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5 **UNITED STATES DISTRICT COURT**6 EASTERN DISTRICT OF CALIFORNIA
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8 ROBERT P. BENYAMINI,

CASE NO. 1:07-cv-00907-LJO-DLB PC

9 Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION

10 v.

(Docs. 33, 34)

11 L. JOHNSON, et al.,

12 Defendants.
13 _____ /
1415 **Order**

16 Plaintiff Robert P. Benyamini (“Plaintiff”) is a prisoner in the custody of the California
17 Department of Corrections and Rehabilitation (“CDCR”). On April 16, 2010, the Magistrate
18 Judge assigned to this action denied Plaintiff’s motion for appointment of counsel. Pending
19 before the Court is Plaintiff’s motion for reconsideration, filed May 20, 2010. (Doc. 33.) On
20 May 26, 2010, Plaintiff filed supplemental exhibits in support of his motion for reconsideration.
21 (Doc. 34.)

22 **I. Legal Standard**

23 The court has discretion to reconsider and vacate a prior order. *Barber v. Hawaii*, 42
24 F.3d 1185, 1198 (9th Cir. 1994); *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 396 (9th Cir.
25 1992). Motions for reconsideration are disfavored, however, and are not the place for parties to
26 make new arguments not raised in their original briefs. *Northwest Acceptance Corp. v.*
27 *Lynnwood Equip., Inc.*, 841 F.2d 918, 925-6 (9th Cir. 1988). Nor is reconsideration to be used to
28 ask the court to rethink what it has already thought. *United States v. Rezzonico*, 32 F. Supp. 2d

1 1112, 1116 (D. Ariz.1998). “A party seeking reconsideration must show more than a
2 disagreement with the Court’s decision, and recapitulation of the cases and arguments considered
3 by the court before rendering its original decision fails to carry the moving party’s burden.” *U.S.*
4 *v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001).

5 Motions to reconsider are committed to the discretion of the trial court. *Combs v. Nick*
6 *Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th
7 Cir. 1983) (en banc). To succeed, a party must set forth facts or law of a strongly convincing
8 nature to induce the court to reverse its prior decision. *See Kern-Tulare Water Dist. v. City of*
9 *Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *affirmed in part and reversed in part on*
10 *other grounds*, 828 F.2d 514 (9th Cir. 1987).

11 This Court reviews a motion to reconsider a Magistrate Judge’s ruling under the “clearly
12 erroneous or contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P.
13 72(a). As such, the court may only set aside those portions of a Magistrate Judge’s order that are
14 either clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); *see also Grimes v. City and*
15 *County of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) (discovery sanctions are
16 non-dispositive pretrial matters that are reviewed for clear error under Rule 72(a)). “Under this
17 standard of review, a magistrate's order is ‘clearly erroneous’ if, after considering all of the
18 evidence, the district court is left with the definite and firm conviction that a mistake has been
19 committed, and the order is ‘contrary to law’ when it fails to apply or misapplies relevant
20 statutes, case law or rules of procedure.” *Yent v. Baca*, 2002 WL 32810316, at *2 (C.D. Cal.
21 2002). “The reviewing court may not simply substitute its judgment for that of the deciding
22 court.” *Grimes*, 951 F.2d at 241. A district court is able to overturn a magistrate judge’s ruling
23 “‘only if the district court is left with the definite and firm conviction that a mistake has been
24 made.’” *Computer Economics, Inc. v. Gartner Group, Inc.*, 50 F.Supp.2d 980, 983 (S.D. Cal.
25 1999) (quoting *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997)).

26 **II. Analysis**

27 Plaintiff repeats the same arguments he raised in his motion to compel. Plaintiff contends
28 that (1) he is on forced medication for his claustrophobia disability; (2) the medication makes

1 him have dizzy spells and double vision; and (3) he is not well-versed in the law, and it would be
2 a due process violation to not grant him counsel. (Mot. Reconsideration 1-2.)

3 Plaintiff's arguments are unpersuasive. There is no constitutional right to the appointment
4 of counsel. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). In certain exceptional
5 circumstances, the Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. §
6 1915(e)(1). In determining whether "exceptional circumstances exist, the district court must
7 evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to
8 articulate his claims pro se in light of the complexity of the legal issues involved." *Id.* (internal
9 quotation marks and citations omitted).

10 Even if it is assumed that Plaintiff is not well-versed in the law, and that he has made
11 serious allegations which, if proved, would entitle him to relief, his case is not exceptional.
12 Plaintiff suffering dizzy spells and double vision may be inconvenient, but it does not appear to
13 severely impede Plaintiff's to articulate his claims. Plaintiff being involuntarily medicated does
14 not demonstrate that Plaintiff is unable to adequately articulate his claims. The Court cannot
15 make a determination that Plaintiff is likely to succeed on the merits at this time. Plaintiff was
16 ordered to complete and return service documents for the United States Marshal to effect service,
17 which does not require any legal research. Plaintiff has not complied, and instead filed motions
18 for counsel and for stay of proceedings. Plaintiff has raised no arguments that indicate the
19 Magistrate Judge's order was clearly erroneous or contrary to law.

20 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion for
21 reconsideration, filed May 20, 2010, is DENIED.

22 IT IS SO ORDERED.

23 **Dated: May 28, 2010**

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