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

SY LEE CASTLE,

Plaintiff,

v.

C. CHEN,

Defendants.

Case No. 1:12-cv-00326-MJS (PC)

**ORDER DENYING PLAINTIFF'S MOTION  
FOR (1) RECONSIDERATION, and (2)  
ENTRY OF DEFAULT JUDGMENT**

**(ECF No. 19)**

**I. PROCEDURAL HISTORY**

Plaintiff Sy Lee Castle, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on March 5, 2012 pursuant to 42 U.S.C. § 1983. (ECF No. 1.) This matter proceeds against Defendant Chen on claims of inadequate medical care and retaliation. (ECF Nos. 8, 12.)

Pending before the Court is Plaintiff's motion (ECF No. 19) seeking (1) reconsideration of the Court's order (ECF No. 16) granting Defendant a nunc pro tunc extension of time through September 13, 2013 in which to respond to the complaint, and (2) entry of default judgment against Defendant for failure to respond to the pleading.

**II. ARGUMENT**

Plaintiff argues that Defendant failed to timely respond to the complaint. The Court's order (ECF No. 16) granting Defendant an extension of time to respond to the complaint should be reconsidered and default judgment should be entered against Defendant.

1 **III. ANALYSIS**

2 **A. Reconsideration**

3 Fed. R. Civ. P. 60(b)(6) allows the Court to relieve a party from an order for any  
4 reason that justifies relief. Rule 60(b)(6) is to be used sparingly as an equitable remedy to  
5 prevent manifest injustice and is to be utilized only where extraordinary circumstances  
6 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008).

7 “A motion for reconsideration should not be granted, absent highly unusual  
8 circumstances, unless the district court is presented with newly discovered evidence,  
9 committed clear error, or if there is an intervening change in the controlling law,” Marlyn  
10 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009), and  
11 “[a] party seeking reconsideration must show more than a disagreement with the court's  
12 decision, and recapitulation . . .” of that which was already considered by the court in  
13 rendering its decision,” United States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131  
14 (E.D. Cal. 2001).

15 Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or different  
16 facts or circumstances are claimed to exist which did not exist or were not shown upon  
17 such prior motion, or what other grounds exist for the motion,” and “why the facts or  
18 circumstances were not shown at the time of the prior motion.”

19 Plaintiff provides no argument and makes no factual showing in support of his  
20 motion for reconsideration of the Court’s Order granting Defendant an extension of time to  
21 respond to the complaint. He has not identified any newly discovered evidence, clear error,  
22 or intervening change in the controlling law that would warrant reconsideration. Plaintiff’s  
23 disagreement with the Court’s decision is not grounds for reconsideration.

24 **B. Default Judgment**

25 Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the  
26 Court enter default “when a party against whom a judgment for affirmative relief is sought  
27 has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.”  
28 Fed. R. Civ. P. 55(a). Rule 55(b)(2) provides that the Court may grant a default judgment

1 after default has been entered by the Clerk of the Court.

2 When considering whether to enter a default judgment, a court should consider “(1)  
3 the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3)  
4 the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the  
5 possibility of a dispute concerning material facts, (6) whether the default was due to  
6 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil  
7 Procedure favoring decisions on the merits.” Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th  
8 Cir. 1986); see also Al-Torki v. Kaempfen, 78 F.3d 1381, 1384 (9th Cir.1996); Alan  
9 Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir.1989). “[T]he general rule  
10 disfavors default judgments. Cases should be decided upon their merits whenever  
11 reasonably possible.” Eitel, 782 F.2d at 1472.

12 Defendant is not in default because the time to respond to the complaint has been  
13 extended retroactively (i.e., nunc pro tunc) through September 13, 2013. Plaintiff is not  
14 presently entitled to default judgment.

15 **IV. ORDER**

16 Accordingly, for the reasons stated above, it is HEREBY ORDERED that:

- 17 1. Plaintiff’s motion for reconsideration (ECF No. 19) of the Court’s order  
18 granting Defendant nunc pro tunc extension of time through September 13,  
19 2013 to respond to the complaint (ECF No.16) is DENIED; and
- 20 2. Plaintiff’s motion for entry of default judgment (ECF No. 19) against  
21 Defendant is DENIED without prejudice.

22  
23  
24 IT IS SO ORDERED.

25 Dated: July 31, 2013

26 /s/ Michael J. Seng  
27 UNITED STATES MAGISTRATE JUDGE  
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