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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LAMONT SHEPARD,

12 Plaintiff,

13 vs.

14 COHEN, et al.,

15 Defendants.
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1:11-cv-00535-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 57.)

17 **I. BACKGROUND**

18 Lamont Shepard ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
19 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
20 commencing this action on March 30, 2011. (Doc. 1.) This action now proceeds on the
21 Second Amended Complaint filed on May 19, 2014, against defendants Dr. Cohen, Sgt. J.
22 Lopez, Correctional Officer (C/O) Z. Dean, C/O J. Campbell, and Vera Brown (LVN) on
23 Plaintiff's due process claim and against defendants Dr. Cohen, Sgt. J. Lopez, C/O Z. Dean, and
24 C/O J. Campbell on Plaintiff's excessive force claim. (Doc. 41.)

25 On July 7, 2014, Plaintiff filed a motion to compel and for sanctions. (Doc. 45.) On
26 August 13, 2014, the court issued an order granting the motion to compel and denying the
27 motion for sanctions, without prejudice to renewal of the motion for sanctions within thirty
28 days, showing evidence of his costs in bringing the motion to compel. (Doc. 51.) On August

1 28, 2014, Plaintiff filed objections to the order denying the motion for sanctions, which the
2 court treats as a motion for reconsideration. (Doc. 57.)

3 **II. MOTION FOR RECONSIDERATION**

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

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

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