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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DONOVAN L. HALEY,

12 Plaintiff,

13 vs.

14 HEIDI LACKNER, et al.,

15 Defendants.  
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1:13-cv-01403-LJO-GSA-PC

ORDER DENYING MOTION FOR  
RECONSIDERATION  
(Doc. 19.)

ORDER FOR PLAINTIFF TO COMPLY WITH  
MAY 8, 2014 SCREENING ORDER  
(Doc. 18.)

ORDER GRANTING EXTENSION OF TIME  
TO FILE AMENDED COMPLAINT

THIRTY DAY DEADLINE

20 **I. BACKGROUND**

21 Donovan L. Haley (“Plaintiff”) is a state prisoner proceeding pro se and in forma  
22 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On July 29, 2013, Plaintiff  
23 filed the Complaint commencing this action at the United States District Court for the Central  
24 District of California. (Doc. 7.) On August 29, 2013, this case was transferred to the court for  
25 the Eastern District of California. (Doc. 4.)

26 The court screened the Complaint pursuant to 28 U.S.C. 1915A and entered an order on  
27 May 8, 2014, dismissing the Complaint for failure to state a claim, with leave to file an  
28 amended complaint within thirty days. (Doc. 18.) On May 21, 2014, Plaintiff filed objections

1 to the court’s screening order, which the court construes as a motion for reconsideration of the  
2 screening order. (Doc. 19.)

3 **II. MOTION FOR RECONSIDERATION**

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

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

24 **III. DISCUSSION**

25 Plaintiff requests the court to reconsider its finding in the screening order that Plaintiff  
26 fails to state a cognizable claim in the Complaint. Plaintiff disagrees with the court’s  
27 assessment of his claims. At this stage of the proceedings, if Plaintiff disagrees with the court’s  
28 screening order, his remedy is to file a First Amended Complaint clearly and succinctly stating

1 the allegations and claims upon which he wishes to proceed. Plaintiff was forewarned in the  
2 screening order that if he does not file an amended complaint, the court will recommend that  
3 this case be dismissed with prejudice, for failure to state a claim. (Doc. 18 at 15 ¶6.) Plaintiff  
4 has not set forth facts or law of a strongly convincing nature to induce the court to reverse its  
5 prior decision. Therefore, Plaintiff's motion for reconsideration shall be denied.

6 Plaintiff shall be granted additional time to comply with the screening order. After  
7 Plaintiff files the First Amended Complaint, the court will screen it based on his allegations  
8 stated therein.

9 **IV. CONCLUSION**

10 Based on the foregoing, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion for reconsideration, filed on May 21, 2014, is DENIED;
- 12 2. Plaintiff is granted an extension of time to comply with the court's screening  
13 order of May 8, 2014;
- 14 3. Within thirty days from the date of service of this order, Plaintiff shall file a  
15 First Amended Complaint, pursuant to the court's screening order of May 8,  
16 2014; and
- 17 4. Plaintiff's failure to file an amended complaint shall result in a recommendation  
18 that this case be dismissed with prejudice, for failure to state a claim.

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20 IT IS SO ORDERED.

21 Dated: May 23, 2014

22 /s/ Gary S. Austin  
23 UNITED STATES MAGISTRATE JUDGE  
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