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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROBIN DASENBROOK,) Case No.: 1:11-cv-01884 AWI DLB PC
)
Plaintiff,) ORDER DISMISSING MOTION FOR ISSUANCE
) OF SUBPOENAS AND MOTIONS FOR
) CLARIFICATION
v.) [ECF No. 94, 99, 100]
)
) ORDER DISMISSING REQUEST FOR RULING
) [ECF No. 97]
A. ENENMOH, et al.,)
) ORDER DENYING PLAINTIFF’S MOTION FOR
Defendants.) RECONSIDERATION
) [ECF No. 95]
)

Plaintiff Robin Dasenbrook (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 28 U.S.C. § 1983. This action is proceeding against Defendants Enenmoh, Page, Perez, and blonde Doe 1 for claims of negligence and deliberate indifference to a serious medical need in violation of the Eighth Amendment.

On October 8, 2014, Plaintiff filed a motion for issuance of subpoenas and service by the U.S. Marshal, as well as a motion for reconsideration. On October 9, 2014, he filed a motion requesting a ruling. On October 29, 2014, he filed two motions for clarification.

1 I. Motions for Issuance of Subpoenas and Clarification [ECF Nos. 94, 99, 100]

2 On October 8, 2014, Plaintiff filed a motion for the Clerk of Court to issue subpoenas duces
3 tecum. On October 15, 2014, the Court issued an order authorizing the issuance of a subpoena duces
4 tecum. Fed. R. Civ. P. 4, 45; 28 U.S.C. § 1915(d). Therefore, Plaintiff’s motion is moot.

5 On October 29, 2014, Plaintiff filed two motions for clarification concerning the Court’s order
6 authorizing issuance of the subpoena duces tecum. Plaintiff acknowledges that the order stated that
7 the subpoena duces tecum would be issued after the passage of ten days. However, Plaintiff states he
8 does not know how service of the subpoena will be effected. Plaintiff is advised that, by separate
9 order, the Court will direct the U.S. Marshal to serve the subpoena.

10 II. Request for Ruling [ECF No. 97]

11 On October 9, 2014, Plaintiff filed a motion requesting a ruling on the numerous motions he
12 filed. On October 15, 2014, the Court resolved those motions. Therefore, Plaintiff’s request for a
13 ruling is moot.

14 III. Motion for Reconsideration [ECF No. 95]

15 On October 8, 2014, Plaintiff filed a motion for reconsideration of this Court’s order of
16 September 17, 2014, denying several of his motions. Rule 60(b) allows the Court to relieve a party
17 from an order for “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
18 evidence that, with reasonable diligence, could not have been discovered in time to move for a new
19 trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation,
20 or misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that justifies
21 relief.” Fed.R.Civ.P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
22 manifest injustice and is to be utilized only where extraordinary circumstances ...” exist. Harvest v.
23 Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The
24 moving party “must demonstrate both injury and circumstances beyond his control....” Id. (internal
25 quotation marks and citation omitted). In seeking reconsideration of an order, Local Rule 230(k)
26 requires Plaintiff to show “what new or different facts or circumstances are claimed to exist which did
27 not exist or were not shown upon such prior motion, or what other grounds exist for the motion.”
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1 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
2 unless the district court is presented with newly discovered evidence, committed clear error, or if there
3 is an intervening change in the controlling law,” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH
4 & Co., 571 F.3d 873, 880 (9th Cir.2009) (internal quotations marks and citations omitted, and “[a]
5 party seeking reconsideration must show more than a disagreement with the Court's decision, and
6 recapitulation ...” of that which was already considered by the Court in rendering its decision,” U.S. v.
7 Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D.Cal.2001). To succeed, a party must set forth
8 facts or law of a strongly convincing nature to induce the court to reverse its prior decision. See Kern-
9 Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *affirmed in part and*
10 *reversed in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

11 Here, Plaintiff requests that the Court reconsider the order denying several of his motions.
12 Plaintiff argues that the Court erroneously determined that Defendant Page’s answer was timely. He
13 states the Court determined that her waiver of service was executed on February 3, 2014. He argues
14 that her answer, filed on March 7, 2014, was beyond the twenty-one day deadline set forth in Fed. R.
15 Civ. P. 12(a)(1)(A)(i). However, this rule does not apply. Defendant Page waived service under Rule
16 4(d). Therefore, under Fed. R. Civ. P. 12(a)(1)(A)(ii), she had sixty (60) days to file a responsive
17 pleading. The March 7, 2014, filing was therefore timely. Plaintiff argues that Defendant Page
18 entered the action when Defendants filed a motion for extension of time on January 30, 2014. Even if
19 the Court were to consider January 30, 2014 as the starting date, the answer is still timely.
20 Accordingly, Plaintiff’s motion for reconsideration of the order denying his motions for default and
21 contempt are denied.

22 Plaintiff also complains that his deposition was conducted on January 29, 2014, without
23 Defendant having first obtained leave of court pursuant to Fed. R. Civ. P. § 30(a)(2)(B). However,
24 Defendant sought leave of court on January 8, 2014. The Court inadvertently did not address the
25 motion until recently, but the motion would have been granted at that time. Therefore, Plaintiff’s
26 motion to reconsider the order denying Plaintiff’s motion to exclude his deposition is denied.
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1 Plaintiff further complains that he does not have a full copy of his deposition transcript. As
2 stated before, Plaintiff is not entitled to a free copy of his deposition transcript. Fed. R. Civ. P.
3 30(f)(3).

4 Last, Plaintiff asks the Court to reconsider its ruling concerning Plaintiff's request for
5 extension of time to locate Defendant Perez. By separate order, the Court will direct the U.S. Marshal
6 to re-serve the summons and complaint on Defendant Perez. Therefore, the request for extension of
7 time is moot.

8 **ORDER**

9 Accordingly, IT IS HEREBY ORDERED:

- 10 1) Plaintiff's motion for issuance of subpoena and motions for clarification are DISMISSED;
11 2) Plaintiff's request for ruling is DISMISSED; and
12 3) Plaintiff's motion for reconsideration is DENIED.

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14 IT IS SO ORDERED.

15 Dated: November 6, 2014

16 /s/ Dennis L. Beck
17 UNITED STATES MAGISTRATE JUDGE
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