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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY RAY EVANS,	CASE No. 1:12-cv-00284-AWI-MJS (PC)
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	DENYING PLAINTIFF'S MOTION FOR
JUDGE DENNIS L. BECK, et al.,	RECONSIDERATION OF ORDER
Defendants.	DISMISSING THIRD AMENDED
	COMPLAINT WITH LEAVE TO AMEND
	(ECF No. 29)
	OBJECTIONS DUE WITHIN FOURTEEN
	(14) DAYS

**I. PROCEDURAL HISTORY**

Plaintiff Anthony Ray Evans is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff has declined Magistrate Judge jurisdiction. (Decline Jurisdiction, ECF No. 4.)

On July 27, 2012, the Court screened and dismissed Plaintiff's Complaint for failure to state a claim, but gave Plaintiff leave to amend. (Order Dismiss. Compl., ECF No. 11.) On August 16, 2012, Plaintiff filed a First Amended Complaint. (First Am. Compl., ECF No. 14.) On August 17, 2012, Plaintiff requested leave to file a supplemental pleading (Mot. for Leave, ECF Nos. 15) which the Court construed as a motion to file an amended complaint and granted. (Order Granting Leave, ECF No. 16.) On August 23, 2012, Plaintiff filed a Second Amended Complaint. (Second. Am.

1 Compl., ECF No. 18.) On September 4, 2012, Plaintiff lodged a Second Amended  
2 Complaint. (Lodged Second Am. Compl., ECF No. 21.) Pursuant to Plaintiff's  
3 September 17, 2012 Notification of Operative Pleading (Notification, ECF No. 24), the  
4 Clerk filed the lodged Second Amended Complaint as the Third Amended Complaint.  
5 (Third Am. Compl., ECF No. 27.)

6 The Court screened the Third Amended Complaint on October 4, 2012 and  
7 dismissed it for failure to state a claim, giving Plaintiff leave to amend solely as to his  
8 2012 Fourteenth Amendment claims against Defendant Matzen. (Order Dismiss. Third  
9 Am. Compl., ECF No. 28.) Plaintiff filed Objections to the Magistrate Judge's October 4,  
10 2012 Order Dismissing Third Amended Complaint, styled as a Motion for  
11 Reconsideration. (Mot. Recons., ECF No. 29.) The Motion for Reconsideration is now  
12 before the Court.

## 13 **II. ANALYSIS**

14 Plaintiff's Motion for Reconsideration of the October 4, 2012 Order Dismissing  
15 the Third Amended Complaint with Leave to Amend shall be denied.

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

25 "A motion for reconsideration should not be granted, absent highly unusual  
26 circumstances, unless the . . . court is presented with newly discovered evidence,  
27 committed clear error, or if there is an intervening change in the controlling law," Marlyn  
28 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),

1 and “[a] party seeking reconsideration must show more than a disagreement with the  
2 [c]ourt's decision, and recapitulation . . .” of that which was already considered by the  
3 court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,  
4 1131 (E.D. Cal. 2001).

5 Here Plaintiff argues matters already considered by the Court in its October 4th  
6 Order, and offers no new or different facts, circumstances, or other grounds for  
7 reconsideration.

8 He argues the Magjstrate erred in finding an “identity of claims” sufficient under  
9 res judicata doctrine to bar re-litigation of his 2010 Eighth Amendment claims decided  
10 in Anthony Ray Evans v. Gonzales<sup>1</sup> because the claims in Gonzales did not arise from  
11 the same facts alleged in this action. However, he provides no factual or legal support  
12 for this argument, and does not controvert the Magistrate’s finding that as to such  
13 claims both Gonzales and the instant action stem from an identical nucleus of facts,  
14 present identical evidence, and allege infringement of the same federal rights. Claim  
15 preclusion bars litigation of claims that were or could have been raised in a prior action.  
16 Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007)

17 Plaintiff argues that claims in the original Complaint filed in this action are not  
18 identical to claims in the Third Amended Complaint. Such a claim, even if true, would  
19 not bar application of res judicata arising from the entry of final judgment in Gonzales.

20 He argues that the Magistrate erred in finding the claims alleged in his Third  
21 Amended Complaint insufficient to state a cognizable federal claim even absent the  
22 application of res judicata. This is merely a re-hash of matters previously before the  
23 Magistrate, unsupported by any new or different facts or circumstances, or other  
24 grounds and is not sufficient to support the requested relief.

25 He argues that he should not be prevented from filing amended pleadings on  
26 claims barred by res judicata. This argument is unsupported in, and contrary to

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<sup>1</sup> E.D. Cal. Case No. 1:10-cv-01680-DLB PC.

1 applicable law. Likewise his argument that application of res judicata, and leave to  
2 amend as granted in the Court's October 4th Order, somehow prevent him from  
3 exhausting remedies under the Prison Litigation Reform Act ("PLRA") is unsupported  
4 and lacks merit.

5 Finally, he argues that the Magistrate improperly denied him leave to supplement  
6 his prior operative pleading(s). Such denial is not property before the Court, and the  
7 request thereon lacks support. The instant Motion for Reconsideration seeks relief only  
8 as to the October 4, 2012 Order. The Motion for Reconsideration fails to notice relief as  
9 to any order denying supplemental pleading. Any such request for relief is not properly  
10 before the Court. Local Rule 230(j). Moreover, Plaintiff provides no new facts or other  
11 grounds in support of relief from denial of any motion to supplement. His argument that  
12 denial of leave to file a supplemental pleading somehow has prevented his exhaustion  
13 of remedies under the PLRA is unsupported and lacks merit.

14 Plaintiff has been liberally afforded opportunities to file amended pleadings and  
15 to clarify which pleading he desires to be operative. Nothing before the Court suggests  
16 harm or prejudice in these regards.

17 Plaintiff provides no good cause for the reconsideration relief he seeks, no  
18 evidence that he has been or will be prejudiced in any measurable way if the relief is  
19 not granted, and no clear error or other meritorious grounds for relief from the October  
20 4, 2012 Order Dismissing the Third Amended Complaint with Leave to Amend.

### 21 **III. CONCLUSIONS AND RECOMMENDATIONS**

22 Plaintiff has shown no basis for granting a motion for reconsideration.

23 Accordingly, it is RECOMMENDED that Plaintiff's Motion for Reconsideration (ECF  
24 No. 29) be DENIED by the District Judge.

25 These findings and recommendations are submitted to the United States District  
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
27 Within fourteen (14) days after being served with these findings and recommendations, any  
28 party may file written objections with the Court and serve a copy on all parties. Such a

1 document should be captioned "Objections to Magistrate Judge's Findings and  
2 Recommendations." Any reply to the objections shall be served and filed within ten (10)  
3 days after service of the objections. The parties are advised that failure to file objections  
4 within the specified time may waive the right to appeal the District Court's order. Martinez  
5 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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10 IT IS SO ORDERED.

11 Dated: October 31, 2012

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE