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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,
Plaintiff,
vs.
BRIAN L. PARRIOT, et al.,
Defendants.

1:19-cv-00286-NONE-GSA-PC
ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION
(ECF No. 36.)

I. BACKGROUND

Lawrence Christopher Smith (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on February 14, 2019, in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1.) On March 4, 2019, the case was transferred to this court. (ECF No. 3.)

On September 10, 2020, Plaintiff filed the First Amended Complaint. (ECF No. 22.) On January 19, 2021, the court found the First Amended Complaint appropriate for service and directed e-service on defendants Andres Cantu, Wilfredo Gutierrez, and J. Mattingly (“Defendants”). (ECF No. 28.) On June 14, 2021, Defendants filed an answer to the First Amended Complaint. (ECF No. 33.) On June 15, 2021, discovery was opened. (ECF No. 35.) This case is now in the discovery phase.

1 On July 16, 2021, Plaintiff filed a motion to amend the complaint. (ECF No. 36.) On
2 July 30, 2021, Defendants filed an opposition to the motion. (ECF No. 37.) On August 12, 2021,
3 Plaintiff filed a motion for extension of time to file a reply to Defendants' opposition. (ECF No.
4 39.) On August 16, 2021, the court issued an order denying Plaintiff's motion to file a Second
5 Amended Complaint. (ECF No. 40.) Also on August 16, 2021, the court granted Plaintiff's
6 motion for extension of time. (ECF No. 41.)

7 On August 31, 2021, Plaintiff filed a reply to Defendants' opposition to the motion to
8 amend. (ECF No. 44.) Given that on August 16, 2021, the court issued an order denying
9 Plaintiff's motion to amend the court shall treat Plaintiff's reply as a motion for reconsideration
10 of the court's order.

11 **II. MOTION FOR RECONSIDERATION**

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

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

1 and citations omitted, and “[a] party seeking reconsideration must show more than a
2 disagreement with the Court’s decision, and recapitulation . . . ” of that which was already
3 considered by the Court in rendering its decision,” U.S. v. Westlands Water Dist., 134 F.Supp.2d
4 1111, 1131 (E.D. Cal. 2001). To succeed, a party must set forth facts or law of a strongly
5 convincing nature to induce the court to reverse its prior decision. See Kern-Tulare Water Dist.
6 v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in
7 part on other grounds, 828 F.2d 514 (9th Cir. 1987).

8 **III. DISCUSSION**

9 Plaintiff has not set forth facts or law of a strongly convincing nature in his motion for
10 reconsideration to induce the Court to reverse its prior decision. Therefore, Plaintiff’s motion for
11 reconsideration shall be denied.

12 **IV. CONCLUSION**

13 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s motion for
14 reconsideration, filed on August 31, 2021, is DENIED.

15 IT IS SO ORDERED.

16
17 Dated: September 1, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE