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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JEFFREY KEVIN GOMEZ,

12 Plaintiff,

13 vs.

14 EDWARD S. ALAMEIDA, JR., et al.,

15 Defendants.
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1:04-cv-05495-LJO-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION AND MOTION FOR
APPOINTMENT OF COUNSEL
(Doc. 117.)

17 **I. BACKGROUND**

18 Jeffrey Kevin Gomez ("Plaintiff") is a state prisoner proceeding pro se and in forma
19 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
20 commencing this action on March 29, 2004. (Doc. 1.)

21 On May 17, 2013, the Magistrate Judge entered findings and recommendations to
22 dismiss this action pursuant to 42 U.S.C. § 1997e(a), based on Plaintiff's failure to exhaust
23 administrative remedies before filing suit. (Doc. 111.) On June 25, 2013, the undersigned
24 adopted the findings and recommendations in full and dismissed this action without prejudice.
25 (Doc. 112.)

26 On July 18, 2013, Plaintiff filed a notice of appeal to the Ninth Circuit Court of
27 Appeals. (Doc. 120.)

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1 Also on July 18, 2013, Plaintiff filed objections to the Magistrate's findings and
2 recommendations of May 17, 2013. (Doc. 117.) Because the findings and recommendations
3 were adopted in full by the undersigned on June 25, 2013, the court construes Plaintiff's
4 objections as a motion for reconsideration of the order adopting the findings and
5 recommendations. Plaintiff also requests appointment of counsel.

6 Plaintiff's motion for reconsideration and motion for counsel are now before the court.

7 **II. MOTION FOR RECONSIDERATION**

8 **A. Legal Standard**

9 The Court has discretion to reconsider and vacate a prior order. Barber v. Hawaii, 42
10 F.3d 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th
11 Cir. 1992). Motions to reconsider are committed to the discretion of the trial court. Combs v.
12 Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460
13 (9th Cir. 1983) (en banc). To succeed, a party must set forth facts or law of a strongly
14 convincing nature to induce the court to reverse its prior decision. See Kern-Tulare Water Dist.
15 v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in
16 part on other grounds, 828 F.2d 514 (9th Cir. 1987). When filing a motion for reconsideration,
17 Local Rule 230(j) requires a party to show the "new or different facts or circumstances claimed
18 to exist which did not exist or were not shown upon such prior motion, or what other grounds
19 exist for the motion." L.R. 230(j).

20 The court has reviewed Plaintiff's motion for reconsideration. Plaintiff has not set forth
21 facts or law of a strongly convincing nature to induce the court to reverse its prior decision.
22 Therefore, the motion for reconsideration shall be denied.

23 **III. MOTION FOR APPOINTMENT OF COUNSEL**

24 Plaintiff requests court-appointed counsel. In light of the fact that this case was
25 dismissed and closed on June 25, 2013, and Plaintiff has appealed the district court's decision
26 to the Ninth Circuit Court of Appeals, Plaintiff's motion for counsel is more properly brought
27 at the Ninth Circuit. Therefore, Plaintiff's request for court-appointed counsel shall be denied.

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IV. CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration and motion for appointment of counsel, filed on July 18, 2013, are DENIED.

IT IS SO ORDERED.

Dated: July 19, 2013

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE