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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 CHRISTOPHER LIPSEY, JR.,

10 Plaintiff,

11 vs.

12 N. HAND-RONGA, et al.,

13 Defendants.
14

1:17-cv-01704-LJO-GSA-PC

**ORDER DENYING MOTION FOR
RECONSIDERATION
(ECF No. 37.)**

15 **I. BACKGROUND**

16 Christopher Lipsey, Jr. (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
17 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On November 5, 2019,
18 findings and recommendations were entered, recommending that this case be dismissed, with
19 prejudice, for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983.
20 (ECF No. 33.) On November 18, 2019, Plaintiff filed objections to the findings and
21 recommendations. (ECF No. 34.) On November 19, 2019, the undersigned adopted the findings
22 and recommendations in full, dismissing the case with prejudice. (ECF No. 35.)

23 On December 13, 2019, Plaintiff filed a motion for relief under Rules 59 and 60(b) of the
24 Federal Rules of Civil Procedure. (ECF No. 37.) The court construes Plaintiff’s motion as a
25 motion for reconsideration of the order dismissing this case.

26 **II. MOTION FOR RECONSIDERATION**

27 Rule 60(b) allows the Court to relieve a party from an order for “(1) mistake,
28 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable

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

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

23 Plaintiff argues that his state law claims should have been denied or otherwise ruled upon
24 when this case was dismissed, asserting that he asked the Court to remand the state law claims
25 to the Kings County Superior Court. Plaintiff claims that the court “refuse[d] to hear the state
26 law claims or find they failed to state claims for relief under state law as well, which may be an
27 error of law.” (ECF No. 37 at 2:17-21.) Plaintiff argues that it would be manifestly unjust for
28 the court to refuse to exercise supplemental jurisdiction or refuse to remand the case to the

1 Superior Court. Plaintiff also claims that he is entitled to relief under Rule 60(b) for excusable
2 neglect in alleging retaliation instead of deliberate indifference, and he should be allowed to
3 amend the complaint.

4 The court addressed Plaintiff's state law claims in the findings and recommendations
5 issued on November 5, 2019, and declined to exercise supplemental jurisdiction:

6 Plaintiff alleges violation of Code of Civil Procedure §§ 1708, 1711, 1714,
7 and 3333.2. Plaintiff also brings claims for negligence, defamation, libel, slander,
8 and violation of the Bane Act, Cal. Civ. Code § 52.1(a). These are all state law
9 claims. Violation of state law is not sufficient to state a claim for relief under §
10 1983. To state a claim under § 1983, there must be a deprivation of federal
11 constitutional or statutory rights. See Paul v. Davis, 424 U.S. 693 (1976).
12 Although the court may exercise supplemental jurisdiction over state law claims,
13 Plaintiff must first have a cognizable claim for relief under federal law. See 28
14 U.S.C. § 1367.

15 In this instance, the court has not found any cognizable § 1983 claims in
16 the Fourth Amended Complaint against any of the Defendants. Therefore, the
17 court declines to exercise supplemental jurisdiction over Plaintiff's state law
18 claims.

19 (ECF No. 33 at 13 ¶ E.) The undersigned considered Plaintiff's objections to the findings and
20 recommendations before adopting the findings and recommendations in full. Here, Plaintiff has
21 not set forth facts or law of a strongly convincing nature in his motion for reconsideration to
22 induce the Court to reverse its prior decision. Therefore, the motion for reconsideration shall be
23 denied.

24 **III. CONCLUSION**

25 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
26 reconsideration, filed on December 13, 2019, is DENIED.

27 IT IS SO ORDERED.

28 Dated: December 16, 2019

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