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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA

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7 RELAUN V. DEADMON,
8 Plaintiff,
9 v.
10 JEFFERY WANG, et al.,
11 Defendants.

Case No. 1:14-cv-00316-LJO-MJS (PC)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(ECF No. 15)

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13 **I. PROCEDURAL HISTORY**

14 Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* in this civil
15 rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United
16 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the
17 United States District Court for the Eastern District of California.

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19 On February 25, 2015 the Magistrate Judge issued Findings and
20 Recommendations to dismiss Plaintiff's Amended Complaint with prejudice. (ECF No.
21 12.) No objections were filed before the fourteen-day deadline passed, and on March
22 19, 2015, the undersigned adopted the findings and recommendations in full. (ECF No.
23 13).

24
25 Later on March 19, 2015, Plaintiff filed objections to the findings and
26 recommendation that his Amended Complaint be dismissed with prejudice. (ECF No.
27 15). The court construes the late-filed objections as a motion for reconsideration.
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1 **II. LEGAL STANDARD**

2 “A motion for reconsideration should not be granted, absent highly unusual
3 circumstances, unless the district court is presented with newly discovered evidence,
4 committed clear error, or if there is an intervening change in the controlling law.” Marlyn
5 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

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7 “A motion for reconsideration may not be used to raise arguments or present evidence
8 for the first time when they could reasonably have been raised in earlier litigation.” Id.

9 Moreover, “recapitulation of the cases and arguments considered by the court before
10 rendering its original decision fails to carry the moving party's burden.” U.S. v.

11 Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001)(quoting
12 Birmingham v. Sony Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)).

13 Similarly, Local Rule 230(j) requires that a party seeking reconsideration show that “new
14 or different facts or circumstances are claimed to exist which did not exist or were not
15 shown upon such prior motion, or what other grounds exist for the motion”

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17 **III. ANALYSIS**

18 In his Amended Complaint, Plaintiff alleged that his medical care for chronic
19 hiccups, respiratory problems, and vomiting blood violated the Eighth Amendment. The
20 undersigned disagreed, finding that the treatment Plaintiff received for his conditions –
21 including 19 appointments with medical staff, several diagnostic procedures, visits to
22 outside facilities, and prescriptions for a number of medications – was “inconsistent with
23 Plaintiff’s claims that Defendants had ignored his health concerns.” (ECF No. 12, at 6;
24 ECF No. 13.)

25
26 Plaintiff’s objections provide no basis for granting a motion for reconsideration.
27 He offers no legal or factual grounds for arguing error, points to no newly discovered
28

1 information, and does not suggest there was an intervening change in the controlling
2 law which would compel the Court to reconsider its March 19 dismissal. Instead,
3 Plaintiff asks for further leave to amend based on his status as a *pro se* litigant. Plaintiff
4 argues that he “cannot reasonably be expected to draft claims for relief absent errors.”
5 (ECF No. 15.) Though Plaintiff states his willingness to submit an amended complaint,
6 he did not file one along with his objections.
7

8 Reconsideration is not a vehicle by which to obtain a second bite at the apple; it
9 is reserved for extraordinary circumstances. Westlands Water Dist., 134 F.Supp.2d at
10 1131. In recognition of Plaintiff’s *pro se* status, the Court previously notified Plaintiff of
11 the deficiencies in his claims and gave him leave to amend. (ECF No. 9.) Thus, Plaintiff
12 was not deprived of notice and an opportunity to amend. Plaintiff’s unsupported
13 contention that he could meet the pleading standard if afforded one more opportunity to
14 amend is not grounds for reconsideration.
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16 **IV. CONCLUSION**

17 Plaintiff’s arguments do not identify a basis for granting reconsideration.

18 Accordingly, it is HEREBY ORDERED that:

- 19 1) Plaintiff’s objections (ECF No. 15), which the Court construes as a motion for
20 reconsideration, are DENIED; and
21 2) This case shall remain closed.
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24 IT IS SO ORDERED.

25 Dated: March 23, 2015

/s/ Lawrence J. O’Neill
26 UNITED STATES DISTRICT JUDGE
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