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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MARLON BLACHER,

12 Plaintiff,

13 vs.

14 S. JOHNSON, et al.,

15 Defendants.  
16

1:12-cv-1159-GSA-PC

ORDER DENYING MOTION FOR  
RECONSIDERATION AND RESOLVING  
MOTION FOR CLARIFICATION  
(Docs. 31, 32.)

17 **I. BACKGROUND**

18 Marlon Blacher (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights  
19 action pursuant to 42 U.S.C. § 1983. On February 26, 2014, the court dismissed this case for  
20 failure to exhaust administrative remedies and entered judgment. (Docs. 29, 30.)

21 On March 24, 2014, Plaintiff filed a motion to alter or amend the judgment, which the  
22 court construes as a motion for reconsideration of the court’s order dismissing the case. (Doc.  
23 31.) Plaintiff also filed a motion for clarification of the court’s order. (Doc. 32.)

24 **II. MOTION FOR RECONSIDERATION**

25 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that  
26 justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent  
27 manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist.  
28 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation

1 omitted). The moving party “must demonstrate both injury and circumstances beyond his  
2 control . . . .” Id. (internal quotation marks and citation omitted). In seeking reconsideration of  
3 an order, Local Rule 230(k) requires Plaintiff to show “what new or different facts or  
4 circumstances are claimed to exist which did not exist or were not shown upon such prior  
5 motion, or what other grounds exist for the motion.”

6 “A motion for reconsideration should not be granted, absent highly unusual  
7 circumstances, unless the district court is presented with newly discovered evidence, committed  
8 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,  
9 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations  
10 marks and citations omitted, and “[a] party seeking reconsideration must show more than a  
11 disagreement with the Court’s decision, and recapitulation . . . .” of that which was already  
12 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134  
13 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a  
14 strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare  
15 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and  
16 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

17 **Plaintiff’s Motion**

18 Plaintiff requests reconsideration of the court’s finding in the court’s order of February  
19 26, 2014, that he failed to exhaust his available administrative remedies for his claim against  
20 defendant Chief Deputy Warden S. Johnson (“Johnson”) before filing suit. Plaintiff argues that  
21 he exhausted his remedies because (1) his appeal addressed the unclothed body searches at  
22 issue in his Complaint, (2) he completed the appeals process through the third level of review,  
23 and (3) the third level response informed him that “[t]his decision exhausts the administrative  
24 remedy available to the appellant within CDCR.” (Doc. 31 at 2:12-13.) Plaintiff also argues  
25 that he complied with the CDCR’s appeals procedures because when he was dissatisfied with  
26 the second level response, he proceeded to file an appeal at the third level in compliance with  
27 Cal.Code Regs. tit.15 § 3084.2(d) which states: “If dissatisfied with the second level response,  
28 the appellant may submit the appeal for a third level review.” (Id. at 3:22-25.) Plaintiff also

1 argues that defendant Johnson was involved in the issue of unclothed body searches because  
2 defendant Johnson's subordinates conducted the searches, and defendant Johnson denied  
3 Plaintiff's appeal at the second level of review, failing to provide Plaintiff with a remedy for a  
4 clear violation of the CDCR's regulations concerning body searches, which made defendant  
5 Johnson a co-conspirator in the violation. Plaintiff argues that there is no requirement that he  
6 start over with the grievance process to address defendant Johnson's decision at the second  
7 level of review.

### 8 **Discussion**

9 Plaintiff's misunderstands the court's ruling, and his arguments are without merit. The  
10 court found that Plaintiff failed to exhaust his remedies for his claim against defendant Johnson  
11 because Plaintiff's claim against defendant Johnson arose *after* Plaintiff filed his Appeal  
12 number COR-11-02175 ("Appeal") and therefore could not have been part of Plaintiff's Appeal  
13 when it was first submitted. The CDCR's appeals process provides that "[a]dministrative  
14 remedies shall not be considered exhausted relative to any new issue, information, or person  
15 later named by the appellant that was not included in the originally submitted CDCR Form  
16 602." CalCode Regs. tit. 15, § 3084.2(a)(3) (2011). Plaintiff's Appeal concerned improper  
17 unclothed body searches which took place before the appeal was submitted. (Exhs. to  
18 Complaint, Doc. 1 at 6.) Plaintiff's claim against defendant Johnson – that she (Johnson)  
19 improperly responded to his Appeal at the second level of review -- arose *after* the Appeal was  
20 submitted. (*Id.* at 7, 9 ¶F.) Plaintiff was not permitted to add a new issue to his appeal after it  
21 was submitted. For Plaintiff to exhaust his remedies with respect to defendant Johnson,  
22 Plaintiff would have to submit a new appeal *after* his claim against defendant Johnson arose,  
23 and complete the process for that claim. There is no evidence that Plaintiff did so.

24 Plaintiff has not set forth facts or law of a strongly convincing nature to induce the court  
25 to reverse its prior decision. Therefore, Plaintiff's motion for reconsideration shall be denied.

### 26 **III. CONCLUSION**

27 Based on the foregoing, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff's motion for reconsideration, filed on March 24, 2014, is DENIED; and

1            2.     This order also resolves Plaintiff's motion for clarification, filed on March 24,  
2                                  2014.

3  
4 IT IS SO ORDERED.

5            Dated: **March 27, 2014**

**/s/ Gary S. Austin**  
   UNITED STATES MAGISTRATE JUDGE

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