

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

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GARRISON JOHNSON,	)	1:10-cv-01918 LJO DLB PC
	)	
Plaintiff,	)	ORDER DENYING MOTION FOR
	)	RECONSIDERATION
vs.	)	[ECF No. 71]
	)	
JEFFREY A. BEARD, et al.,	)	
	)	
Defendants.	)	

---

Plaintiff Garrison Johnson (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. He filed this action on October 14, 2010.

On September 22, 2014, Plaintiff filed a Second Amended Complaint. On October 14, 2014, Defendants filed a motion to dismiss for failure to state a claim. On October 27, 2014, Plaintiff filed a motion to deny Defendants’ motion to dismiss. Defendants filed a response to Plaintiff’s motion on October 30, 2014.

On November 7, 2014, the Magistrate Judge issued a Findings and Recommendation that recommended the action be dismissed for failure to state a claim. On November 10, 2014, Plaintiff filed an opposition to the motion to dismiss as well as a response to Defendants’ response to his motion. On December 1, 2014, Defendants filed a reply to Plaintiff’s response. On December 3, 2014, the Court construed Plaintiff’s opposition to the motion to dismiss and his response to Defendants’ response to his motion as an objection to the Magistrate Judge’s

1 Findings and Recommendation. The Court adopted the Findings and Recommendation in full  
2 and dismissed the second amended complaint without leave to amend, thereby terminating the  
3 action. On December 8, 2014, Plaintiff filed objections to the Findings and Recommendation.  
4 On December 9, 2014, Defendants filed a response to the objections and suggested that the  
5 objections be construed as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P.  
6 59(e). On January 5, 2015, Plaintiff filed a motion for reconsideration pursuant to Fed. R. Civ.  
7 P. 60(a),(b).  
8

### 9 DISCUSSION

10 Rule 60(a) allows the Court to “correct a clerical mistake or a mistake arising from  
11 oversight or omission whenever one is found in a judgment, order or other part of the record.”

12 Rule 60(b) allows the Court to relieve a party from an order for “(1) mistake, inadvertence,  
13 surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence,  
14 could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud  
15 (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an  
16 opposing party; (4) the judgment is void; or (6) any other reason that justifies relief.”

17 Fed.R.Civ.P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent  
18 manifest injustice and is to be utilized only where extraordinary circumstances ...” exist. Harvest  
19 v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted).  
20

21 The moving party “must demonstrate both injury and circumstances beyond his control....” Id.  
22 (internal quotation marks and citation omitted). In seeking reconsideration of an order, Local  
23 Rule 230(k) requires Plaintiff to show “what new or different facts or circumstances are claimed  
24 to exist which did not exist or were not shown upon such prior motion, or what other grounds  
25 exist for the motion.”

26 “A motion for reconsideration should not be granted, absent highly unusual  
27 circumstances, unless the district court is presented with newly discovered evidence, committed  
28

1 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,  
2 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.2009) (internal quotations marks  
3 and citations omitted, and “[a] party seeking reconsideration must show more than a  
4 disagreement with the Court's decision, and recapitulation ...” of that which was already  
5 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134 F.Supp.2d  
6 1111, 1131 (E.D.Cal.2001). To succeed, a party must set forth facts or law of a strongly  
7 convincing nature to induce the court to reverse its prior decision. See Kern–Tulare Water Dist.  
8 v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *affirmed in part and reversed in*  
9 *part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

10  
11 Here, Plaintiff requests that the Court reconsider the order adopting the Findings and  
12 Recommendation and dismissing the action for failure to state a claim. Plaintiff contends that he  
13 timely filed objections which were not considered by the Court because the Court mistakenly  
14 construed, as his objections, the opposition and reply he filed after the Findings and  
15 Recommendation were issued. Plaintiff is advised that the Court construed his pleadings as  
16 objections because he had already responded to Defendants’ motion to dismiss. Since Plaintiff  
17 had previously responded to Defendants’ motion to dismiss, the pleadings he filed after the  
18 Findings and Recommendations were logically construed as his response thereto.

19  
20 In any case, the objections would not alter this Court’s determination that the Findings  
21 and Recommendations were supported by the record and proper analysis. In his objections,  
22 Plaintiff states his disagreement with the Magistrate Judge’s Findings and Recommendation.  
23 Then, in support of his disagreement, Plaintiff merely incorporates by reference the arguments he  
24 set forth in his opposition motion. These are the very same arguments the Court construed and  
25 considered as his objections which Plaintiff now complains was done in error. In other words,  
26 Plaintiff complains that the Court considered his opposition motion as his objections rather than  
27 the objections he later filed, yet he asks the Court to reconsider its decision by referring the Court  
28

1 to arguments he presented in his opposition motion. Since in effect Plaintiff presents the exact  
2 same arguments in his objections as he did in his opposition motion, the Court finds no reason to  
3 grant reconsideration.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration is  
6 DENIED.

7  
8 IT IS SO ORDERED.

9 Dated: March 17, 2015

10 /s/ Lawrence J. O'Neill  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28