

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

THOMAS GOOLSBY,)	1:11cv01773 DLB PC
)	
Plaintiff,)	ORDER DENYING PLAINTIFF’S
)	MOTION FOR RECONSIDERATION
vs.)	
)	(Document 40)
CATE, et al.,)	
)	
Defendants.)	

Plaintiff Thomas Goolsby (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 25, 2011.¹

This action is proceeding on First Amendment retaliation claims and due process claims against Defendants Holland, Steadman, Gutierrez, Noyce, Tyree, Gentry, Eubanks, Medrano and Holman.

Defendants’ November 26, 2013, Motion to Dismiss is currently pending. Plaintiff’s December 11, 2013, Motion to Stay is also pending.

¹ On December 5, 2011, Plaintiff consented to the jurisdiction of the United States Magistrate Judge.

1 On December 6, 2013, Plaintiff filed a request for entry of default against Defendant
2 Holman. The Court denied the request on December 17, 2013, explaining that there was no
3 evidence in the record that Defendant Holman had been served.

4 On December 26, 2013, Plaintiff filed this Motion for Reconsideration of the denial of his
5 request for entry of default.

6 **LEGAL STANDARD**

7 Rule 60(b)(6) allows the Court to relieve a party from a final judgment, order, or
8 proceeding for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an
9 equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary
10 circumstances ...” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir.2008). The moving party
11 “must demonstrate both injury and circumstances beyond his control....” Id. In seeking
12 reconsideration of an order, Local Rule 230(j) requires a party to identify the motion or order in
13 issue and when it was made, and show “what new or different facts or circumstances are claimed
14 to exist which did not exist or were not shown upon such prior motion, or what other grounds
15 exist for the motion.”

16
17 “A motion for reconsideration should not be granted, absent highly unusual
18 circumstances, unless the ... court is presented with newly discovered evidence, committed clear
19 error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals, Inc. v.
20 Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.2009), and “[a] party seeking
21 reconsideration must show more than a disagreement with the [c]ourt’s decision, and
22 recapitulation ...” of that which was already considered by the court in rendering its decision.
23 U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D.Cal.2001).

24
25 Motions to reconsider are committed to the discretion of the trial court. Combs v. Nick
26 Garin Trucking, 825 F.2d 437, 441 (D.C.Cir.1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th
27 Cir.1983). To succeed, a party must set forth facts or law of a strongly convincing nature to
28

1 induce the court to reverse its prior decision. See e.g., Kern–Tulare Water Dist. v. City of
2 Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal.1986), aff’d in part and rev’d in part, 828 F.2d 514
3 (9th Cir.1987).

4 **DISCUSSION**

5 Here, Plaintiff bases his Motion for Reconsideration on the recent waiver of service filed
6 on behalf of Defendant Holman. He contends that now that there is proof of service, default
7 should be entered.

8 Plaintiff is correct that Defendant Holman has been served. According to the waiver and
9 the proof of service provided by Plaintiff, Defendant Holman was served on December 2, 2013.
10 Defendant Holman was therefore required to file a response within 60 days of December 2,
11 2013. Fed. R. Civ. Proc. 4(d)(3).

12 On December 13, 2013, Defendant Holman appeared in this action and joined in
13 Defendants’ November 26, 2013, Motion to Dismiss.

14 Plaintiff’s Motion for Reconsideration is therefore without merit. Defendant Holman has
15 now been served and, most importantly, he has filed a response within the allotted time.

16 Accordingly, Plaintiff’s Motion for Reconsideration is DENIED.

17
18
19 IT IS SO ORDERED.

20 Dated: January 8, 2014

21 /s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28