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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 LAMONT SHEPARD,

10 Plaintiff,

11 vs.

12 COHEN, et al.,

13 Defendants.  
14

1:11-cv-00535-GSA-PC

ORDER DENYING MOTION FOR  
RECONSIDERATION  
(Doc. 55.)

15 **I. BACKGROUND**

16 Lamont Shepard ("Plaintiff") is a state prisoner proceeding pro se in this civil rights  
17 action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action  
18 on March 30, 2011. (Doc. 1.) This action now proceeds on the Second Amended Complaint  
19 against defendants Dr. Cohen, Sgt. J. Lopez, Correctional Officer (C/O) Z. Dean, C/O J.  
20 Campbell, and Vera Brown (LVN) on Plaintiff's due process claim and against defendants Dr.  
21 Cohen, Sgt. J. Lopez, C/O Z. Dean, and C/O J. Campbell on Plaintiff's excessive force claim.  
22 (Doc. 41.)

23 On May 9, 2014, Plaintiff filed a motion to compel. (Doc. 40.) On August 12, 2014,  
24 the court issued an order denying the motion. (Doc. 50.) On August 22, 2014, Plaintiff filed  
25 objections to the order, which the court treats as a motion for reconsideration. (Doc. 55.)

26 **II. MOTION FOR RECONSIDERATION**

27 Rule 60(b) allows the Court to relieve a party from an order for "(1) mistake,  
28 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with

1 reasonable diligence, could not have been discovered in time to move for a new trial under  
2 Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or  
3 misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that justifies  
4 relief.” Fed. R. Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to  
5 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .”  
6 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and  
7 citation omitted). The moving party “must demonstrate both injury and circumstances beyond  
8 his control . . . .” Id. (internal quotation marks and citation omitted). In seeking  
9 reconsideration of an order, Local Rule 230(k) requires Plaintiff to show “what new or different  
10 facts or circumstances are claimed to exist which did not exist or were not shown upon such  
11 prior motion, or what other grounds exist for the motion.”

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

### 23 Discussion

24 Plaintiff takes issue with the statement in the court’s order that he failed to file a timely  
25 reply to Defendants’ opposition to the motion to compel. (Order, Doc. 50 at 2:5-7.) Plaintiff  
26 asserts that on July 31, 2014, he prepared a reply titled “Plaintiff’s Opposition to Defendant’s  
27 Motion Opposition to Plaintiff’s Motion to Compel” and delivered it to prison officials for  
28 mailing. Plaintiff requests the court’s consideration of this reply.

1 The motion to compel at issue was filed by Plaintiff on May 9, 2014.<sup>1</sup> (Doc. 40.)  
2 Defendants filed their opposition on May 23, 2014. (Doc. 42.) Under Local Rule 230(l),  
3 Plaintiff had seven (7) days from May 23, 2014, the date of filing of the Defendants'  
4 opposition, in which to file a reply to the opposition.<sup>2</sup> Plaintiff did not file any reply until  
5 August 7, 2014, when he filed a document dated July 31, 2014, titled "Plaintiff's Opposition to  
6 Defendant's Motion Opposition to Plaintiff's Motion to Compel." (Doc. 49.) Even under the  
7 mailbox rule, this reply was filed untimely under Rule 230(l).<sup>3</sup>

8 Plaintiff has not set forth facts or law of a strongly convincing nature to induce the court  
9 to reverse its prior decision.

10 **III. CONCLUSION**

11 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for  
12 reconsideration, filed on June 18, 2014, is DENIED.

13  
14 IT IS SO ORDERED.

15 Dated: August 25, 2014

16 /s/ Gary S. Austin  
17 UNITED STATES MAGISTRATE JUDGE  
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20  
21 <sup>1</sup> Plaintiff filed a second motion to compel on July 7, 2014, which is not at issue here. (Doc. 45.) It appears to the court that Plaintiff filed his August 7, 2014 reply in response to the opposition to **this** motion to compel.

22 <sup>2</sup> Local Rule 230 (l) provides: **Motions in Prisoner Actions.** All motions, except motions to dismiss for lack of  
23 prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the  
24 record without oral argument unless otherwise ordered by the Court. Such motions need not be noticed on the motion calendar.  
25 Opposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one  
26 (21) days after the date of service of the motion. A responding party who has no opposition to the granting of the motion shall  
serve and file a statement to that effect, specifically designating the motion in question. Failure of the responding party to file  
an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion  
and may result in the imposition of sanctions. **The moving party may, not more than seven (7) days after the opposition has  
been filed in CM/ECF, serve and file a reply to the opposition.** All such motions will be deemed submitted when the time to  
reply has expired. L.R. 230(l) (emphasis added).

27 <sup>3</sup> Based on the mailbox rule of Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379 (1988), a pro se prisoner's court  
28 filing is deemed filed at the time the prisoner delivers it to prison authorities for forwarding to the court clerk. Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009).