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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Jonathan McAllister, Sr.,

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No. CV 10-2638-PHX-JAT

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Plaintiff,

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ORDER

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vs.

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Carol Lynn Preston (Nurse Practitioner),

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Defendant.

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Pending before this Court is Plaintiff's Response to an Order to Show Cause and

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Plaintiff's Request for Reconsideration of his Motion for the Appointment of Counsel. (Doc.

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34). The Court now rules on these motions.

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I. Issues

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Plaintiff combines in his Motion: (1) a Response to an Order to Show Cause regarding

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the dismissal of his First Amended Complaint; and, (2) a Motion for Reconsideration of his

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Motion for the Appointment of Counsel. (Doc. 34). The Court will address each Motion

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separately.

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A. Plaintiff's Motion for Reconsideration of His Response to an Order to Show Cause

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1. Facts

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Plaintiff began a lawsuit in December of 2010. (Doc 1). In a screening order (Doc. 12)

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filed on February 24, 2011, the Court ordered service upon one of the defendants and

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1 dismissed the rest of the name defendants. (Doc. 31 at 1). Plaintiff had numerous difficulties
2 in effecting service on the Defendant, and in response the Magistrate Judge issued an order
3 giving Plaintiff a final chance to serve the Defendant. (Doc. 31). The Magistrate also
4 extended the deadline for service to October 31, 2011. (Doc. 31). As of March 12, 2012,
5 Plaintiff had not successfully effected service on the defendant, and furthermore, had not
6 made any attempt to do so. *Id.* at 2. At that time, the Magistrate Judge ordered Plaintiff to
7 show cause why the First Amended Complaint should not be dismissed and assigned a
8 deadline of April 1, 2012. *Id.* As of April 6, 2012, the Court had not received a response to
9 the show cause order and therefore dismissed the complaint without prejudice. (Doc. 32). On
10 April 11, 2012, Plaintiff filed the instant response which was dated April 2, 2012. (Doc. 34
11 at 8). The Certificate of Service was dated April 6, 2012. *Id.* at 9. Because this response to
12 the show cause order was filed after the deadline, and because Plaintiff made no attempt to
13 explain his failure to meet the October 31 or the April 1 deadlines, Plaintiff's claim has
14 already been dismissed by this Court. Because the Court received this Motion within 28 days
15 of the dismissal of Plaintiff's complaint, the Court will construe Plaintiff's Motion as a
16 Motion for Reconsideration pursuant to Federal Rule of Civil Procedure 59(e).

17 **2. Legal Standard**

18 In relevant part, Rule 59 reads: "(e) Motion to Alter or Amend a Judgment. A motion
19 to alter or amend a judgment must be filed no later than 28 days after the entry of the
20 judgment." Fed. R. Civ. P. 59(e). "A Rule 59 motion should not be granted 'unless the
21 district court is presented with newly discovered evidence, committed clear error, or if there
22 is an intervening change in the controlling law.'" *McQuillion v. Duncan*, 343 F.3d 1012,
23 1014 (9th Cir. 2003)(quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999)(en
24 banc)). The Court will ordinarily deny a motion for reconsideration absent a showing of
25 manifest error or a showing of new facts or legal authority that could not have been brought
26 to the Court's attention earlier with reasonable diligence. L.R.Civ.P. 7.2(g). No motion for
27 reconsideration may repeat any oral or written argument made by the movant in support of
28 or in opposition to the motion that resulted in the Order for which the party seeks

1 reconsideration. *Id.* Repeating arguments in a motion to reconsider may be grounds for
2 denying the motion. *Id.* A Rule 59(e) motion may not present evidence that could have been
3 presented at the time of the challenged decision. *Kona Enters. Inc. v. Estate of Bishop*, 229
4 F.3d 877, 890 (9th Cir. 2000).

5 **3. Analysis**

6 Plaintiff does not show newly discovered evidence, clearly committed error, or an
7 intervening change in the controlling law. Plaintiff provides the Court with a factual record
8 of his difficulties in effecting process, but that record ends on May 2, 2011. (Doc. 34 at 2-6).
9 Because the Order to Show Cause specifically orders Plaintiff to demonstrate why he failed
10 to meet the October 31, 2011 and April 1, 2012 deadlines, this factual record fails to provide
11 new evidence. Furthermore, this factual background could have been provided prior to the
12 challenged decision and cannot, therefore, constitute evidence in the current proceeding. *Kona*
13 *Enters. Inc.*, 229 F.3d at 890. Additionally, Plaintiff has made no effort to show any errors
14 in the challenged decision. Accordingly, the Court will not reconsider its decision.

15 **B. Plaintiff's Motion for Reconsideration of His Motion for the Appointment** 16 **of Counsel**

17 On March 14, 2011, the Plaintiff moved for Appointment of Counsel on the grounds
18 that the Plaintiff is severely mentally ill. (Doc. 13). On March 28, 2011, the Magistrate Judge
19 denied the Plaintiff's Motion because the Plaintiff did not sufficiently show any exceptional
20 circumstances; specifically, the Plaintiff did not establish that he had a likelihood of success
21 on the merits of his case or provide sufficient evidence of his mental impairment. (Doc. 18).
22 Additionally, the Magistrate Judge found that Plaintiff's motion was "clear and well-written,
23 suggesting he is able to articulate his claims without an attorney." *Id.* Plaintiff now moves
24 the Court to reconsider this denial. (Doc. 34). Plaintiff's suit has been previously dismissed
25 and this Order denies reconsideration of that dismissal.

26 Because the Plaintiff's case has been previously dismissed, his Motion for
27 Appointment of Counsel in this case is now moot. The Court will therefore deny
28 reconsideration.

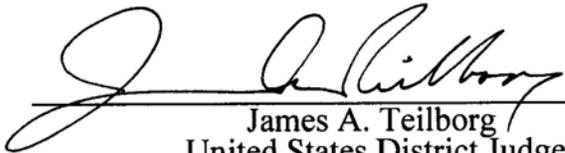
1 **II. Conclusion**

2 **IT IS ORDERED** denying Plaintiff's Motion for Reconsideration of his Response
3 (Doc. 34) to an Order to Show Cause (Doc. 31).

4 **IT IS FURTHER ORDERED** denying the Plaintiff's Motion for Reconsideration
5 of Appointment of Counsel. (Doc. 34).

6 DATED this 10th day of July, 2012.

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James A. Teilborg
United States District Judge