

1 denied in part his motion to reopen discovery. (ECF No. 37.)

2 Before the Court is Plaintiff's "Response" to the February 2, 2015 discovery order,
3 which the Court construes as a motion for reconsideration. (ECF No. 41.) Defendants
4 filed no opposition.

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from
7 an order for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an
8 equitable remedy to prevent manifest injustice and is to be utilized only where
9 extraordinary circumstances" exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008)
10 (internal quotations marks and citation omitted).

11 "A motion for reconsideration should not be granted, absent highly unusual
12 circumstances, unless the district court is presented with newly discovered evidence,
13 committed clear error, or if there is an intervening change in the controlling law." Marlyn
14 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).
15 "A motion for reconsideration may not be used to raise arguments or present evidence
16 for the first time when they could reasonably have been raised in earlier litigation." Id.
17 Moreover, "recapitulation of the cases and arguments considered by the court before
18 rendering its original decision fails to carry the moving party's burden." U.S. v. Westlands
19 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony
20 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)
21 requires that a party seeking reconsideration show that "new or different facts or
22 circumstances are claimed to exist which did not exist or were not shown upon such
23 prior motion, or what other grounds exist for the motion"

24 **III. Discussion**

25 **A. February 2, 2015 Order Denying Leave to Reopen Discovery**

26 Relevant to the issues presented here, Plaintiff sought leave to reopen discovery
27 to obtain an inmate count for his housing unit. Plaintiff sought this information in order to
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1 determine whether a regular cell was available for Plaintiff, rather than the holding cell
2 where he was housed. (ECF No. 28.) The Court denied this request on the grounds that
3 the information did not appear necessary to oppose the motion for summary judgment
4 and, in any event, there was nothing to indicate Plaintiff diligently sought this information
5 prior to the close of discovery. (ECF No. 37.)

6 Plaintiff also sought to reopen discovery to determine whether the holding cell
7 was, as Defendants assert, "climate controlled." (ECF No. 28.) However, in his reply,
8 Plaintiff stated his willingness to forego further discovery on this issue. (ECF No. 32.)
9 Accordingly, this request was not addressed by the Court. (ECF No. 37.)

10 **B. Motion for Reconsideration**

11 Plaintiff objects to the Court's February 2, 2015 order on two grounds. First,
12 Plaintiff argues that the Court incorrectly concluded that discovery regarding the inmate
13 count was not necessary to oppose the motion for summary judgment. He points out that
14 Defendants' declarations state that the holding cell was used as overflow when no other
15 cells were available, and that Plaintiff was placed in the holding cell because the housing
16 unit was full.

17 Plaintiff is correct that Defendants' declarations so state. However, as stated in
18 the Court's prior order, Defendants' motion for summary judgment contends that the
19 conditions in the holding cell did not violate the Eighth Amendment. Defendants do not
20 argue that they subjected Plaintiff to undesirable conditions because no other housing
21 was available. Further, even if such arguments had been presented, Plaintiff has not
22 shown the requisite diligence necessary to reopen discovery. Indeed, Plaintiff provides
23 no explanation as to why he did not pursue this issue while discovery was open.
24 Accordingly, Plaintiff's motion for reconsideration on this ground will be denied.

25 Second, Plaintiff appears to object to Defendants' contention that the holding cell
26 was "climate-controlled." (ECF No. 41.) As noted, this issue was not addressed by the
27 Court. Nevertheless, Plaintiff endeavors to present facts contesting whether the holding
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1 cell was climate controlled or excessively cold. Plaintiff's arguments do not raise an
2 issue of fact or law under the discovery order. If Plaintiff wishes to contest Defendants'
3 evidence, the proper time to do so is in opposition to the motion for summary judgment
4 or at trial.

5 **IV. CONCLUSION AND ORDER**

6 Based on the foregoing, Plaintiff's "Response" (ECF No. 41), which the Court
7 construes as a motion for reconsideration, is HEREBY DENIED.

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9 IT IS SO ORDERED.

10 Dated: March 19, 2015

11 */s/ Michael J. Seng*
12 UNITED STATES MAGISTRATE JUDGE
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