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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY NIELSEN,,
Plaintiff,
v.
JOSE LOPEZ, et al.,
Defendants.

No. 1: 14-cv-01608-DAD-MJS (PC)

ORDER DENYING MOTION TO
RECONSIDER DENIAL OF FURTHER
LEAVE TO AMEND

(ECF No. 37)

Plaintiff has moved for reconsideration of the assigned magistrate judge’s October 9, 2015 order denying his motion to further amend his complaint. For the reasons set forth below, the motion for reconsideration will be denied.

I. PROCEDURAL HISTORY

Plaintiff is civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1 & 8.) This action was originally filed on September 8, 2014, in the Sacramento Division of the U.S. District Court for the Eastern District of California and was transferred to the Fresno Division of the court on October 15, 2014. (ECF No. 4.) This matter proceeds on plaintiff’s amended complaint. (ECF No. 27.) The assigned magistrate judge screened that complaint and found that it stated a cognizable excessive force claim against Defendant Lopez. (ECF No. 28.) The magistrate judge also recommended that: (1) plaintiff proceed on the excessive force claim against Defendant Lopez; (2) all other claims asserted in the

1 amended complaint and all other named defendants be dismissed; and (3) plaintiff's motion for
2 interlocutory appeal be denied as moot. (Id.) On October 7, 2015, the then assigned district
3 judge adopted those findings and recommendations. (ECF No. 30.)

4 On October 2, 2015, plaintiff filed a motion to amend. (ECF No. 29.) On October 9,
5 2015, the Magistrate Judge denied that motion. (ECF No. 31.) Plaintiff has now filed a second
6 motion to amend his amended complaint, seeking review by the assigned district judge. (ECF
7 No. 37 at 4.) The court construes plaintiff's latest motion as a motion to reconsider the magistrate
8 judges' denial of his earlier motion to amend.

9 II. MOTION FOR RECONSIDERATION OF PLAINTIFF'S MOTION TO AMEND

10 A. Legal Standard

11 Federal Rule of Civil Procedure 60(b)(1) allows the Court to relieve a party from an order
12 due to "mistake, inadvertence, surprise, or excusable neglect." In seeking reconsideration of an
13 order, Local Rule 230(j) requires a party to show "what new or different facts or circumstances
14 are claimed to exist which did not exist or were not shown upon such prior motion, or what other
15 grounds exist for the motion."

16 "A motion for reconsideration should not be granted, absent highly unusual
17 circumstances, unless the . . . court is presented with newly discovered evidence, committed clear
18 error, or if there is an intervening change in the controlling law," *Marlyn Nutraceuticals, Inc. v.*
19 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009), and "[a] party seeking
20 reconsideration must show more than a disagreement with the Court's decision, and
21 'recapitulation . . .'" of that which was already considered by the court in rendering its decision.
22 *United States v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (quoting
23 *Birmingham v. Sony Corp. of Am., Inc.*, 820 F. Supp. 834, 856 (D. N.J. 1992)).

24 B. Analysis

25 Plaintiff seeks to amend his amended complaint to add the phrase "and then violently
26 slammed plaintiff face-first down into the tiled concrete floor" and to correct a diacritic error in
27 the spelling of a defendant's name. (ECF No. 38.)

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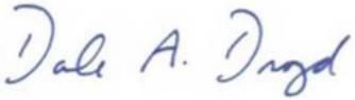
1 The minor corrections and/or additions plaintiff seeks to make do not present a basis for
2 reconsideration of the magistrate judge's order denying further leave to amend. The assigned
3 magistrate judge correctly denied plaintiff's motion to amend because his requested modifications
4 do not add nor detract from the substance of the allegations of his amended complaint. Simply
5 put, plaintiff's requested amendments are unnecessary. Plaintiff has not shown clear error or
6 other meritorious grounds for relief from the magistrate judge's order.

7 III. CONCLUSION

8 For the reasons stated above, plaintiff's motion to amend (ECF No. 37) construed as a
9 motion for reconsideration is DENIED.

10 IT IS SO ORDERED.

11
12
13 Dated: January 5, 2016



DALE A. DROZD
UNITED STATES DISTRICT JUDGE