

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BARRY LEE BROOKINS,)	Case No. 1:17-cv-01675-AWI-SAB (PC)
Plaintiff,)	
v.)	ORDER DENYING PLAINTIFF’S SECOND
M. HERNANDEZ, et al.,)	MOTION FOR RECONSIDERATION OF THE
Defendants.)	COURT’S MARCH 26, 2020 ORDER
)	[ECF No. 75]
)	
)	

Plaintiff Barry Lee Brookins is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for clarification, filed on May 28, 2020. The Court construes Plaintiff’s motion as a second motion for reconsideration under Rule 60(b) of the Court’s March 26, 2020 order denying his second motion to compel.

Federal Rule of Civil Procedure 60(b) governs relief from orders of the district court. The Rule permits a district court to relieve a party from a final order or judgment on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence. . . ; (3) fraud . . . by an opposing party, . . . ; (4) the judgment is void; (5) the judgment has been satisfied. . . ; or (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b). The motion for reconsideration must be made within a reasonable time. Id. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist. Harvest v.

1 Castro, 531 F.3d 737, 749 (9th Cir. 2008). The moving party “must demonstrate both injury and
2 circumstances beyond his control” Id. Local Rule 230(j) requires Plaintiff to show “what new or
3 different facts or circumstances are claimed to exist which did not exist or were not shown upon such
4 prior motion, or what other grounds exist for the motion.” “A motion for reconsideration should not
5 be granted, absent highly unusual circumstances, unless the district court is presented with newly
6 discovered evidence, committed clear error, or if there is an intervening change in the controlling
7 law,” and it “may *not* be used to raise arguments or present evidence for the first time when they could
8 reasonably have been raised earlier in the litigation.” Marilyn Nutraceuticals, Inc. v. Mucos Pharma
9 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (emphasis in original).

10 “A party seeking reconsideration must show more than a disagreement with the Court’s decision,
11 and recapitulation” of that which was already considered by the Court in rendering its decision. United
12 States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To succeed, a party must
13 set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.
14 See Kern–Tulare Water Dist. v. City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986).
15 Additionally, pursuant to this Court’s Local Rules, when filing a motion for reconsideration, a party
16 must show what “new or different facts or circumstances claimed to exist which did not exist or were
17 not shown upon such prior motion, or what other grounds exist for the motion.” Local Rule 230(j).

18 Here, Plaintiff fails to meet the requirements for granting a motion for reconsideration.
19 Plaintiff has not shown mistake, inadvertence, surprise, or excusable neglect, or any other basis for
20 relief under Rule 60(b). Furthermore, Plaintiff has not shown “new or difference facts or
21 circumstances claimed to exist which did not exist or were not shown upon such prior motion, or what
22 other grounds exist for the motion.” Local Rule 230(j). Rather, Plaintiff merely expresses
23 disagreement with the Court’s March 26, 2020 order denying his second motion to compel, and
24 contends that discovery is necessary for him to litigate this action. However, as stated in the Court’s
25 March 26, 2020 order, Plaintiff’s discovery requests and motion to compel were not timely filed, and

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff has failed to present any basis to reconsider the Court's order. Accordingly, Plaintiff's second motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: June 2, 2020



UNITED STATES MAGISTRATE JUDGE