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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOBBY LEE KINDER, JR.,
Plaintiff,
v.
MERCED COUNTY,
Defendant.

CASE No. 1:16-cv-01311-MJS (PC)
ORDER DENYING MOTION FOR RECONSIDERATION
(ECF No. 22)

I. Procedural History

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. He has consented to Magistrate Judge jurisdiction. No other parties have appeared in the action.

Plaintiff’s complaint was dismissed for failure to state a claim, but he was given leave to amend. (ECF No. 9.) His first amended complaint was dismissed because it only contained allegations that were not properly joined in this action. He again was given leave to amend. (ECF No. 11.) His initial attempt at a second amended complaint was stricken because it also contained only allegations that were not properly joined in this action. A separate action was opened and the stricken complaint was filed therein. Finally, his re-filed second amended complaint was dismissed for failure to state a claim. (ECF No. 19.) Further leave to amend was denied, and the action was closed. (Id.)

1 Before the Court are Plaintiff's objections to the screening order, which the Court
2 construes as a motion for reconsideration.¹ (ECF No. 22.)

3 **II. Legal Standard**

4 "A motion for reconsideration should not be granted, absent highly unusual
5 circumstances, unless the district court is presented with newly discovered evidence,
6 committed clear error, or if there is an intervening change in the controlling law." Marlyn
7 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

8 "A motion for reconsideration may not be used to raise arguments or present evidence
9 for the first time when they could reasonably have been raised in earlier litigation." Id.

10 Moreover, "recapitulation of the cases and arguments considered by the court before
11 rendering its original decision fails to carry the moving party's burden." U.S. v. Westlands

12 Water Dist., 134 F. Supp. 2d 1111, 1131 (9th Cir. 2001) (quoting Birmingham v. Sony
13 Corp. of Am., Inc., 820 F. Supp. 834, 856-57 (D.N.J. 1992)). Similarly, Local Rule 230(j)

14 requires that a party seeking reconsideration show that "new or different facts or
15 circumstances are claimed to exist which did not exist or were not shown upon such
16 prior motion, or what other grounds exist for the motion"

17 Additionally, Rule 60(b) allows the Court to relieve a party from a final judgment or
18 order on grounds of: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

19 discovered evidence . . . ; (3) fraud . . . , misrepresentation, or misconduct by an
20 opposing party; (4) the judgment is void; (5) the judgment has been satisfied . . . ; it is

21 based on an earlier judgment that has been reversed or vacated; or applying it
22 prospectively is no longer equitable; or (6) any other reason that justifies relief." Fed. R.

23 Civ. P. 60(b). Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent
24 manifest injustice and is to be utilized only where extraordinary circumstances" exist.

25 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
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27 _____
28 ¹ Plaintiff has appealed. (ECF No. 23.) The Court nonetheless has jurisdiction to deny the motion for
reconsideration. Fed. R. Civ. P. 62.1(a).

1 citation omitted). The moving party bears the burden of demonstrating that relief under
2 Rule 60(b) is appropriate. Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988).

3 **III. Discussion**

4 Plaintiff's motion does not present a basis for relief.

5 Plaintiff asks for extra time to obtain the name of a police officer who tazed him.
6 This claim was dismissed because Plaintiff alleged only municipal liability and yet he
7 failed to state a claim on that basis. Furthermore, to the extent Plaintiff wishes to
8 proceed against an individual police officer, this claim would appear to be improperly
9 joined. Fed. R. Civ. P. 20.

10 Plaintiff asks for extra time to subpoena a police report. It is unclear how such
11 report would have affected the Court's analysis of Plaintiff's claims. It appears related to
12 the tazing incident.

13 Plaintiff proposes to reduce the amount of monetary relief he seeks in this action.
14 This was not a basis for the dismissal of the complaint. Altering the amount of relief
15 would not affect the Court's conclusions.

16 Plaintiff asks for permission to re-file his state law claims. The Court declined to
17 exercise jurisdiction over Plaintiff's state law claims. The dismissal order does not affect
18 Plaintiff's ability to bring such claims in state court.

19 Lastly, Plaintiff re-alleges allegations that the Court determined were not
20 cognizable. Plaintiff presents no basis for reconsidering the Court's prior ruling.

21 **IV. Conclusion and Order**

22 Plaintiff's objections, construed as a motion for reconsideration, do not present a
23 basis for reconsideration or for relief from judgment. Accordingly, the motion for
24 reconsideration is HEREBY DENIED.
25 IT IS SO ORDERED.

26 Dated: February 6, 2017

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE