

1
2
3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 JOHN MICHAEL CRIM,

8 Plaintiff,

9 vs.

10 MANAGEMENT & TRAINING CORP.,
11 et al.,

12 Defendants.
13
14
15

1:12-cv-1340-AWI-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 21.)

ORDER FOR PLAINTIFF TO COMPLY WITH
NOVEMBER 19, 2013 SCREENING ORDER
(Doc. 20.)

ORDER GRANTING EXTENSION OF TIME
TO FILE AMENDED COMPLAINT

THIRTY DAY DEADLINE

16 **I. BACKGROUND**

17 John Michael Crim (“Plaintiff”) is a federal prisoner proceeding pro se. This action was
18 initiated by civil Complaint filed by Plaintiff in the Kern County Superior Court on June 12,
19 2012 (Case #S-1500-CV-276883-WDP). (Doc. 2-2 at 8-30.) On August 16, 2012, defendants
20 Management & Training Corp., Adler, Stewart, Mann, Patrick, Logan, McBride, and Sy
21 (“Removing Defendants”) removed the case to federal court by filing a Notice of Removal
22 pursuant to 28 U.S.C. § 1441(a) (federal question). (Doc. 1.)

23 The court screened the Complaint pursuant to 28 U.S.C. 1915A and entered an order on
24 November 19, 2013, dismissing the Complaint for failure to state a claim, with leave to file an
25 amended complaint within thirty days. (Doc. 20.) On December 12, 2013, Plaintiff filed a
26 response to the court’s screening order, which the court construes as a motion for
27 reconsideration of the screening order. (Doc. 21.)

28 ///

1 **II. MOTION FOR RECONSIDERATION**

2 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that
3 justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
4 manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist.
5 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation
6 omitted). The moving party “must demonstrate both injury and circumstances beyond his
7 control . . .” Id. (internal quotation marks and citation omitted). In seeking reconsideration of
8 an order, Local Rule 230(k) requires Plaintiff to show “what new or different facts or
9 circumstances are claimed to exist which did not exist or were not shown upon such prior
10 motion, or what other grounds exist for the motion.”

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

22 **III. DISCUSSION**

23 Plaintiff requests the court to reconsider its finding in the screening order that Plaintiff
24 fails to state a cognizable claim in the Complaint. Plaintiff disagrees with the court’s
25 assessment of his claims. At this stage of the proceedings, if Plaintiff disagrees with the court’s
26 screening order, his remedy is to file a First Amended Complaint clearly and succinctly stating
27 the allegations and claims upon which he wishes to proceed. Plaintiff was forewarned in the
28 screening order that if he does not file an amended complaint, the court will recommend that

1 this case be dismissed with prejudice, for failure to state a claim. (Doc. 20 at 5 ¶5.) Plaintiff
2 has not set forth facts or law of a strongly convincing nature to induce the court to reverse its
3 prior decision. Therefore, Plaintiff's motion for reconsideration shall be denied.

4 Plaintiff shall be granted additional time to comply with the screening order. After
5 Plaintiff files the First Amended Complaint, the court will screen it based on his allegations
6 stated therein.

7 **IV. CONCLUSION**

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

- 9 1. Plaintiff's motion for reconsideration, filed on December 12, 2013, is DENIED;
- 10 2. Plaintiff is granted an extension of time to comply with the court's screening
11 order of November 20, 2013;
- 12 3. Within thirty days from the date of service of this order, Plaintiff shall file a
13 First Amended Complaint, pursuant to the court's screening order of November
14 20, 2013; and
- 15 4. Plaintiff's failure to file an amended complaint shall result in a recommendation
16 that this case be dismissed with prejudice, for failure to state a claim.

17
18
19
20 IT IS SO ORDERED.

21 Dated: December 16, 2013

/s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28