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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 JEREMY JONES,

10 Plaintiff,

11 vs.

12 ARNETTE, et al.,

13 Defendants.
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1:16-cv-01212-DAD-GSA-PC

**ORDER DENYING MOTION FOR
RECONSIDERATION
(ECF No. 78.)**

15 **I. BACKGROUND**

16 Jeremy Jones (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
17 with this civil rights action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act
18 (ADA), 42 U.S.C. § 12132.

19 On November 6, 2020, the court issued a Discovery and Scheduling Order establishing
20 pretrial deadlines for the parties including a discovery deadline of April 6, 2021, and a dispositive
21 motions deadline of June 6, 2021. (ECF No. 59.) On April 1, 2021, defendants Arnett, Flores,
22 Gonzales, and Keener (“Defendants”) filed a motion to modify the Scheduling Order. (ECF No.
23 74.)

24 On April 9, 2021, the court issued an order granting Defendants’ motion to modify the
25 Scheduling Order, extending the deadlines for discovery and for the filing of dispositive motions
26 for all parties. (ECF No. 77.) On April 19, 2021, Plaintiff filed an opposition to the modification
27 of the discovery deadline, which the court construes as a motion for reconsideration of the April
28 9, 2021 order. (ECF No. 78.)

1 **II. MOTION FOR RECONSIDERATION**

2 Rule 60(b) allows the Court to relieve a party from an order for “(1) mistake,
3 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable
4 diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3)
5 fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an
6 opposing party; (4) the judgment is void; or (6) any other reason that justifies relief.” Fed. R.
7 Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest
8 injustice and is to be utilized only where extraordinary circumstances . . .” exist. Harvest v.
9 Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotation marks and citation omitted). The
10 moving party “must demonstrate both injury and circumstances beyond his control . . .” Id.
11 (internal quotation marks and citation omitted). In seeking reconsideration of an order, Local
12 Rule 230(k) requires Plaintiff to show “what new or different facts or circumstances are claimed
13 to exist which did not exist or were not shown upon such prior motion, or what other grounds
14 exist for the motion.”

15 “A motion for reconsideration should not be granted, absent highly unusual
16 circumstances, unless the district court is presented with newly discovered evidence, committed
17 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,
18 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks
19 and citations omitted, and “[a] party seeking reconsideration must show more than a
20 disagreement with the Court’s decision, and recapitulation . . . ” of that which was already
21 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134 F.Supp.2d
22 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a strongly
23 convincing nature to induce the court to reverse its prior decision. See Kern-Tulare Water Dist.
24 v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in
25 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

26 Here, Plaintiff objects to the extension of the discovery deadline to depose Plaintiff,
27 because of Defendants’ misconduct. First, Plaintiff claims that Defendants failed to comply with
28 deadlines in the court’s Discovery Order which require that all discovery requests be served at

1 least 60 calendar days before the discovery deadline, and that notice of a deposition be served at
2 least 15 calendar days before such deposition. Plaintiff asserts that Defendants waited until
3 March 22, 2021 to serve notice of Plaintiff's deposition and by the time Plaintiff received the
4 notice, only 10 days were left until the scheduled deposition date. Second, Plaintiff argues that
5 Defendants were not held to the same standard for complying with deadlines as Plaintiff was in
6 a previous case when he was excluded from discovery for missing the "45-day rule." (ECF No.
7 78 at 2:3-7.) Plaintiff contends that Defendants should be held accountable for waiting until the
8 last minute and scheduling his deposition for the very last day of discovery.

9 **III. DISCUSSION**

10 Plaintiff has not set forth facts or law of a strongly convincing nature in his motion for
11 reconsideration to induce the court to reverse its prior decision. Plaintiff claims that Defendants
12 have not complied with deadlines, but he cites no examples of any deadlines that Defendants
13 failed to meet. Modification of a scheduling order requires a showing of good cause, which
14 requires a showing of due diligence by the party seeking modification. In its order of April 9,
15 2021, the court found that Defendants showed that even with the exercise of due diligence they
16 could not meet the requirements of the prior scheduling order. Plaintiff has not presented the
17 court with newly discovered evidence, shown that the court committed clear error, or claimed
18 there was an intervening change in the controlling law. Therefore, Plaintiff's motion for
19 reconsideration shall be denied.

20 **IV. CONCLUSION**

21 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
22 reconsideration, filed on April 19, 2021, is DENIED.

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24 IT IS SO ORDERED.

25 Dated: April 22, 2021

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE
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