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8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
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11	HUBERT DYMITR HARASZEWSKI,	CASE NO. 10cv0546-LAB (PCL)
12	Plaintiff, vs.	ORDER GRANTING EXTENSION OF TIME TO FILE AMENDED
13	V3.	COMPLAINT; AND
14	LISA BRANNAN, et al.,	ORDER DENYING MOTION FOR RECONSIDERATION
15	Defendants.	
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18	On September 30, 2011, the Court issued an order dismissing certain claims, and	
19	allowing Plaintiff, if he wished, to file an amended complaint no later than October 21, 2011.	
20	The purpose of allowing Plaintiff to amend was to permit him to file a clean complaint that	

The purpose of allowing Plaintiff to amend was to permit him to file a clean complaint that
included only his one surviving claim, a Due Process claim regarding pretrial detention. On
October 20, 2011, Plaintiff filed a motion seeking additional time in which to amend,
explaining that he needed additional time to reorganize his complaint. For good cause
shown, the request is **GRANTED**. Plaintiff may file his amended complaint (which is not to
include any dismissed claims) no later than <u>Thursday, Bcj Ya VYf 17, 201</u>1.

As part of the same motion, Plaintiff sought reconsideration of the Court's order. His request for reconsideration says he believes the Court may have misconstrued his complaint. Plaintiff says he believes certain searches of his cell while he was a pretrial

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detainee were motivated by a desire to harass and punish, and he thinks the Court erred by
 considering only Fourth Amendment theories of recovery, rather than an Eighth Amendment
 theory.

4 This objection is baseless. Plaintiff cites Hudson v. Palmer, 468 U.S. 517, 530 (1984) 5 as holding that, even though the plaintiff there did not enjoy a reasonable expectation of 6 privacy in his cell, the Eighth Amendment provides a remedy for cruel and unusual 7 punishment by means of harassing searches. But the plaintiff in *Hudson* was a prisoner, not 8 a pretrial detainee. Hudson does not hold that the Eighth Amendment supports claims by 9 pretrial detainees for improper searches. Such claims based on allegedly improper searches 10 (including searches conducted merely to harass) are properly brought as Fourth or 11 Fourteenth Amendment claims, and the Court analyzed them as such.

The Court did not err in declining to apply the Eighth Amendment to claims allegedly
arising while Plaintiff was a pretrial detainee. See Bell v. Wolfish, 441 U.S. 520, 537 n.16
(1979) (holding that the court properly declined to rely on the Eighth Amendment in
considering the claims of pretrial detainees). The motion for reconsideration is therefore **DENIED**.

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IT IS SO ORDERED.

18 DATED: October 27, 2011

and A. Burny

HONORABLE LARRY ALAN BURNS United States District Judge