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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RICK HAZELTINE,

12 Plaintiff,

13 vs.

14 FRANCES HICKS, et al.,

15 Defendants.
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1:14-cv-00056-DAD-GSA-PC

ORDER GRANTING MOTION FOR
RECONSIDERATION
(ECF No. 100.)

ORDER FOR PLAINTIFF TO PROVIDE
ADDITIONAL INFORMATION WITHIN
TWENTY (20) DAYS

17 **I. RELEVANT PROCEDURAL HISTORY**

18 Rick Hazeltine (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma pauperis*
19 with this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds with
20 Plaintiff’s First Amended Complaint filed on July 6, 2015, on the following claim: Excessive
21 force in violation of the Fourteenth Amendment against defendants Ian Young, Benjamin
22 Gamez, Rashaun Casper, Julius Oldan, Porfirio Sanchez Negrete, David Avilia, Rickey Smith,
23 and Charles Ho (collectively “Defendants”). (ECF No. 27.) This case is scheduled for trial on
24 July 10, 2018, at 8:30 a.m. before the Honorable Dale A. Drozd.

25 On April 23, 2018, Plaintiff filed a motion for reconsideration of the court’s order
26 denying Plaintiff’s motion for the attendance of incarcerated witnesses at trial. (ECF No. 100.)
27 On April 24, 2018, Defendants filed an opposition to the motion. (ECF No. 101.) Plaintiff’s
28 motion for reconsideration is now before the court. Local Rule 230(l).

1 **II. MOTION FOR RECONSIDERATION**

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

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

22 **A. Plaintiff’s Motion for Reconsideration**

23 Plaintiff requests the court to reconsider its April 11, 2018, order denying Plaintiff’s
24 motion for the attendance of incarcerated witnesses. Plaintiff acknowledges that the court
25 denied his motion due to his failure to provide information required by the court. Now, in the
26 motion for reconsideration, Plaintiff has provided the required information, including the
27 names, location, and I.D. numbers of the prospective witnesses, and Plaintiff’s declaration
28 asserting that the prospective witnesses can testify to relevant information and are willing to

1 voluntarily testify at trial. Plaintiff seeks to bring four prospective witnesses, Rodney Short
2 #499-4, John Edgington #809-4, Ramiro G. Madera #544-7, and Stephen Arnold #607-2, and
3 he states that all of the witnesses are actual eyewitnesses to the events at issue in the complaint.

4 Defendants argue that Plaintiff has not cited any legal authority for his request, and that
5 the Federal Rules of Civil Procedure do not provide reconsideration of an order such as the one
6 Plaintiff is seeking. Defendants also argue that Plaintiff was required to file his motion for
7 attendance of incarcerated witnesses pursuant to the requirements in the Amended Scheduling
8 Order, and he failed to do so. Defendants request that if the court is inclined to grant Plaintiff's
9 motion, then discovery be reopened for the limited purpose of deposing the potential witnesses.

10 **B. Discussion**

11 Defendants' argument that court rules do not provide for reconsideration of the court's
12 order is without merit. As discussed above, Rule 60(b)(6) of the Federal Rules of Civil
13 Procedure allows the Court to relieve a party from an order for any reason that justifies relief.
14 Fed. R. Civ. P. 60(b)(6). Also, Rule 54(b) of the Federal Rules of Civil Procedure provides that
15 any order that does not terminate the action is subject to revision at any time before the entry of
16 judgment. Fed. R. Civ. P. 54(b). In addition, Rule 230(j) of the Local Rules for the Eastern
17 District of California also governs reconsideration of such interlocutory orders. Rule 230(j)
18 provides, in part:

19 **(j) Applications for Reconsideration.** Whenever any motion has been
20 granted or denied in whole or in part, and a subsequent motion for
21 reconsideration is made upon the same or any alleged different set of facts,
22 counsel shall present to the Judge or Magistrate Judge to whom such subsequent
23 motion is made an affidavit or brief, as appropriate, setting forth the material
24 facts and circumstances surrounding each motion for which reconsideration is
25 sought.

26 Plaintiff states in his motion for reconsideration that he was confused whether to
27 provide information about prospective witnesses in the pretrial statement or the motion for the
28 attendance of incarcerated witnesses. Plaintiff also admits that he simply overlooked the
court's requirement that he inform the court of the witnesses' addresses due to them being
patients in the same hospital as Plaintiff. Because Plaintiff has now provided facts which were
not shown upon his prior motion the court shall reconsider its order denying Plaintiff's motion

1 for the attendance of incarcerated witnesses. However, before deciding which witnesses shall
2 be allowed to testify at trial, the court requires more information from Plaintiff about the
3 specific testimony expected from each prospective witness.

4 ***Federal Rule of Evidence 403***

5 Plaintiff requests the attendance of four witnesses who he claims were all eyewitnesses
6 to the excessive force incident at issue in this case. However, similar testimony by multiple
7 witnesses may be needlessly cumulative. Under Rule 403 of the Federal Rules of Evidence,
8 “evidence may be excluded if its probative value is substantially outweighed . . . by
9 considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”
10 Fed. R. Evid. 403. “Rule 403 confers broad discretion on the trial judge.” United States v.
11 Hooton, 662 F.2d 628, 636 (9th Cir. 1981) (“The trial judge’s ruling on excluding evidence on
12 the ground that it would create undue delay, waste time, or needlessly present cumulative
13 evidence should be reversed only if the decision constitutes an abuse of discretion”).

14 The rule does not prohibit the introduction of cumulative evidence; it merely permits a
15 court to exclude otherwise relevant evidence when it has little incremental value, i.e., where it
16 would be “needless[ly] cumulative.” Fed. R. Evid. 403; United States v. Miguel, 87 Fed.
17 Appx. 67, 68 (9th Cir. Jan. 30, 2004) (“Rule 403’s cumulative evidence provision does not
18 prohibit the introduction of cumulative evidence; rather, it merely permits courts to exclude
19 cumulative evidence when it has little incremental value”).

20 The probative value of the same or similar testimony of four witnesses who all
21 witnessed the same excessive force incident at the same time may be substantially outweighed
22 by consideration that the testimony would be needlessly cumulative, waste time, and cause
23 undue delay at trial. It does not benefit the factfinder to listen to similar testimony describing
24 the same event four times. Therefore, the court shall require Plaintiff to provide further
25 information about the specific testimony expected by each of the individual prospective
26 witnesses at trial. If the testimony of each witness is expected to be materially the same or very
27 similar, Plaintiff shall inform the court of this fact. The court shall not allow Plaintiff to bring
28 all four witnesses to testify if their testimony would be needlessly cumulative.

1 **III. CONCLUSION**

2 The court shall reconsider its order denying Plaintiff's motion for attendance of
3 incarcerated witnesses. However, the court requires additional information from Plaintiff
4 before determining which of his prospective incarcerated witnesses shall be allowed to testify
5 at trial.

6 Therefore, based on the foregoing, it is **HEREBY ORDERED** that:

- 7 1. Plaintiff's motion for reconsideration, filed on April 20, 2015, is GRANTED;
- 8 2. Within twenty (20) days of the date of service of this order, Plaintiff shall notify
9 the court in writing of the specific testimony expected of each of his four
10 prospective incarcerated witnesses. If the testimony is expected to be materially
11 the same or very similar, Plaintiff shall inform the court of this fact;
- 12 3. After the court has determined which of Plaintiff's prospective incarcerated
13 witnesses shall be allowed to testify at trial, Defendants are not precluded from
14 filing a motion for the court to reopen discovery for the limited purpose of
15 deposing the potential witnesses; and
- 16 4. Plaintiff's failure to comply with this order may result in the dismissal of this
17 case.

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19 IT IS SO ORDERED.

20 Dated: May 22, 2018

/s/ Gary S. Austin
21 UNITED STATES MAGISTRATE JUDGE
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