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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
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6 DANNY JAMES COHEA,

CASE NO. 1:12-cv-01739-LJO-MJS PC

7 Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION

8 v.

9 NANCY GRANNIS et al.,

(ECF No. 10)

10 Defendants.

AMENDED COMPLAINT DUE WITHIN
THIRTY DAYS

11 _____ /

12 **Order Denying Motion for Reconsideration**

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14 Plaintiff Danny James Cohea (“Plaintiff”), a state prisoner proceeding pro se and in
15 forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 25,
16 2012. On January 14, 2013, Plaintiff filed a motion seeking reconsideration of the order
17 screening his original Complaint and dismissing it for failure to state a claim under 42
18 U.S.C. § 1983, with leave to amend. (ECF No. 10.)

19 **I. Legal Standard**

20 Fed. R. Civ. P. 60(b)(6) allows the Court to relieve a party from an order for any
21 reason that justifies relief. Rule 60(b)(6) is to be used sparingly as an equitable remedy
22 to prevent manifest injustice and is to be utilized only where extraordinary circumstances
23 exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (quotation marks and citation
24 omitted). The moving party must demonstrate both injury and circumstances beyond his
25 control. Id. (quotation marks and citation omitted). Further, Local Rule 230(j) requires, in
26 relevant part, that Plaintiff show “what new or different facts or circumstances are claimed
27 to exist which did not exist or were not shown upon such prior motion, or what other
28 grounds exist for the motion,” and “why the facts or circumstances were not shown at the

1 time of the prior motion.”

2 “A motion for reconsideration should not be granted, absent highly unusual
3 circumstances, unless the district court is presented with newly discovered evidence,
4 committed clear error, or if there is an intervening change in the controlling law,” Marlyn
5 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)
6 (internal quotations marks and citations omitted, and “[a] party seeking reconsideration
7 must show more than a disagreement with the Court’s decision, and recapitulation . . .” of
8 that which was already considered by the Court in rendering its decision,” United States
9 v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

10 **II. Discussion and Order**

11 Plaintiff disagrees with the Court’s decision and seeks reconsideration of the
12 screening order dismissing his original Complaint, with leave to amend. In screening
13 Plaintiff’s Complaint, the Court reviewed Plaintiff’s allegations and found that his pleading
14 failed to comply with Fed. R. Civ. P. 8(a)(2). The Court provided him with general pleading
15 requirements and specific requirements for the types of causes of action Plaintiff appeared
16 to be intending to file. The Court gave Plaintiff the opportunity to file a new pleading which
17 contained “a short and plain statement” of a claim which met the standards provided to him
18 by the Court. This was not a situation in which Plaintiff was deprived of notice and an
19 opportunity to amend.

20 Reconsideration is not a vehicle by which to obtain a second bite at the apple; it is
21 reserved for extraordinary circumstances. Westlands Water Dist., 134 F.Supp.2d at 1131;
22 see also In re Pacific Far East Lines, Inc., 889 F.2d 242, 250 (9th Cir. 1989) (Fed. R. Civ.
23 P. 60(b)(6) may provide relief where parties were confronted with extraordinary
24 circumstances but it does not provide a second chance for parties who made deliberate
25 choices). Plaintiff’s disagreement with the Court’s decision is not grounds for
26 reconsideration. Plaintiff’s argument that the Court did not provide him with an adequate
27 screening order pursuant to 28 U.S.C. § 1915(A) is also without merit because although
28 the Court did not discuss each one of Plaintiff’s claims individually, it reviewed his

1 Complaint and provided him with the standards he would need to meet if he filed an
2 amended pleading in compliance with the requirements of Fed. R. Civ. P. 8(a)(2). .

3 **III. Order**

4 Accordingly, it is hereby ORDERED that:

- 5 1. Plaintiff's motion for reconsideration (ECF No. 10) is DENIED;
- 6 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall
7 file an amended complaint; and
- 8 3. If Plaintiff fails to file an amended complaint in compliance with this order,
9 this action will be dismissed, with prejudice, for failure to state a claim.

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14 IT IS SO ORDERED.

15 Dated: April 8, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE