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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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9 MICHAEL GONZALES,

1:15-cv-00924-SKO (PC)

10 Plaintiff,

11 v.  
12 ORDER ON PLAINTIFF'S MOTIONS FOR  
13 Defendants. RECONSIDERATION OF INJUNCTIVE  
14 (Docs. 29, 33) RELIEF

15 Plaintiff, Michael Gonzales, a state prisoner proceeding *pro se* and *in forma pauperis*,

16 filed this civil rights action pursuant to 42 U.S.C. § 1983. On February 13, 2017, the order  
17 screening Plaintiff's First Amended Complaint issued in which Plaintiff's request for injunctive  
18 relief was dismissed as Plaintiff was no longer at the facility where the events underlying his  
19 claims occurred. (Doc. 28, p. 8.) On March 13, 2017, and April 3, 2017, Plaintiff filed motions  
20 for reconsideration of the order dismissing his request for injunctive relief. (Docs. 29, 33.)

21 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order  
22 for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy  
23 to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ."  
24 exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and  
25 citation omitted). The moving party "must demonstrate both injury and circumstances beyond his  
26 control . . ." *Id.* (internal quotation marks and citation omitted). Further, Local Rule 230(j)  
27 requires, in relevant part, that Plaintiff show "what new or different facts or circumstances are  
28 claimed to exist which did not exist or were not shown upon such prior motion, or what other

1 grounds exist for the motion,” and “why the facts or circumstances were not shown at the time of  
2 the prior motion.”

3 “A motion for reconsideration should not be granted, absent highly unusual  
4 circumstances, unless the district court is presented with newly discovered evidence, committed  
5 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to  
6 raise arguments or present evidence for the first time when they could reasonably have been  
7 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571  
8 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in  
9 original).

10 In his motions for reconsideration, Plaintiff indicates that he has been transferred back to  
11 California State Prison, Corcoran (“CSP-Cor”), in the precise housing unit where the facts he  
12 alleges in this action occurred. Plaintiff further states that the defendants in this action are again  
13 tainting his meals as alleged in the Second Amended Complaint. This amounts to new evidence  
14 upon which to reinstate Plaintiff’s request for injunctive relief in the Second Amended  
15 Complaint. Having carefully considered this matter, the Court finds the screening order to have  
16 been supported by proper analysis and the record before it when it issued, but Plaintiff’s transfer  
17 back to CSP-Cor warrants reinstating his request for injunctive relief.

18 It is also, however, possible that Plaintiff filed his motions for reconsideration to obtain  
19 preliminary injunctive relief from Defendants’ offending acts, which must be denied. “A plaintiff  
20 seeking a preliminary injunction must establish that he is likely to succeed on the merits and to  
21 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
22 favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense*  
23 *Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). “A preliminary injunction is an  
24 extraordinary remedy never awarded as a matter of right. In each case, courts must balance the  
25 competing claims of injury and must consider the effect on each party of the granting or  
26 withholding of the requested relief. In exercising their sound discretion, courts of equity should  
27 pay particular regard for the public consequences in employing the extraordinary remedy of  
28 injunction.” *Id.*, at 24 (citations and quotations omitted). An injunction may only be awarded

1 upon a clear showing that the plaintiff is entitled to such relief. *Id.*, at 22.

2 Requests for prospective relief are further limited by 18 U.S.C. § 3626 (a)(1)(A) of the  
3 Prison Litigation Reform Act, which requires that the Court ensure the relief “is narrowly drawn,  
4 extends no further than necessary to correct the violation of the Federal Right, and is the least  
5 intrusive means necessary to correct the violation of the Federal Right.”

6 “An inmate seeking an injunction on the ground that there is a contemporary violation of a  
7 nature likely to continue, must adequately plead such a violation; . . . .” *Farmer v. Brennan*, 511  
8 U.S. 825, 845-46 (1994) (citations and quotations omitted). It is subsequent to screening, such as  
9 in efforts to survive summary judgment, that a plaintiff “must come forward with evidence from  
10 which it can be inferred that the defendant-officials were at the time suit was filed, and are at the  
11 time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable  
12 risk of harm, and that they will continue to do so; and finally to establish eligibility for an  
13 injunction, the inmate must demonstrate the continuance of that disregard during the remainder of  
14 the litigation and into the future.” *Id.*, at 845-46. However, at this stage, the Court is not in a  
15 position to determine questions of a claim’s merits which require submission of evidence as  
16 opposed to merely determining whether a claim has been stated. *Barrett v. Belleque*, 544 F.3d  
17 1060 (9th Cir. 2008). Thus, any request for preliminary injunctive relief in Plaintiff’s motions for  
18 reconsideration must be denied without prejudice at this time.

19 Accordingly, it is HEREBY ORDERED that Plaintiff’s motions for reconsideration of the  
20 screening order are GRANTED in part and his request for injunctive relief in the Second  
21 Amended Complaint is reinstated. To the extent, however, that these motions seeks preliminary  
22 injunctive relief, they are DENIED without prejudice.

23 IT IS SO ORDERED.

24 Dated: April 20, 2017

25 /s/ *Sheila K. Oberlo*  
26 UNITED STATES MAGISTRATE JUDGE