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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOHN MICHAEL CRIM,

12 Plaintiff,

13 vs.

14 MANAGEMENT & TRAINING CORP.,  
15 et al.,

16 Defendants.

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

ORDER DENYING PLAINTIFF'S SECOND  
MOTION FOR RECONSIDERATION OF THE  
COURT'S SCREENING ORDER, WITH  
PREJUDICE  
(Doc. 23.)

17 **I. BACKGROUND**

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

24 The court screened the Complaint pursuant to 28 U.S.C. 1915A and entered an order on  
25 November 19, 2013, dismissing the Complaint for failure to state a claim, with leave to file an  
26 amended complaint within thirty days. (Doc. 20.) On December 12, 2013, Plaintiff filed a  
27 response to the court's screening order, which the court construed as a motion for  
28 reconsideration of the screening order. (Doc. 21.) On December 17, 2013, the court denied the

1 motion for reconsideration and ordered Plaintiff to comply with the screening order within  
2 thirty days. (Doc. 22.)

3 On January 2, 2014, Plaintiff filed a second response to the court’s screening order,  
4 which the court construes as a second motion for reconsideration of the screening order. (Doc.  
5 23.)

6 **II. MOTION FOR RECONSIDERATION**

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

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

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1 **III. DISCUSSION**

2 Plaintiff argues that, based on this court’s rulings in Plaintiff’s related cases, this court  
3 lacks jurisdiction to order Plaintiff to file an amended complaint and should remand the case to  
4 the superior court. Plaintiff alternatively argues that “if this court insists it has jurisdiction,” the  
5 court may not properly move sua sponte for dismissal, because defendants are the proper party  
6 to raise issues of the questionable merits of the case. (Motion, Doc. 23 at 1.) Plaintiff also  
7 argues that a Bivens action may be brought against a contract prison facility; that a claim of  
8 constitutional right violation is a cognizable claim; that the term “state” encompasses a federal  
9 action taken under the color of federal law; that liability under § 1983 may ensue even though  
10 the person sued has no intent to deprive the plaintiff of a federal right; and that the term  
11 “government” is defined as any other person “acting under color of law.” (Id. at ¶¶2-6.)

12 In the screening order of November 19, 2013, the court dismissed Plaintiff’s complaint  
13 for failure to state a cognizable access-to-courts claim because Plaintiff failed to show that  
14 deficiencies in his prison’s law library caused him “actual injury” as defined by the Supreme  
15 Court in Casey v. Lewis, 518 U.S. 343 (1996). Plaintiff fails to address this issue. With  
16 respect to Plaintiff’s request for the court to remand this case to the superior court, this issue  
17 was resolved by the court’s order of March 22, 2013, which denied Plaintiff’s prior request for  
18 remand. (Doc. 17.) Plaintiff’s arguments do not appear to address any of the analysis found in  
19 the screening order. Plaintiff has not presented any new evidence to the court, notified the  
20 court of an intervening change in the controlling law, nor shown that the court committed clear  
21 error. Plaintiff has not set forth facts or law of a strongly convincing nature to induce the court  
22 to reverse its prior decision. Therefore, Plaintiff’s motion for reconsideration shall be denied,  
23 with prejudice.

24 As Plaintiff was previously advised, if he disagrees with the court’s screening order, his  
25 remedy at this stage of the proceedings is to file a First Amended Complaint clearly and  
26 succinctly stating the allegations and claims upon which he wishes to proceed. Plaintiff was  
27 forewarned in the screening order that if he does not file an amended complaint, the court will

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1 recommend that this case be dismissed with prejudice, for failure to state a claim. (Doc. 20 at 5  
2 ¶5.)

3 **IV. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's second motion for  
5 reconsideration of the court's screening order, filed on January 2, 2014, is DENIED, with  
6 prejudice.

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10 IT IS SO ORDERED.

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12 Dated: January 3, 2014

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