

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  
SOUTHERN DISTRICT OF CALIFORNIA

JAVON LAMAR TORBERT,  
  
Plaintiff,  
  
v.  
  
WILLIAM D. GORE, Sheriff of San  
Diego Sheriff Department; DEPUTY  
DAILY, Sheriff of San Diego Sheriff  
Department; DEPUTY McMAHON,  
Sheriff of San Diego Sheriff Department;  
DEPUTY Y.G. GEBREBIORGIS, Sheriff  
of San Diego Sheriff Department;  
SERGEANT ESTRADA, Sheriff of San  
Diego Sheriff Department; COUNTY OF  
SAN DIEGO; and DOES 1-50,  
  
Defendants.

Case No.: 3:14-cv-02911 BEN (NLS)

**ORDER DENYING MOTION FOR  
CLARIFICATION/OBJECTION TO  
DENIAL OF PLAINTIFF’S MOTION  
TO AMEND**

**[Docket No. 128]**

Plaintiff Javon Lamar Torbert (“Plaintiff”), a prisoner proceeding pro se and in forma pauperis, filed this civil rights action on December 9, 2014. He alleges excessive force, cruel and unusual punishment, and deliberate indifference claims arising from an alleged incident where one of the Defendants slammed a metal door on Plaintiff’s left arm. After summary judgment, only one excessive force claim against one Defendant

1 remains in the case.

2 Plaintiff sought leave to amend his complaint to add a new claim against  
3 Defendants for “conspiracy to obstruct justice by committing declaration perjury under  
4 oath to fraudulently conceal the existence of the surveillance camera located above the  
5 isolation cell #4 for the incident of October 2, 2014.” (Docket No. 113 at 1.) The motion  
6 for leave to amend was the fourth iteration of Plaintiff’s request to sanction the  
7 Defendants for allegedly concealing the existence of a security camera that he claims  
8 recorded acts related to the October 2, 2014 incident. On October 26, 2016, this Court  
9 denied Plaintiff’s motion because an amended complaint would be futile and would  
10 prejudice Defendants. (Docket No. 117.)

11 Now before the Court is Plaintiff’s “Clarification/Objection to Denial of Plaintiff’s  
12 Motion to Amend Obstruction of Justice.” (Docket No. 128.) The Court construes this  
13 filing as a motion for reconsideration. This is the fifth iteration of Plaintiff’s request for  
14 the alleged video footage.

15 For the following reasons, the Court **DENIES** the motion for reconsideration.

### 16 **BACKGROUND**

17 The Court’s prior order denying Plaintiff’s motion for leave to amend detailed the  
18 history of litigation on Plaintiff’s request for the alleged video footage. In short, Plaintiff  
19 claims that video footage from inside his medical isolation cell exists. Defendants have  
20 explained that there is no footage from inside the cell, but produced footage from the  
21 hallway outside the cell. The Court found no good cause to disbelieve Defendants’  
22 account that there is no recording of events inside the cell.

23 In ruling on Plaintiff’s motion for leave to amend, the Court found that good cause  
24 did not exist to grant Plaintiff’s motion:

25 First, Defendants would be prejudiced now—long after discovery closed and  
26 after they largely prevailed on summary judgment—if Torbert is allowed to  
27 file an amended complaint that includes a completely new factual basis for  
28 relief. Second, the filing of an amended complaint would be futile because  
even if video footage exists from inside the medical isolation cell, Torbert

1 still cannot prevail on his deliberate indifference claim. The Court already  
2 accepted as true the facts that Torbert alleges are evident in the alleged video  
3 footage, which include Torbert not receiving medical attention for 13 hours  
4 and only receiving his regularly-scheduled psychiatric medication and three  
5 Tylenols for pain. Even assuming these facts were true, this Court still  
6 found no deliberate indifference because “[n]o objective medical evidence  
7 shows that either an immediate visit to a doctor was necessary, or that  
8 referral to a neurologist was warranted” during that 13 hour period. See  
9 R&R, pp.16-17. In sum, the amended complaint and purported missing  
10 discovery would add nothing to Torbert’s constitutional claims.

11 (Docket No. 117 at 5.)

12 Plaintiff now moves for reconsideration of this order.

### 13 DISCUSSION

#### 14 **I. LEGAL STANDARD**

15 Under Rule 60(b), a court may relieve a party from a final judgment, order, or  
16 proceeding upon a showing of mistake, newly discovered evidence, fraud, or “any other  
17 reason that justifies relief.” Fed. R. Civ. P. 60(b); see *Latshaw v. Trainer Wortham &*  
18 *Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006) (explaining that the catch-all provision should  
19 be used sparingly as an equitable remedy to prevent manifest injustice).

20 Motions for reconsideration “should not be granted, absent highly unusual  
21 circumstances.” *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 05-cv-1660-J, 2007 WL  
22 2456223, at \*2 (S.D. Cal. Aug. 23, 2007). “A motion for reconsideration may not be  
23 used to raise arguments or present evidence for the first time when they could reasonably  
24 have been raised earlier in the litigation.” *Life Techs. Corp. v. Illumina, Inc.*, No. 11-cv-  
25 00703, 2012 WL 10933209, at \*1 (S.D. Cal. June 11, 2012) (quoting *Kona Enters., Inc.*  
26 *v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)). Moreover, motions to reconsider  
27 are not a platform to relitigate arguments and facts previously considered and rejected.  
28 See *Harrison v. Sofamor/Danek Grp., Inc.*, No. 94-cv-0692, 1998 WL 1166044, at \*3  
(S.D. Cal. Sept. 15, 1998).

///

///

1 **II. WHETHER TO GRANT RECONSIDERATION**

2 It appears that Plaintiff claims that the Court made a mistake in its prior  
3 ruling. He “asks the Court to review all evidence and allow Plaintiff to file [a]  
4 motion to allow a look thru [sic] the isolation hallway cell #4 for the requested  
5 camera, and obstruction on defendants under penalty of perjury.” (Docket No. 128  
6 at 4.) None of Plaintiff’s arguments are persuasive.

7 Plaintiff first argues that he never requested video footage from a camera  
8 inside the cell, and that he always sought footage from a camera placed directly  
9 outside his cell that monitored events inside the cell. Plaintiff misreads the Court’s  
10 orders. The Court’s orders are clear that Plaintiff sought footage from a camera  
11 outside the cell that recorded activities inside it. The Court did not make a mistake  
12 about the location of the camera.

13 He also contends that the produced video footage shows another hallway  
14 camera closer to the incident, and that Defendants never produced footage from his  
15 closer camera. The Court has re-reviewed the produced footage and fails to find  
16 other cameras in the hallway.

17 Plaintiff’s motion seeks to relitigate issues that have been considered and  
18 rejected several times. This is not proper grounds for a motion for reconsideration.  
19 The Court readopts its prior conclusion that allowing Plaintiff’s requested relief  
20 would prejudice Defendants and be futile.

21 **CONCLUSION**

22 The Court **DENIES** Plaintiff’s motion for reconsideration.

23 **IT IS SO ORDERED.**

24  
25 Dated: December 19, 2016

26   
27 Hon. Roger T. Benitez  
28 United States District Judge