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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAUL ERNEST ALONSO-PRIETO,  
Plaintiff,  
v.  
B. PIERCE,  
Defendant.

CASE NO. 1:11-cv-0024-MJS  
**ORDER REGARDING RESPONSE TO  
ORDER TO SHOW CAUSE, PRETRIAL  
STATEMENT, AND NOTICE OF APPEAL  
(ECF No. 82)**

**I. PROCEDURAL HISTORY**

Plaintiff is a former federal prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388. (ECF Nos. 4 & 17.) The action proceeded on Plaintiff's second amended complaint (ECF No. 17) against Defendant Pierce for excessive force in violation of the Eighth amendment. (ECF Nos. 21 & 25.)

The Courts' second scheduling order required Plaintiff to file and serve his pretrial statement on or before November 3, 2014. (ECF No. 60.) The deadline passed without

1 Plaintiff filing the statement or seeking an extension of time to do so. On November 17,  
2 2014, the Court ordered Plaintiff to file a pretrial statement or show cause why the action  
3 should not be dismissed with prejudice in light of Plaintiff's failure to obey the Court's  
4 second scheduling order. (ECF No. 73.) In that Order, the Court warned that if dismissal  
5 resulted, dismissal without prejudice would not be appropriate.

6 The deadline for Plaintiff to show cause passed without any response from  
7 Plaintiff. The action was dismissed on December 10, 2014. (ECF No. 80.)

8 On December 12, 2014, Plaintiff filed a response to the order to show cause, a  
9 pretrial statement, and a notice of appeal. (ECF No. 82.) The Court construes Plaintiff's  
10 response to the order to show cause and his pretrial statement as a motion for  
11 reconsideration of the Court's December 10, 2014 dismissal order.

## 12 **II. LEGAL STANDARD**

13 "A motion for reconsideration should not be granted, absent highly unusual  
14 circumstances, unless the district 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 "A motion for reconsideration may not be used to raise arguments or present evidence  
18 for the first time when they could reasonably have been raised in earlier litigation." Id.  
19 Moreover, "recapitulation of the cases and arguments considered by the court before  
20 rendering its original decision fails to carry the moving party's burden." U.S. v. Westlands  
21 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony  
22 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)  
23 requires that a party seeking reconsideration show that "new or different facts or  
24 circumstances are claimed to exist which did not exist or were not shown upon such  
25 prior motion, or what other grounds exist for the motion . . . ."

## 26 **III. ANALYSIS**

27 In his response to the order to show cause, Plaintiff states his continuing  
28 disagreement with the Court's rulings on discovery matters in this case. (ECF No. 82 at

1 1-2.) Discovery issues were addressed in the Court's order denying Plaintiff's motion to  
2 compel, for reconsideration, recusal, and transfer of venue. (ECF No. 71.) They also  
3 were addressed in the Court's order denying Plaintiff's motion for clarification. (ECF No.  
4 79.) Plaintiff does not provide any new arguments that would warrant reconsideration of  
5 the Court's dismissal order. See Westlands Water Dist., 134 F. Supp. 2d at 1131.

6 Plaintiff's "informal pretrial statement" is deficient in several respects. It briefly  
7 summarizes the facts Plaintiff intends to prove. It goes on to discuss documentary  
8 evidence Plaintiff would like to present, but which, according to him, has been destroyed.  
9 It then lists intended witnesses, to include four medical personnel who appear to be  
10 associated with the prison, one inmate witness, and 29 unnamed inmate witnesses  
11 whose names Defendants allegedly refused to release.

12 The Court's second scheduling order (ECF No. 60) advised Plaintiff that his  
13 pretrial statement would have to comply with Local Rule 281. A copy of the Rule was  
14 sent to Plaintiff. Plaintiff's pretrial statement does not comply; it does not address each of  
15 the matters specified by that Rule.

16 The order also informed Plaintiff, at length, of the procedures required to obtain  
17 the attendance of incarcerated and unincarcerated witnesses. Plaintiff did not comply  
18 with these procedures. He did not file a motion for attendance of incarcerated witnesses  
19 or a declaration indicating that his incarcerated witness was willing to testify voluntarily.  
20 He also did not indicate whether his unincarcerated medical witnesses were willing to  
21 testify voluntarily; he did not, as an alternative, file a motion to ensure their attendance or  
22 pay the required witness fees and travel expenses.

23 In light of these deficiencies, Plaintiff's pretrial statement does not provide a basis  
24 for reconsideration of the Court's dismissal order. See Marlyn Nutraceuticals, Inc., 571  
25 F.3d at 880.

#### 26 **IV. ORDER**

27 Based on the foregoing, Plaintiff's response to the order to show cause and  
28 pretrial statement (ECF No. 82), which the Court construes as a motion for

1 reconsideration, is HEREBY DENIED. The case remains dismissed.

2 The Clerk of Court is directed to process Plaintiff's notice of appeal. (ECF No. 82.)

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4 IT IS SO ORDERED.

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Dated: December 15, 2014

*1st Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE

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