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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LILLIAN SMITH,

12 Plaintiff,

13 vs.

14 C. BURGDORFF, et al.,

15 Defendants.
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1:17-cv-00634-DAD-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(ECF No. 11.)

17 **I. BACKGROUND**

18 This is a civil action filed by Lillian Smith (“Plaintiff”), a state prisoner proceeding *pro*
19 *se*. This action was initiated by civil complaint filed by Plaintiff in the Madera County
20 Superior Court on November 18, 2016 (Case #MCV073193). On May 17, 2017, defendants C.
21 Burgdorff, J. Harry, E. Olesky, and B. Wilkins (“Defendants”) removed the case to federal
22 court by filing a Notice of Removal of Action pursuant to 28 U.S.C. § 1441(a). (ECF No. 1.)
23 On April 16, 2018, the court screened the Complaint under 28 U.S.C. § 1915A and issued an
24 order dismissing the Complaint for failure to state a claim upon which relief may be granted,
25 with leave to amend. (ECF No. 10.) In the order, Plaintiff was directed to file a First Amended
26 Complaint within thirty days, and she was forewarned that her failure to comply with the
27 court’s order “shall result in a recommendation that this case be dismissed for failure to state a
28 claim.” (*Id.* at 10.)

1 On May 3, 2018, Plaintiff filed a motion for reconsideration of the court’s screening
2 order. (ECF No. 11.)

3 **II. MOTION FOR RECONSIDERATION**

4 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that
5 justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
6 manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist.
7 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation
8 omitted). The moving party “must demonstrate both injury and circumstances beyond his
9 control . . .” Id. (internal quotation marks and citation omitted). In seeking reconsideration of
10 an order, Local Rule 230(k) requires Plaintiff to show “what new or different facts or
11 circumstances are claimed to exist which did not exist or were not shown upon such prior
12 motion, or what other grounds exist for the motion.”

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

24 **III. DISCUSSION**

25 Plaintiff requests the court to reconsider its decision in the screening order to dismiss
26 her claims against defendants C. Burgdorff, J. Harry, E. Olesky, and B. Wilkins. Plaintiff
27 disagrees with the court’s assessment of these claims. Plaintiff reiterates her allegations against
28 defendants and requests the court to reverse the decision in the screening order.

1 Plaintiff has not set forth facts or law of a strongly convincing nature to induce the court
2 to reverse its prior decision. Therefore, the motion for consideration shall be denied.

3 At this stage of the proceedings, if Plaintiff disagrees with the court's screening order
4 her remedy is to file a First Amended Complaint clearly and succinctly stating the allegations
5 and claims upon which she wishes to proceed. Thereafter the court will screen the First
6 Amended Complaint based on her allegations stated therein. Plaintiff shall be granted
7 additional time to prepare and file a First Amended Complaint.

8 **IV. CONCLUSION**

9 Based on the foregoing, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's motion for reconsideration, filed on May 3, 2018, is DENIED;
- 11 2. Within thirty days from the date of service of this order, Plaintiff is required to
12 comply with the court's Screening Order of April 16, 2018, by filing a First
13 Amended Complaint; and
- 14 3. Plaintiff's failure to comply with this order shall result in a recommendation that
15 this action be dismissed for failure to state a claim.

16
17 IT IS SO ORDERED.

18 Dated: May 7, 2018

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE