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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE SWEARINGTON,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Defendants.

Case No. 1:12-cv-00958-MJS (PC)

**ORDER DENYING PLAINTIFF'S
OBJECTION TO DISMISSAL OF ACTION**

(ECF No. 25)

Plaintiff is a state prisoner. He filed this action pursuant to 42 U.S.C. § 1983 proceeding pro se and in forma pauperis. The Complaint and First Amended Complaint were dismissed for failure to state a claim. On April 28, 2014, the Court screened the Second Amended Complaint and dismissed the action for failure to state a claim. Judgment was entered thereon.

On May 27, 2014 Plaintiff filed an objection to dismissal of his action. The objection, construed as a request for reconsideration, is now before the Court.¹

Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that

¹ Plaintiff objects to the district judge's order. However, this matter proceeded on Plaintiff's consent to magistrate judge jurisdiction. (ECF No. 8.)

1 justifies relief. Rule 60(b)(6) is to be used sparingly as an equitable remedy to prevent
2 manifest injustice and is to be utilized only where extraordinary circumstances exist.
3 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008). Further, Local Rule 230(j) requires, in
4 relevant part, that Plaintiff show “what new or different facts or circumstances are claimed
5 to exist which did not exist or were not shown upon such prior motion, or what other
6 grounds exist for the motion,” and “why the facts or circumstances were not shown at the
7 time of the prior motion.”

8 Plaintiff’s objection rehashes matters already considered by the Court and found
9 deficient. Plaintiff is referred to the order dismissing the action for the specific reasons why
10 his claims were found deficient and dismissed without leave to amend. (See ECF No. 23.)
11 Plaintiff’s disagreement with the Court’s order is not alone a basis for reconsideration.

12 Plaintiff also objects the action was wrongly dismissed under the “three strikes”
13 provision of 28 U.S.C. § 1915(g). However, the Court did not rely on § 1915(g) in
14 dismissing the action. *Id.*

15 Plaintiff does not identify any error of law or fact in the Court’s April 28, 2014 order
16 dismissing the action with prejudice for failure to state a claim.

17 Accordingly, for the reasons stated, it is HEREBY ORDERED that Plaintiff’s May 27,
18 2014 objection to dismissal of the action (ECF No. 25) construed as a request for
19 reconsideration is DENIED.

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21 IT IS SO ORDERED.

22 Dated: May 30, 2014

23 */s/ Michael J. Seng*
24 UNITED STATES MAGISTRATE JUDGE
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