

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 GEORGE MARTIN, H-90626,)
9 Plaintiff(s),) No. C 12-3193 CRB (PR)
10 vs.) ORDER DENYING
11 A. HEDGPETH, Warden, et al.,) SECOND MOTION FOR
12 Defendant(s).) RECONSIDERATION
13) (Dkt. #137 & 148)
14

15 On May 14, 2015, the court granted summary judgment in
16 favor of defendants on plaintiff's three remaining Eighth
17 Amendment medical claims – denial of adequate hypertension
18 medicine, denial of morning pain medication on December 29,
19 2011 and denial of effective eye wear – and judgment was
20 entered. After reviewing the papers and evidence submitted by
21 plaintiff and defendants, the court found that no reasonable jury
22 could find that defendants were deliberately indifferent to
23 plaintiff's serious medical needs and that defendants were entitled
24 to qualified immunity because a reasonable doctor could have
25 believed that his conduct was lawful under the circumstances.

26 On June 5, 2015, plaintiff filed a motion for reconsideration
27 of the court's May 14, 2015 order. The court directed defendants
28 to respond and, after reviewing the parties' submissions, denied

1 the motion on June 24, 2015. The court specifically noted that
2 motions for reconsideration are not a substitute for appeal or a
3 means of attacking some perceived error of the court. See June
4 24, 2015 Order at 1 (citing Twentieth Century - Foc Film Corp. v.
5 Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981)).

6 On August 24, 2015, plaintiff filed a motion for an
7 extension of time to file a notice of appeal, claiming that he had
8 not received a copy of the court's June 24, 2015 order denying his
9 motion for reconsideration until August 4, 2015. On September
10 2, 2015, the court granted plaintiff's motion and advised him that
11 he could "file a notice of appeal within fourteen (14) days of the
12 date of this order. See Fed. R. App. P. 4(a)(5)."

13 On October 2, 2015, plaintiff instead filed a second motion
14 for reconsideration of the court's May 14, 2015 order granting
15 defendants' motion for summary judgment claiming "newly
16 discovered evidence." The court directed defendants to respond
17 by no later than October 16, 2015, which they did. But plaintiff
18 replied that he could not read defendants' response due to his
19 visual impairment and asked that the response be sent to him in a
20 larger type size. On November 4, 2015, the court ordered
21 defendants to serve plaintiff with a new copy of their response
22 using Times New Roman type size 16, as the court is using in this
23 order, within seven days. Defendants complied and, after some
24 not unexpected delay from plaintiff, plaintiff filed several related
25 and unrelated pleadings to his second motion for reconsideration.

26 Plaintiff's second motion for reconsideration (dkt. # 137) of
27
28

1 the court's May 14, 2015 order granting defendants' motion for
2 summary judgment is DENIED. Federal Rule of Civil Procedure
3 60(b) provides for reconsideration where one or more of the
4 following is shown: (1) mistake, inadvertence, surprise or
5 excusable neglect; (2) newly discovered evidence which by due
6 diligence could not have been discovered before the court's
7 decision; (3) fraud by the adverse party; (4) voiding of the
8 judgment; (5) satisfaction of the judgment; (6) any other reason
9 justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS
10 Inc., 5 F.3d 1255, 1263 (9th Cir.1993). But plaintiff does not
11 show why the proffered new evidence could not have been
12 discovered and presented before the court's May 14, 2015
13 decision or, if it somehow could be considered by the court, why
14 it would compel a different result. See Carroll v. Nakatani, 342
15 F.3d 934, 945 (9th Cir. 2003) (reconsideration is not a vehicle for
16 rehash arguments previously presented or to raise arguments or
17 present evidence that could have been raised earlier). There
18 simply is no showing that the evidence plaintiff has set forth at
19 this late hour may be considered by the court and would preclude
20 defendants of summary judgment and qualified immunity.

21 The clerk is instructed to terminate all pending motions as
22 moot (see dkt. #148) and close the file. No further motions for
23 reconsideration will be entertained in this matter.

24 SO ORDERED.

25 DATED: Dec. 22, 2015

26 CHARLES R. BREYER
27 United States District Judge
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