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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTWOINE BEALER,

 Plaintiff,

 v.

SECRETARY OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION, et al.,

 Defendants.

CASE NO. 1:16-cv-00671-LJO-MJS (PC)

**ORDER DENYING MOTION FOR RELIEF
FROM JUDGMENT OR ORDER**

(ECF No. 24)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's May 3, 2017 motion for relief from a judgment or order pursuant to Federal Rule of Civil Procedure 60(b).

I. Procedural History

On June 6, 2016, Plaintiff filed a motion for injunctive relief, seeking to halt random drug tests that Plaintiff views as retaliatory. (ECF No. 6.) On January 17, 2017, the assigned Magistrate Judge issued findings and a recommendation to deny the motion on several grounds. (ECF No. 16.) First, as Plaintiff's complaint had at that time

1 been dismissed with leave to amend for failure to state a claim (ECF No. 15), there was
2 no operative pleading. The Magistrate Judge therefore could not conclude that Plaintiff
3 was likely to succeed on the merits of his claims. Additionally, Plaintiff had failed to
4 suggest a threat of irreparable injury.

5 Plaintiff sought and received an extension of time to file objections to the findings
6 and recommendations. (ECF Nos. 17, 20.) However, no objections were filed during the
7 relevant period and, on March 17, 2017, the undersigned adopted the findings and
8 recommendations in full. (ECF No. 21.)

9 Subsequently, on April 24, 2017, the undersigned screened Plaintiff's first
10 amended complaint and concluded that it stated cognizable Fourth Amendment claims
11 against Officer Stinson but no other cognizable claims. Plaintiff was ordered to file an
12 amended complaint or notify the Court of his willingness to proceed only on the
13 cognizable claims. (ECF No. 24.) On May 5, 2017, Plaintiff filed a motion for an
14 extension of time, stating his intent to file an amended complaint and seeking additional
15 time to do so. (ECF No. 25.) The motion is pending and Plaintiff's second amended
16 complaint has not been filed.

17 **II. Plaintiff's Motion**

18 In his motion for relief, Plaintiff states that he timely submitted objections to the
19 findings and recommendations but they were returned to him. (ECF No. 24.) He asks the
20 Court to consider his objections. He points out that he has submitted an amended
21 complaint since the findings and recommendation issued. He states that his amended
22 complaint is sufficient for the Court to determine that he is likely to succeed on the
23 merits. With regard to the requirement that he face a threat of immediate and irreparable
24 injury, he states that he has been drug tested more than one hundred times over the
25 course of thirteen years with negative results. He contends that he will continue to be
26 subjected to such harassment and retaliation absent preliminary injunctive relief.

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1 **III. Legal Standard**

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

14 To the extent the request is construed as a motion for reconsideration, “[a] motion
15 for reconsideration should not be granted, absent highly unusual circumstances, unless
16 the district court is presented with newly discovered evidence, committed clear error, or if
17 there is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc. v.
18 Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009). “A motion for
19 reconsideration may not be used to raise arguments or present evidence for the first time
20 when they could reasonably have been raised in earlier litigation.” Id. Moreover,
21 “recapitulation of the cases and arguments considered by the court before rendering its
22 original decision fails to carry the moving party’s burden.” U.S. v. Westlands Water Dist.,
23 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Bermingham v. Sony Corp. of Am.,
24 Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j) requires that a
25 party seeking reconsideration show that “new or different facts or circumstances are
26 claimed to exist which did not exist or were not shown upon such prior motion, or what
27 other grounds exist for the motion”

1 **IV. Discussion**

2 Plaintiff fails to present any basis for reconsideration of the Court's ruling. He is
3 not entitled to preliminary injunctive relief.

4 Injunctive relief, whether temporary or permanent, is an "extraordinary remedy,
5 never awarded as of right." Winter v. Natural Res. Def. Council, 555 U.S. 7, 22 (2008).
6 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
8 that the balance of equities tips in his favor, and that an injunction is in the public
9 interest." Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.
10 2009) (quoting Winter, 555 U.S. at 20).

11 Here, the Court has concluded that Plaintiff states a viable Fourth Amendment
12 claim against Officer Stinson, an officer at Kern Valley State Prison. (ECF No. 22.)
13 However, Plaintiff is now housed at High Desert State Prison. Absent facts to suggest
14 that Plaintiff will be transferred back to the custody of Defendant Stinson, any requests
15 for injunctive relief against him appear to be moot. See Preiser v. Newkirk, 422 U.S. 395,
16 402-03 (1975); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991); see also Andrews
17 v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007).

18 To the extent Plaintiff asks the Court to intervene in drug testing at his current
19 institution, no individuals at that institution are named as defendants, nor has he stated
20 cognizable claims against anyone able to afford such relief. The Court does not have
21 jurisdiction to order injunctive relief which would require directing parties not before the
22 Court to take action. Zepeda v. United States Immigration & Naturalization Serv., 753
23 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal
24 jurisdiction over the parties and subject matter jurisdiction over the claim; it may not
25 attempt to determine the rights of persons not before the court.").

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1 **V. Conclusion and Order**

2 For the reasons stated, Plaintiff is not entitled to preliminary injunctive relief as
3 requested in his motion. His motion for relief from judgment or order is HEREBY
4 DENIED.

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6 IT IS SO ORDERED.

7 Dated: May 18, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

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