on March 10, 2014, of his
14 willingness to proceed, or why he submitted documents on April 4, 2014 to proceed with
15 service, if he disagreed with the court's screening order. The court finds that Plaintiff has not
16 set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
17 decision. Therefore, the motion for reconsideration shall be denied.

18 At this stage of the proceedings, if Plaintiff disagrees with the court's screening order,
19 his remedy is to file a motion for leave to amend, requesting leave to file a Second Amended
20 Complaint, or file a motion to dismiss the claims he did not intend to bring. Plaintiff shall be
21 granted thirty days in which to file a motion for leave to amend, if he so wishes. The motion
22 for leave to amend must be accompanied by Plaintiff's proposed Second Amended Complaint,
23 for the court's review. The proposed Second Amended Complaint must clearly and succinctly
24 state the allegations and claims upon which Plaintiff wishes to proceed. Plaintiff is advised that
25 courts "need not grant leave to amend where the amendment: (1) prejudices the opposing
26 party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile."
27 AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006) (quoting
28 Fed. R. Civ. P. 15(a)). If Plaintiff does not file a motion for leave to amend within thirty days,

1 this case shall proceed with the First Amended Complaint on the claims found cognizable by
2 the court in the screening order.

3 **IV. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for reconsideration, filed on November 3, 2014, is DENIED;
- 6 2. Plaintiff is granted thirty days from the date of service of this order to file a
7 motion for leave to amend, as instructed by this order, if he so wishes; and
- 8 3. If Plaintiff does not file a motion for leave to amend within thirty days pursuant
9 to this order, this case shall proceed with the First Amended Complaint on the
10 claims found cognizable by the court in the screening order of February 5, 2014.

11
12 IT IS SO ORDERED.

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14 Dated: November 5, 2014

/s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE