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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTWOINE BEALER,
Plaintiff,
vs.
R. BRANNUM, et al.,
Defendants.

1:12-cv-01516-AWI-GSA-PC
ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION OF COURT’S
ORDER OF JULY 20, 2015
(ECF No. 82.)

I. RELEVANT PROCEDURAL HISTORY

Antwoine Bealer ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On September 14, 2012, Plaintiff filed the Complaint commencing this action. (Doc. 1.) This case now proceeds with the Fourth Amended Complaint filed on March 28, 2014, against defendants Correctional Officer S. Rios and Sergeant Brannum (“Defendants”) for use of excessive force in violation of the Eighth Amendment. (Doc. 21.)

On March 2, 2015, the court issued a Discovery and Scheduling Order establishing pretrial deadlines for the parties, including a deadline of November 2, 2015, to complete discovery, and a deadline of January 11, 2016, to file dispositive motions. (Doc. 45.) This case

1 is presently in the discovery phase. On April 15, 2015, Defendants filed a motion for summary
2 judgment, which is pending. (ECF No. 48.)

3 On July 31, 2015, Plaintiff filed a motion for reconsideration under Rule 60 of the
4 court's order issued on July 20, 2015, which denied Plaintiff's renewed motion to defer the
5 court's ruling on Defendants' motion for summary judgment.¹ (ECF No. 82.)

6 **II. MOTION FOR RECONSIDERATION**

7 Rule 60(b) allows the Court to relieve a party from an order for "(1) mistake,
8 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with
9 reasonable diligence, could not have been discovered in time to move for a new trial under
10 Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
11 misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that justifies
12 relief." Fed. R. Civ. P. 60(b). Rule 60(b)(6) "is to be used sparingly as an equitable remedy to
13 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ."
14 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
15 citation omitted). The moving party "must demonstrate both injury and circumstances beyond
16 his control" Id. (internal quotation marks and citation omitted). In seeking
17 reconsideration of an order, Local Rule 230(k) requires Plaintiff to show "what new or different
18 facts or circumstances are claimed to exist which did not exist or were not shown upon such
19 prior motion, or what other grounds exist for the motion."

20 "A motion for reconsideration should not be granted, absent highly unusual
21 circumstances, unless the district court is presented with newly discovered evidence, committed
22 clear error, or if there is an intervening change in the controlling law," Marlyn Nutraceuticals,
23 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations
24 marks and citations omitted, and "[a] party seeking reconsideration must show more than a
25

26 ¹ On May 12, 2015, Plaintiff filed a motion under Rule 56 for the court to defer its ruling on
27 Defendants' motion for summary judgment pending discovery. (ECF No. 54.) On May 21, 2015, the court denied
28 the motion, without prejudice to renewal of the motion within thirty days. (ECF No. 58.) On June 1, 2015,
Plaintiff filed a renewed motion to defer the court's ruling on Defendants' motion for summary judgment. (ECF
No. 66.) The renewed motion was denied on July 20, 2015. (ECF No. 76.)

1 disagreement with the Court's decision, and recapitulation . . . ” of that which was already
2 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134
3 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a
4 strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare
5 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and
6 reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).

7 Here, Plaintiff has not set forth facts or law of a strongly convincing nature in his
8 motion for reconsideration to induce the court to reverse its prior decision. Therefore, the
9 motion for reconsideration shall be denied, with prejudice.

10 **III. CONCLUSION**

11 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
12 reconsideration, filed on July 31, 2015, is DENIED.

13 IT IS SO ORDERED.

14 Dated: September 15, 2015

15 /s/ Gary S. Austin
16 UNITED STATES MAGISTRATE JUDGE