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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARRELL HARRIS,

Plaintiff,

v.

R. PIMENTEL, et al.,

Defendants.

Case No. 1:13-CV-01354-LJO-MJS (PC)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(ECF No. 42)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Free Exercise, RLUIPA, and Equal Protection claims against Defendant Escamilla, who has appeared in the action. (ECF Nos. 10 & 14.)

On May 28, 2015, the Court denied Plaintiff's motion to consolidate the instant action with a state court case. (ECF No. 41.) Plaintiff's motion for reconsideration of that ruling, filed June 17, 2015, is now before the Court. (ECF No. 42.)

1 **II. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from
3 an order for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an
4 equitable remedy to prevent manifest injustice and is to be utilized only where
5 extraordinary circumstances” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008)
6 (internal quotations marks and citation omitted).
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8 “A motion for reconsideration should not be granted, absent highly unusual
9 circumstances, unless the district court is presented with newly discovered evidence,
10 committed clear error, or if there is an intervening change in the controlling law.” Marlyn
11 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

12 “A motion for reconsideration may not be used to raise arguments or present evidence
13 for the first time when they could reasonably have been raised in earlier litigation.” Id.
14 Moreover, “recapitulation of the cases and arguments considered by the court before
15 rendering its original decision fails to carry the moving party's burden.” U.S. v. Westlands
16 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony
17 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)
18 requires that a party seeking reconsideration show that “new or different facts or
19 circumstances are claimed to exist which did not exist or were not shown upon such
20 prior motion, or what other grounds exist for the motion”
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23 **III. ANALYSIS**

24 Plaintiff presents no new evidence or facts to the Court here. Instead, he argues
25 that the Court committed an error of law. The authority he cites is inapposite. Cienaga
26 Gardens v. United States permitted the consolidation of two cases that were *both*
27 pending before the Court of Federal Claims, not a state case with a federal one. 62 Fed.
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1 Cl. 28, 29 (Fed. Cl. 2004). , Mitchum v. Foster did not involve consolidation at all, but
2 the authority of a federal court to enjoin state proceedings during the pendency of a
3 federal § 1983 action. 407 U.S. 225, 242 (1972). Finally, the possibility that Defendants
4 may try to introduce evidence that Plaintiff has filed other lawsuits is not a reason for
5 consolidating the present action with the other suits. If Plaintiff believes particular
6 evidence is unduly prejudicial to him, he may object to its introduction. See Fed. R. Evid.
7 403.
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9 Under Rule 42, a court may only consolidate actions that are pending before it.
10 Fed. R. Civ. P. 42(a).

11 Based on the foregoing, Plaintiff's motion for reconsideration is HEREBY DENIED.
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14 IT IS SO ORDERED.

15 Dated: June 18, 2015

16 /s/ Michael J. Seng
17 UNITED STATES MAGISTRATE JUDGE
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