

1 issued on March 23, 2017, for Plaintiff to respond to the Screening Order by either filing a first
2 amended complaint, or a notice that he was willing to proceed on the two claims that had been
3 found cognizable. (Doc. 16.) Instead Plaintiff filed a motion for reconsideration and objections
4 to the Screening Order. (Doc. 17.)

5 Rule 60(b) of the Federal Rules of Civil Procedure provides that “[o]n motion and upon
6 such terms as are just, the court may relieve a party . . . from a final judgment, order, or
7 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;
8 (2) newly discovered evidence that, with reasonable diligence could not have been discovered in
9 time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by
10 an opposing party; . . . or (6) any other reason justifying relief from the operation of judgment.”
11 Motions under Rule 60(b) "must be made within a reasonable time -- and for reasons (1), (2), and
12 (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”

13 Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest
14 injustice and is to be utilized only where extraordinary circumstances . . .” exist. *Harvest v.*
15 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted)
16 (addressing reconsideration under Rules 60(b)(1)-(5)). The moving party “must demonstrate both
17 injury and circumstances beyond his control . . .” *Id.* (internal quotation marks and citation
18 omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or
19 different facts or circumstances are claimed to exist which did not exist or were not shown”
20 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
21 not shown” at the time the substance of the order which is objected to was considered.

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

2 It is noteworthy that it was not until after the Ninth Circuit dismissed his appeal that
3 Plaintiff filed the present motion. Though Plaintiff presents a multi-paged rant of perceived bias
4 by corrections officials, judges, and the court system in general, he raises neither evidence nor
5 law that has not previously been considered.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this
7 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
8 Court finds the Screening Order to be supported by the record and proper analysis.

9 Accordingly, it is HEREBY ORDERED that:

- 10 1. Plaintiff's motion for reconsideration, filed on April 6, 2017 (Doc. 17), is
11 DENIED and any objections based thereon are OVERRULED;
- 12 2. The Clerk's Office shall send Plaintiff an amended complaint form and another
13 copy of the October 25, 2016 screening order (Doc. 8);
- 14 3. Within **twenty-one (21) days** from the date of service of this order, Plaintiff
15 SHALL either:
 - 16 a. File a first amended complaint curing the deficiencies identified by the
17 Court in the October 25, 2016 screening order; or
 - 18 b. Notify the Court in writing that he is willing to proceed only on the two
19 claims found cognizable in the October 25, 2016 screening order for (i)
20 inhumane conditions of confinement, in violation of the Eighth
21 Amendment, against Doe Defendant Correctional Officers ("COs"), and
22 (ii) retaliation, in violation of the First Amendment, against Doe Defendant
23 COs; and
 - 24 c. If Plaintiff files a notice that he is willing to proceed only on the cognizable
25 claims, he must include all information available to him to identify the Doe
26 Defendant COs for service of process (i.e. their physical descriptions, yards
27 and times of their interaction with Plaintiff, and any documents containing
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their identities); and

4. **If Plaintiff fails to comply with this order, this action will be dismissed for Plaintiff's failure to obey a court order.**

IT IS SO ORDERED.

Dated: **April 21, 2017**

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