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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lee Michael Beitman,
10 Plaintiff,

11 v.

12 S. Herrick, et al.,
13 Defendants.
14

No. CV-17-08229-PCT-JAT

ORDER

15 Pending before the Court is Plaintiff's Motion for Reconsideration (Doc. 233) of
16 this Court's January 19, 2022 Order denying Plaintiff's Motion for Appointment of
17 Counsel (Doc. 223).

18 On January 13, 2022, Plaintiff filed a Motion for Appointment of Counsel. (Doc.
19 221). On January 19, 2022, the Court denied that motion, finding no exceptional
20 circumstances warranted appointment of counsel given Plaintiff's ability to articulate his
21 claims pro se and a low likelihood of success on the merits of the current case based on the
22 previous jury verdict in a case that largely addressed the same issues. (Doc. 223 at 2). On
23 January 28, 2022, Plaintiff filed the present Motion for Reconsideration of that Order.
24 (Doc. 232).

25 Pursuant to Local Rule 7.2(g)(1):

26 The Court will ordinarily deny a motion for reconsideration of
27 an Order absent a showing of manifest error or a showing of
28 new facts or legal authority that could not have been brought
to its attention earlier with reasonable diligence. Any such
motion shall point out with specificity the matters that the

1 movant believes were overlooked or misapprehended by the
2 Court, any new matters being brought to the Court’s attention
3 for the first time and the reasons they were not presented
4 earlier, and any specific modifications being sought in the
5 Court’s order. No motion for reconsideration of an Order may
6 repeat any oral or written argument made by the movant in
7 support of or in opposition to the motion that resulted in the
8 Order. Failure to comply with this subsection may be grounds
9 for denial of the motion.

10 First, Plaintiff argues that he “lacks the skill set necessary to” prepare for the final
11 pretrial conference and to represent himself effectively at trial. (Doc. 233 at 2). However,
12 Local Rule 7.2(g)(1) requires that motions for reconsideration do not “repeat any oral or
13 written argument made by the movant in support of or in opposition to the motion that
14 resulted in the Order.” Plaintiff raised these concerns in his original motion and the Court
15 addressed them in its prior Order. (*See* Doc. 223 at 2). Moreover, Plaintiff’s simultaneously
16 filed Motion for Sanctions (Doc. 236) suggests that he can articulate his claims and his
17 evidentiary objections without the assistance of counsel. Additionally, although Plaintiff
18 seeks counsel to help him file his motions in limine, the deadline to file any such motions
19 was on January 25, 2022.

20 Next, Plaintiff argues that the Court erred in finding the previous jury verdict
21 indicative of his likelihood of success in this case because he contends that the unfavorable
22 verdict resulted from both the Court’s “abuse of discretion and judicial error” and his
23 previous counsel’s ineffective performance. (*Id.* at 2–3). Plaintiff proffers a variety of
24 examples of the Court’s and his prior counsel’s failings that are unrelated to the present
25 request for counsel. However, as discussed in the prior Order, the Court finds a low
26 likelihood of success on the merits in this case because Defendant Herrick testified in the
27 prior case regarding her treatment of Plaintiff’s facial injuries, which is central to the issues
28 underpinning both cases. (Doc. 223 at 2). Plaintiff does not argue that Defendant Herrick’s
testimony was not central to the issues in the previous case nor that the alleged errors of
this Court or prior counsel resulted in the improper admission of that testimony. *See*
Motorola, Inc. v. J.B. Rodgers Mechanical Contractors, 215 F.R.D. 581, 582 (D. Ariz.

1 2003) (“[R]econsideration [may not] be used to ask the Court to rethink what it has already
2 thought.”) (citations omitted).

3 Plaintiff further contends that the Court’s prior Order both suggests that the Court
4 harbors prejudice against him for appealing the unfavorable jury verdict and disincentives
5 Defendants to offer him a favorable pretrial settlement. (*Id.* at 5–6). Plaintiff contends that
6 the Court’s alleged prejudice constitutes an “exceptional circumstance” that requires the
7 Court to appoint him counsel. (*Id.* at 7). However, as explained in the Court’s prior Order,
8 a finding of exceptional circumstances only “requires an evaluation of both the likelihood
9 of success on the merits [and] the ability of the petitioner to articulate his claims pro se in
10 light of the complexity of the legal issues involved.” (Doc. 223 at 2) (citing *Wilborn v.*
11 *Escalderon*, 789 F.2d 1328 (9th Cir. 1986) (quotations omitted)). The Court does not find
12 that Plaintiff’s arguments of this Court’s alleged prejudice against him to affect the
13 likelihood of success on the merits of his claims before a jury. Nor does the Court find the
14 same to affect his ability to articulate his claims pro se.¹

15 Finally, Plaintiff argues that under *Bounds v. Smith*, his lack of access to a law
16 library at his prison facility violates his constitutional right to access the courts. (*Id.* at 6)
17 (citing *Bounds v. Smith*, 430 U.S. 817 (1977)). In *Bounds v. Smith*, the Supreme Court held
18 “the fundamental constitutional right of access to the courts requires prison authorities to
19 assist inmates in the preparation and filing of meaningful legal papers by providing
20 prisoners with adequate law libraries or adequate assistance from persons trained in the
21 law.” *Bounds*, 430 U.S. at 828. However, in *Lewis v. Casey*, the Supreme Court limited its
22 earlier decision in *Bounds* and reversed a Ninth Circuit decision upholding a District of
23 Arizona determination that Arizona Department of Corrections violated prisoners’ right to
24 access the courts by failing to update legal materials or provide access to the law library.
25 518 U.S. 343, 346–347 (1996). The *Lewis* Court clarified that *Bounds* did not establish “the
26 right to a law library or to legal assistance,” and instead reiterated the well-known right to

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28 ¹ To the extent Plaintiff is asking this Court to appoint him counsel based on various alleged
errors of the Court and his previous counsel in his prior case, those are issues squarely
within the Ninth Circuit’s review on appeal and not for this Court to weigh in on.

1 court access. *Id.* at 350. The *Lewis* Court went on:

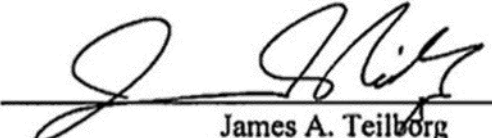
2 In the cases to which *Bounds* traced its roots, we had protected
3 that right by prohibiting state prison officials from actively
4 interfering with inmates' attempts to prepare legal documents
5 or file them, and by requiring state courts to waive filing fees
6 or transcript fees for indigent inmates. *Bounds* focused on the
7 same entitlement of access to the courts. Although it affirmed
8 a court order requiring North Carolina to make law library
9 facilities available to inmates, it stressed that that was merely
10 one constitutionally acceptable method to assure meaningful
11 access to the courts, and that our decision here ... does not
foreclose alternative means to achieve that goal. In other
words, prison law libraries and legal assistance programs are
not ends in themselves, but only the means for ensuring a
reasonably adequate opportunity to present claimed violations
of fundamental constitutional rights to the courts.

12 *Id.* at 350–51 (citations omitted). Here, Plaintiff has not alleged that the prison officials are
13 preventing him from his right to access the courts or from presenting his legal claims.
14 Plaintiff's ability to access the court is evidenced by the various articulate filings before
15 the Court in this case. Thus, the Court does not find Plaintiff's argument persuasive enough
16 to reconsider its Order denying Plaintiff counsel on this basis.

17 Accordingly,

18 **IT IS ORDERED** that Plaintiff's Motion for Reconsideration (Doc. 233) is denied.

19 Dated this 3rd day of February, 2022.

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23 James A. Teilborg
24 Senior United States District Judge
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