



1 recommendations, and granting defendant Lesniak’s motion for summary judgment (Doc. No.  
2 63). (Doc. Nos. 61, 67.) For the reasons set forth below, the court will deny plaintiff’s motions  
3 for reconsideration.

#### 4 **PROCEDURAL BACKGROUND**

5 On December 16, 2015, plaintiff Van Buren filed what the assigned magistrate judge  
6 construed as a motion for leave to file a second amended complaint. (Doc. No. 24.) On June 27,  
7 2016, the assigned magistrate judge issued findings and recommendations, recommending that  
8 the court (1) deny plaintiff’s motion without prejudice, and (2) grant plaintiff thirty days within  
9 which to file a new motion for leave to file an amended complaint. (Doc. No. 43.) After the  
10 issuance of the findings and recommendations, but before the court ruled on them, plaintiff filed a  
11 new motion seeking leave to file a second amended complaint. (Doc. No. 49.) On September 8,  
12 2016, after no objections thereto were filed, the court adopted the magistrate judge’s findings and  
13 recommendations in full (Doc. No. 58.) On October 3, 2016, plaintiff filed a motion for  
14 reconsideration of the court’s September 8, 2016 order. (Doc. No. 61.)

15 Separately, on October 23, 2015, defendant C. Lesniak filed motion for summary  
16 judgment with respect to plaintiff’s Fourteenth Amendment due process claim against him. (Doc.  
17 No. 18.) On August 24, 2016, the assigned magistrate judge issued findings and  
18 recommendations, recommending that the court grant defendant Lesniak’s motion. (Doc. No.  
19 54.) On October 7, 2016, after considering the entire file, including plaintiff’s objections, the  
20 court adopted the findings and recommendations in full, and granted summary judgment in favor  
21 of defendant Lesniak, dismissing him from this action. (Doc. No. 63.) On October 24, 2016,  
22 plaintiff filed a motion seeking an extension of time to file a motion regarding the court’s October  
23 7, 2016 order. (Doc. No. 65.) Four days later, on October 28, 2016, plaintiff filed a motion to  
24 reconsider that order. (Doc. No. 67.)

#### 25 **LEGAL STANDARD**

26 District courts “possess[] the inherent procedural power to reconsider, rescind, or modify  
27 an interlocutory order for cause seen by it to be sufficient.” *City of L.A., Harbor Div. v. Santa*  
28 *Monica Baykeeper*, 254 F. 3d 882, 885 (9th Cir. 2001) (citations and internal quotation marks

1 omitted). A motion for reconsideration, however, “should not be granted . . . unless the district  
2 court is presented with newly discovered evidence, committed clear error, or if there is an  
3 intervening change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F. 3d 656,  
4 665 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F. 3d 1255, 1263 (9th Cir. 1993)).  
5 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the interests  
6 of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.  
7 3d 877, 890 (9th Cir. 2000) (citation omitted); *Pyramid Lake Paiute Tribe of Indians v. Hodel*,  
8 882 F. 2d 364 n.5 (9th Cir. 1989) (“[T]he orderly administration of lengthy and complex litigation  
9 such as this requires the finality of orders be reasonably certain.”).

## 10 DISCUSSION

### 11 A. Reconsideration of September 8, 2016 Order

12 Plaintiff’s first motion for reconsideration appears to misconstrue the court’s prior orders.  
13 Specifically, plaintiff interprets the magistrate judge’s June 27, 2016 findings and  
14 recommendations as having effectively denied his first motion for leave to file a second amended  
15 complaint. Thus, believing that he was given thirty days from the date of that order to act,  
16 plaintiff then filed a new motion for leave to file a second amended complaint on July 18, 2016.

17 However, pursuant to 28 U.S.C. § 636(b)(1), the magistrate judge’s findings and  
18 recommendations are not effective until the assigned district judge accepts, rejects, or modifies  
19 them. Thus, plaintiff was not required to file a new motion for leave to amend until after the  
20 court entered its order on September 8, 2016. Nevertheless, the court deems plaintiff’s new  
21 motion (Doc. No. 49), filed July 18, 2016, as timely filed in light of the court’s order. That new  
22 motion for leave to file a second amended complaint (Doc. No. 49) will be addressed separately  
23 and is not the subject of the instant motion for reconsideration. Because plaintiff has not  
24 identified any newly discovered evidence, a change in law, or any clear error on the part of the  
25 court, plaintiff’s motion for reconsideration of the court’s September 8, 2016 order (Doc. No. 61)  
26 will be denied.

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1 **B. Reconsideration of the October 7, 2016 Order**

2 Plaintiff's second motion for reconsideration concerns the court's October 7, 2016 order.<sup>1</sup>  
3 Plaintiff's due process claim against defendant Lesniak in this action arose from alleged  
4 procedural deficiencies that occurred during a rules violation report ("RVR") hearing, over which  
5 defendant Lesniak presided, after plaintiff was issued a RVR for battery on a peace officer. (*See*  
6 Doc. No. 54 at 6, 8–9.) In this context, certain minimum procedural requirements are due under  
7 the Constitution: (1) written notice of the charges; (2) at least 24-hours' advance notice before the  
8 hearing; (3) a written statement by the fact finders of the evidence relied on and the reasons for  
9 taking disciplinary action; (4) the right of the prisoner to call witnesses in his defense, when  
10 permitting him to do so would not be unduly hazardous to institutional safety or correctional  
11 goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the issues  
12 presented are legally complex. *Wolff v. McDonnell*, 418 U.S. 539, 563–71 (1974).

13 Here, plaintiff's motion for reconsideration of the court's order granting summary  
14 judgment in favor of defendant Lesniak advances substantially similar arguments as those  
15 plaintiff has previously raised both in opposition to defendant Lesniak's motion and in plaintiff's  
16 objections to the magistrate judge's findings and recommendations. In particular, plaintiff argues  
17 that defendant Lesniak (1) failed to consider purportedly contradictory statements made by  
18 correctional officers, (2) denied plaintiff the ability to call witnesses to provide live testimony at  
19 his prison disciplinary hearing, and (3) refused to hear or consider witness statements in reaching  
20 his findings. (Doc. No. 67 at 4–7.) In addition, plaintiff attaches as evidence documents  
21 pertaining to his RVR hearing.

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24 <sup>1</sup> In moving for reconsideration, plaintiff relies on Rule 59(e) of the Federal Rules of Civil  
25 Procedure. Because judgment has not yet been entered in this case, that rule is inapplicable to  
26 plaintiff's motion. Nevertheless, the court will construe plaintiff's motion as a pre-judgment  
27 motion for reconsideration under the applicable legal standard described above. In addition,  
28 because there is no explicit time limit within which to file such a motion for reconsideration,  
plaintiff's motion for a fifteen-day extension of time to file his motion for reconsideration (Doc.  
No. 65) is denied as unnecessary, and his motion for reconsideration (Doc. No. 67) is deemed  
timely filed.

1 Each of plaintiff's arguments has been addressed in the court's prior rulings. (*See* Doc.  
2 Nos. 54, 63.) To the extent plaintiff's offers "newly discovered evidence," the court finds it  
3 unpersuasive as to plaintiff's due process claim. As previously noted, the Supreme Court has  
4 bestowed a substantial amount of discretion upon prison officials to consider and evaluate  
5 evidence in a disciplinary hearing. *See Wolff*, 418 U.S. at 566. Thus, due process requires only  
6 that the fact finder provide a written statement describing the evidence relied upon, and stating its  
7 reasons for refusing to consider certain evidence. *See id.*; *see also Baxter v. Palmigiano*, 425  
8 U.S. 308, 321 (1976). Accordingly, the court found that based upon the evidence presented on  
9 summary judgment, defendant Lesniak did all that due process required in connection with  
10 plaintiff's prisoner disciplinary hearing. (*See* Doc. No. 63 at 3.) In moving for reconsideration,  
11 plaintiff effectively asks this court to look beyond the requirements set forth in *Wolff*, to evaluate  
12 the relevance of plaintiff's proffered evidence, and to examine whether defendant Lesniak  
13 appropriately considered or disregarded certain evidence at that hearing. Because such inquiries  
14 are not required to determine whether plaintiff was afforded procedural due process, plaintiff's  
15 newly offered evidence fails to create a genuine issue of material fact.

16 Accordingly, plaintiff's motion for reconsideration (Doc. No. 67) of this court's order  
17 granting summary judgment in favor of defendant Lesniak with respect to plaintiff's due process  
18 claim will be denied.

### 19 CONCLUSION

20 For the reasons set forth above,

- 21 1. Plaintiff's motion for reconsideration of the court's September 8, 2016 order (Doc.  
22 No. 61) is denied;
- 23 2. Plaintiff's motion for a fifteen-day extension of time to file his motion for  
24 reconsideration (Doc. No. 65) is denied as unnecessary; and

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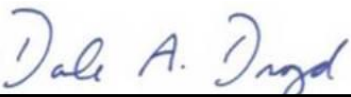
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3. Plaintiff's motion for reconsideration of the court's October 7, 2016 order (Doc. No. 67) is denied.

IT IS SO ORDERED.

Dated: December 30, 2016

  
UNITED STATES DISTRICT JUDGE