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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBIN SCOTT DASENBROCK,

 Plaintiff,

 v.

KINGS COUNTY, et al.,

 Defendants.

Case No. 1:11-cv-01884-DLB PC

**ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION**

ECF No. 12

Plaintiff Robin Scott Dasenbrock (“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 action pursuant to 42 U.S.C. § 1983. On November 14, 2011, Plaintiff filed his complaint. ECF No. 1. On September 24, 2012, the Court screened Plaintiff’s complaint and ordered Plaintiff either to file a first amended complaint curing the deficiencies identified or notify the Court that he wished to proceed only on the claims found to be cognizable. ECF No. 10. The Court found that Plaintiff stated claims for deliberate indifference in violation of the Eighth Amendment and negligence against Defendants Enenmoh, Perez, Doe 1, and Page. The Court also ordered that Plaintiff could not proceed with all four Defendants in the same action, finding that Plaintiff was not in compliance with Rule 20(a)(2) of the Federal Rules of Civil Procedure. Plaintiff failed to state a claim against Defendants Kelso, Walker, Parvez, and Ybarra. On October 15, 2012, Plaintiff filed a motion seeking reconsideration. ECF No. 12.

1 Federal Rule of Civil Procedure 60(b) governs relief from orders of the district court. The
2 Rule permits a district court to relieve a party from a final order or judgment on grounds of: “(1)
3 mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud . . . by an opposing party, . . . or
4 (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b). The motion for reconsideration must
5 be made within a reasonable time. *Id.*

6 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
7 unless the district court is presented with newly discovered evidence, committed clear error, or if
8 there is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or
9 present evidence for the first time when they could reasonably have been raised earlier in the
10 litigation.” *Marilyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th
11 Cir. 2009) (internal quotation marks and citation omitted) (emphasis in original).

12 Plaintiff raises two arguments in his motion: 1) Plaintiff does not wish to proceed with three
13 separate actions because all Defendants should be joined in this action and 2) Defendant Parvez
14 should not be dismissed from this action.

15 **A. Permissive Joinder**

16 Plaintiff contends that Defendants Enenmoh, Doe 1, Page, and Perez should all be in the
17 same action. Pl.’s Mot. 1-2. Plaintiff contends that he is in compliance with Rule 20(a)(2) of the
18 Federal Rules of Civil Procedure. Pl.’s Mot. 1-2. Plaintiff further contends that he modeled his
19 pleadings on *Gil v. Reed*, 381 F.3d 649 (7th Cir. 2004), which allegedly allowed several causes of
20 action arising from a prisoner’s medical treatment to proceed in the same action. Pl.’s Mot. 1-2.

21 *Gil* is unpersuasive. The district court in *Gil* allowed the action to proceed on an inmate’s
22 medical care following his rectal prolapse surgery. 381 F.3d at 652. This encompassed incidents in
23 March 1998 and May 2000. *Id.* at 653. For the March 1998 incident, the defendant (physician
24 assistant) had failed to provide the plaintiff with medication following his surgery. *Id.* For the May
25 2000 incident, the defendant (physician) had disagreed with another doctor’s treatment and cancelled
26 medication following a second surgery for the same condition. *Id.* However, Plaintiff’s cognizable
27 claims here do not arise from the same series of transactions or occurrences. Plaintiff’s claim
28 against Defendant Enenmoh involves an alleged substantial delay in providing Plaintiff with a

1 hemorrhoidectomy. Plaintiff's claim against Defendants Perez and Doe 1 involves their alleged
2 refusal to provide Plaintiff with medication on January 2, 2010, after the hemorrhoidectomy
3 occurred. Plaintiff's claim against Defendant Page involves an alleged failure to treat Plaintiff's
4 severe blood loss in February 2010. While these claims may all generally involve Plaintiff's medical
5 care, the Court does not find that they involve the same transaction or occurrence.

6 If Plaintiff chose to amend and were to allege facts which would support a finding of
7 permissive joinder, then Plaintiff's claims against Defendants may proceed in the same action.
8 Based on Plaintiff's pleadings in his complaint, however, Plaintiff has not sufficiently alleged facts
9 which demonstrate that the right to relief against the Defendants arises out of the same transaction or
10 occurrence or series of transactions or occurrence, and that questions of law or fact common to all
11 Defendants will arise in the action. Plaintiff's motion for reconsideration as to this issue is denied.

12 **B. Defendant Parvez**

13 Plaintiff contends that Defendant Parvez violated Plaintiff's rights under the Eighth
14 Amendment. Plaintiff contends that the doctrine of res ipsa loquitur applies to Defendant Parvez's
15 alleged conduct. Pl.'s Mot. 3-4. However, res ipsa loquitur applies only in the context of
16 negligence, not deliberate indifference. *Reber v. United States*, 951 F.2d 961, 964 (9th Cir. 1991)
17 (res ipsa loquitur is form of circumstantial evidence that permits inference of negligence from set of
18 proven facts); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (negligence is not a violation of the
19 Eighth Amendment). Based on Plaintiff's allegations in his original complaint, Plaintiff failed to
20 state a § 1983 claim. Plaintiff's motion for reconsideration as to this issue is denied.

21 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for reconsideration, filed
22 October 15, 2012, is denied.

23
24 IT IS SO ORDERED.

25 Dated: October 30, 2012

/s/ Dennis L. Beck
26 UNITED STATES MAGISTRATE JUDGE