

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT E. THOMPSON,

Plaintiff,

v.

J. HARTLEY, et al.,

## Defendants.

CASE NO. 1: 10-cv-02260-LJO-MJS (PC)

ORDER DENYING MOTION TO ALTER  
OR AMEND THE JUDGMENT  
(ECF No. 57)

## I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 28 U.S.C. § 1983. (ECF No. 1 & 4.) The action proceeds on an excessive force claim against Defendants Tercero and Campbell. (ECF No. 22.)

Before the Court is Plaintiff's May 11, 2015 Motion to alter or amend the judgment granting Defendants' motion for summary judgment and closing the case. (ECF No. 57.)

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) allows a party to move to alter or amend a judgment. Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party

1 from an order for any reason that justifies relief. Rule 60(b)(6) “is to be ‘used sparingly  
2 as an equitable remedy to prevent manifest injustice and is to be utilized only where  
3 extraordinary circumstances” exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)  
4 (quoting *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).  
5 The moving party “must demonstrate both injury and circumstances beyond his control.”  
6 *Latshaw*, 452 F.3d at 1103. In seeking reconsideration of an order, Local Rule  
7 230(j) requires a party to show “what new or different facts or circumstances are claimed  
8 to exist which did not exist or were not shown upon such prior motion, or what other  
9 grounds exist for the motion.”

10 “A motion for reconsideration should not be granted, absent highly unusual  
11 circumstances, unless the . . . court is presented with newly discovered evidence,  
12 committed clear error, or if there is an intervening change in the controlling law,” *Marlyn*  
13 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009),  
14 and “[a] party seeking reconsideration must show more than a disagreement with the  
15 Court’s decision, and ‘recapitulation . . .’ of that which was already considered by the  
16 court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111,  
17 1131 (E.D. Cal. 2001) (quoting *Birmingham v. Sony Corp. of Am., Inc.*, 820 F. Supp.  
18 834, 856 (D. N.J. 1992)).

19 **III. ANALYSIS**

20 Plaintiff moves to have the order granting Defendants’ motion for summary  
21 judgment altered or amended, but he fails to state how or in what regard it should be  
22 altered or amended. If Plaintiff is seeking a determination that Defendants’ motion be  
23 denied, and the case reopened, Plaintiff has not shown clear error or other meritorious  
24 relief from the Court’s order. Plaintiff references a grievance that was turned into an  
25 internal affairs complaint and requests additional discovery as to when this occurred so  
26 that he can prove his administrative remedies were exhausted. However, it is not clear  
27 how this internal affairs complaint has any bearing on Plaintiff’s failure to demonstrate  
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1 that the administrative grievance process was unavailable to him from March 9, 2009 to  
2 April 19, 2009. Plaintiff does not state what this internal affairs complaint was about,  
3 when he submitted it, how it is relevant to the issues raised in Defendants' motion, and  
4 why he was unable to bring it to the attention to the Court sooner.

5 **IV. CONCLUSION AND ORDER**

6 Based on the foregoing, it is HEREBY ORDERED that:

7 Plaintiff's motion to alter or amend the judgment (ECF No. 9.) is DENIED.

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9 IT IS SO ORDERED.

10 Dated: May 22, 2015

11 /s/ Lawrence J. O'Neill  
12 UNITED STATES DISTRICT JUDGE

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