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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RAYVAUGHN ROYCE EMBRY,

12 Petitioner,

13 v.

14 G.J. GUIRBINO,

15 Respondent.
16

Case No. 1:04-cv-06101-AWI-SAB-HC

ORDER DENYING MOTION FOR
RECONSIDERATION OF CERTIFICATE
OF APPEALABILITY

(Doc. No. 49)

17 Petitioner is a state prisoner who proceeded pro se and in forma pauperis with a § 2254
18 petition for writ of habeas corpus. On September 15, 2017, the Court denied Petitioner's Rule
19 60(b) motion. See Doc. No. 37. On November 16, 2017, the Ninth Circuit issued a limited
20 remand for this Court to determine whether a certificate of appealability pursuant to 28 U.S.C.
21 § 2253 should issue with respect to the September 2017 Rule 60(b) motion. See Doc. No. 47. On
22 November 17, 2017, the Court declined to issue a certificate of appealability. See Doc. No. 48.

23 On December 11, 2017, Petitioner filed a motion for reconsideration with respect to the
24 denial of a certificate of appealability. See Doc. No. 49. The motion for reconsideration will be
25 denied as Petitioner has not shown that reconsideration is warranted. See Marlyn Nutraceuticals,
26 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009). The Court notes that
27 Petitioner may seek a certificate of appealability from the court of appeals. See Fed. R. App. P.
28 22(b)(1).

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Accordingly, IT IS HEREBY ORDERED that Petitioner’s motion for reconsideration (Doc. No. 49) is DENIED.

IT IS SO ORDERED.

Dated: January 10, 2018



SENIOR DISTRICT JUDGE