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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS BUENROSTRO,  
Plaintiff,  
v.  
CASTILLO, et al.,  
Defendants.

Case No. 1:14-cv-00075-BAM (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
FOR RECONSIDERATION AND DENYING  
MOTION FOR CERTIFICATION FOR  
INTERLOCUTORY APPEAL  
(ECF No. 37)

Plaintiff Jose Luis Buenrostro (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). This action proceeds on Plaintiff’s third amended complaint against Defendant Fajardo for retaliation in violation of the First Amendment, arising out of the blocking of phone numbers, interference with typewriter access, and false accusations regarding possession of a cell phone and related strip searches. (ECF No. 36.) Plaintiff filed a consent to Magistrate Judge jurisdiction on January 31, 2014. (ECF No. 5.)

On April 13, 2017, the Court issued a screening order finding service of the third amended complaint appropriate as to Defendant Fajardo, and dismissing all other claims and defendants without prejudice for failure to comply with joinder requirements under Federal Rules of Civil Procedure 18(a), 20(a)(2). (ECF No. 36.) On April 26, 2017, Plaintiff filed the instant motion for reconsideration and/or motion for certification for interlocutory appeal pursuant to 28 U.S.C.

1 § 1292(b) of the Court’s April 13, 2017 screening order dismissing certain claims and defendants.  
2 (ECF No. 37.)

3 **I. Plaintiff’s Motion for Reconsideration**

4 **a. Legal Standard**

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

14 “A motion for reconsideration should not be granted, absent highly unusual  
15 circumstances, unless the district court is presented with newly discovered evidence, committed  
16 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,  
17 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks  
18 and citations omitted), and “[a] party seeking reconsideration must show more than a  
19 disagreement with the Court’s decision, and recapitulation . . .” of that which was already  
20 considered by the Court in rendering its decision, U.S. v. Westlands Water Dist., 134 F. Supp. 2d  
21 1111, 1131 (E.D. Cal. 2001) (internal quotation marks and citation omitted).

22 **b. Discussion**

23 Plaintiff argues that the Court erred in dismissing the other defendants and claims in his  
24 third amended complaint. Plaintiff notes that the Court found that he stated cognizable claims in  
25 his second amended complaint against Defendants DeVore, Fajardo, Dern, Pullings, Crank, and  
26 Knoll, and therefore all of those claims and defendants should be allowed to proceed in this  
27 action. Plaintiff reasserts that he has stated in great detail in each of the first, second, and third  
28 amended complaints that the defendants have colluded and conspired to retaliate against him for

1 filing a civil action against their colleagues. Plaintiff argues that “whether the named Defendants  
2 violated Plaintiff’s First Amendment right to grieve a wrong” will be a question of law or fact  
3 common to all the named defendants in this action. (ECF No. 37.)

4 Plaintiff has not shown any error in the Court’s application of Rule 20(a)(2) to the facts of  
5 this case. As noted previously, multiple parties may be joined as defendants in one action only if  
6 “any right to relief is asserted against them jointly, severally, or in the alternative with respect to  
7 or arising out of the same transaction, occurrence, or series of transactions or occurrences; and [ ]  
8 any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P.  
9 20(a)(2). Therefore, claims against different parties may be joined together in one complaint *only*  
10 *if* the claims have similar factual backgrounds and have common issues of law or fact. Coughlin  
11 v. Rogers, 130 F.3d 1348, 1350–51 (9th Cir. 1997).

12 Although the Court found that Plaintiff stated cognizable claims against other named  
13 defendants in his second amended complaint, this does not mean that such claims are appropriate  
14 for joinder. Although Plaintiff asserts that each defendant acted in accordance with an overriding  
15 conspiracy, Plaintiff failed to plead sufficient factual allegations establishing the existence of an  
16 express or implied agreement among the defendants. See Ting v. United States, 927 F.2d 1504,  
17 1512 (9th Cir. 1991). Plaintiff may not merely assert the existence of a conspiracy to circumvent  
18 the joinder rules.

19 Plaintiff’s contention that each claim will raise a common question of law regarding the  
20 violation of his First Amendment rights is similarly unpersuasive. The mere fact that all of a  
21 plaintiff’s claims arise under the same general law does not necessarily establish a common  
22 question of law or fact. See Coughlin, 130 F.3d at 1351.

23 Plaintiff also fails to present a common question of fact by showing that his claims against  
24 the remaining defendants arise out of the same “transaction, occurrence, or series of transactions  
25 or occurrences.” Fed. R. Civ. P. 20(a)(2). The remaining claims present factual scenarios that  
26 differ from the claim against Defendant Fajardo arising out of the blocking of phone numbers,  
27 interference with typewriter access, and false accusations regarding possession of a cell phone

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1 and related strip searches.<sup>1</sup> Were Plaintiff permitted to proceed against all of the named  
2 Defendants in a single action, the Court would still be required to give each claim individualized  
3 attention.

4 Therefore, Plaintiff has failed to set forth grounds entitling him to reconsideration of the  
5 Court's order dismissing certain claims and defendants from this action.

## 6 **II. Plaintiff's Motion for Certification of Interlocutory Appeal**

### 7 **a. Legal Standard**

8 An interlocutory appeal of a non-final order may be certified if the district court  
9 determines that "such order involves a controlling question of law as to which there is substantial  
10 ground for difference of opinion and that an immediate appeal from the order may materially  
11 advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). "Section 1292(b) is a  
12 departure from the normal rule that only final judgments are appealable, and therefore must be  
13 construed narrowly." James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1067 n. 6 (9th Cir. 2002).  
14 The purpose of the section is to "facilitate disposition of the action by getting a final decision on a  
15 controlling legal issue sooner, rather than later" in order to "save the courts and the litigants  
16 unnecessary trouble and expense." United States v. Adam Bros. Farming, Inc., 369 F.Supp.2d  
17 1180, 1182 (C.D. Cal. 2004) (citation omitted).

18 "An issue is 'controlling' if its resolution could materially affect the outcome of the  
19 litigation." Simmons v. Akanno, No. 1:09-cv-00659-GBC (PC), 2011 WL 1566583, at \*3 (E.D.  
20 Cal. Apr. 22, 2011) (citing In re Cement Antitrust Litig. (MDL No. 296), 673 F.2d 1020, 1026  
21 (9th Cir. 1981)). In addition, "[t]he legal question must be stated at a high enough level of  
22 abstraction to lift the question out of the details of the evidence or facts of a particular case and  
23 give it general relevance to other cases in the same area of law." McFarlin v. Conesco Servs.,  
24 LLC, 381 F.3d 1251, 1259 (11th Cir. 2004). "The antithesis of a proper § 1292(b) appeal is one  
25 that turns on whether there is a genuine issue of fact, or whether the district court properly applied

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27 <sup>1</sup> For example, Plaintiff asserts claims against Defendants Khem and Duchand arising out of confiscation of his  
28 postage stamps and related disciplinary action, against Defendant Dern related to his grievances and family visits,  
against Defendant Gramm for false accusations and placement in the SHU, and against Defendant Castillo for  
Plaintiff's transfer. (ECF No. 31.)

1 settled law to the facts[.]” Id.

2 **b. Discussion**

3 Plaintiff seeks review of the Court’s application of the rules of joinder to the factual  
4 allegations in his third amended complaint. This is the antithesis of a proper interlocutory appeal  
5 because this issue for appeal turns on whether the Court properly applied well-settled rules of  
6 joinder to his factual allegations. Id.

7 Plaintiff has not demonstrated that there is a controlling legal question at stake relative to  
8 the rules of joinder. Therefore, an interlocutory appeal of the Court’s screening order will not  
9 facilitate disposition of the action or materially advance the ultimate termination of this action by  
10 securing a final decision on a controlling legal issue. Instead, it will further delay resolution of  
11 this action and result in unnecessary trouble and expense. Id. (noting that § 1292(b) requirement  
12 of a controlling question of law “means that resolution of a controlling legal question would serve  
13 to avoid a trial or otherwise substantially shorten the litigation.”)

14 **III. Conclusion**

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff’s motion for reconsideration is DENIED; and  
17 2. Plaintiff’s motion for certification of interlocutory appeal is DENIED.

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19 IT IS SO ORDERED.

20 Dated: May 2, 2017

21 /s/ Barbara A. McAuliffe  
22 UNITED STATES MAGISTRATE JUDGE  
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