

1 The Court also dismissed certain defendants without leave to amend. (ECF No. 16.) The
2 complaint itself was dismissed and Plaintiff was granted thirty (30) days to file a second
3 amended complaint. (Id.)

4 Plaintiff proceeded to file four motions for extension of time to file a second
5 amended complaint. (ECF Nos. 17, 19, 21, 24.) The motions were granted, but in
6 granting the fourth motion, filed January 30, 2017 (ECF No. 24), the Court warned
7 Plaintiff that further extensions of time were unlikely. (ECF No. 25.) Plaintiff was ordered
8 to file an amended complaint but also was given the option of notifying the Court of his
9 willingness to proceed only on the claims previously found cognizable. (Id.)

10 Plaintiff then failed to timely file a second amended complaint, notify the Court of
11 his willingness to proceed only on the cognizable claims or otherwise respond to the
12 Court's order. (Id.) Accordingly, on April 20, 2017, the Court issued an order to show
13 cause for failure to obey a court order and failure to prosecute. (ECF No. 26.) Plaintiff
14 then filed a fifth motion for extension of time on May 11, 2017. (ECF No. 27.) The Court
15 denied the motion and ordered Plaintiff to, within twenty-one days, either file an
16 amended complaint or advise the Court whether he wished to proceed on the excessive
17 force claim previously found cognizable. (ECF No. 28.) Plaintiff was advised that the
18 failure to timely respond would result in dismissal of the action for failure to obey a court
19 order and failure to prosecute. (Id.) The twenty-one day deadline passed without Plaintiff
20 either filing an amended complaint, stating his willingness to proceed only on cognizable
21 claims, or otherwise responding to the Court's order. Accordingly, on June 28, 2017, the
22 action was dismissed.

23 On July 24, 2017, Plaintiff filed a notice of appeal and, with it, a "Notice of
24 Reconsideration."

25 **II. Legal Standard**

26 "A motion for reconsideration should not be granted, absent highly unusual
27 circumstances, unless the district court is presented with newly discovered evidence,
28 committed clear error, or if there is an intervening change in the controlling law." Marlyn

1 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).
2 “A motion for reconsideration may not be used to raise arguments or present evidence
3 for the first time when they could reasonably have been raised in earlier litigation.” Id.
4 Moreover, “recapitulation of the cases and arguments considered by the court before
5 rendering its original decision fails to carry the moving party's burden.” U.S. v. Westlands
6 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony
7 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)
8 requires that a party seeking reconsideration show that “new or different facts or
9 circumstances are claimed to exist which did not exist or were not shown upon such
10 prior motion, or what other grounds exist for the motion”

11 Additionally, Rule 60(b) allows the Court to relieve a party from a final judgment or
12 order on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
13 discovered evidence . . . ; (3) fraud . . . , misrepresentation, or misconduct by an
14 opposing party; (4) the judgment is void; (5) the judgment has been satisfied . . . ; it is
15 based on an earlier judgment that has been reversed or vacated; or applying it
16 prospectively is no longer equitable; or (6) any other reason that justifies relief.” Fed. R.
17 Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
18 manifest injustice and is to be utilized only where extraordinary circumstances” exist.
19 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
20 citation omitted). The moving party bears the burden of demonstrating that relief under
21 Rule 60(b) is appropriate. Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988).

22 **III. Discussion**

23 Plaintiff's motion reiterates the arguments presented in his fifth motion for
24 extension of time. (ECF No. 27.) These arguments have been considered and rejected
25 by the Court. (ECF No. 28.) Plaintiff's only other argument is that his claim is meritorious
26 and he is likely to prevail. However, this does not excuse his failure to comply with Court
27 orders or his failure to prosecute this matter by either filing an amended complaint or
28 electing to prosecute only the cognizable claim. He does not present a basis for

1 reconsideration or relief from judgment.

2 **IV. Conclusion and Order**

3 Based on the foregoing, Plaintiff's motion for reconsideration is HEREBY
4 DENIED.

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6 IT IS SO ORDERED.

7 Dated: September 12, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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