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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CLAUDELL EARL MARTIN,

CASE NO. CV F 08-415 LJO DLB PC

Plaintiff,

**RECONSIDERATION ORDER**  
(Doc. 50.)

vs.

JEANNE S. WOODFORD, et. al.,

Defendants.

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**INTRODUCTION**

In this inmate civil rights action, pro se plaintiff Claudell Earl Martin (“plaintiff”) seeks reconsideration of the magistrate judge’s order denying plaintiff’s motion for appointment of counsel. For the reasons discussed below, this Court DENIES plaintiff reconsideration.

**BACKGROUND**

United States Magistrate Judge Dennis Beck issued his August 20, 2009 order (“August 20 order”) to address plaintiff’s request. On September 11, 2009, plaintiff filed a motion to reconsider the August 20 order.

**DISCUSSION**

**Timeliness of Reconsideration Attempt**

This Court’s Local Rule 72-303(b) addresses timing to seek reconsideration:

Rulings by Magistrate Judges shall be final if no reconsideration thereof is sought

1 from the Court within ten (10) court days calculated from the date of service of the ruling  
2 on the parties . . .”

3 The August 20 order was served on plaintiff on August 20, 2009. Plaintiff had filed a motion  
4 for thirty day extension of time for reconsideration. This Court assumes without deciding that plaintiff’s  
5 motion for reconsideration is timely. This Court will turn to the merits of reconsideration of the August  
6 20 order.

7 **Merits**

8 Motions to reconsider are committed to the discretion of the trial court. *Rodgers v. Watt*, 722  
9 F.2d 456, 460 (9th Cir. 1983) (en banc); *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C.Cir.  
10 1987). A party seeking reconsideration must set forth facts or law of a strongly convincing nature to  
11 induce the court to reverse a prior decision. *See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield*,  
12 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff’d in part and rev’d in part on other grounds*, 828 F.2d 514  
13 (9th Cir. 1987). This Court’s Local Rule 78-230(k) requires a party seeking reconsideration to  
14 demonstrate “what new or different facts or circumstances are claimed to exist which did not exist or  
15 were not shown upon such prior motion, or what other grounds exist for the motion.”

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

1 *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7<sup>th</sup> Cir. 1997)).

2 Plaintiff argues that he should be appointed counsel because his circumstances are exceptional  
3 and he is likely to succeed on the merits. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997).  
4 While plaintiff has stated a claim, that is not necessarily an indication of likelihood of success on the  
5 merits. Even assuming plaintiff has a likelihood of success, this Court disagrees that his circumstances  
6 are exceptional. Having reviewed the court record, this Court finds that the legal issues presented are  
7 not sufficiently complex to justify appointment of counsel. Plaintiff's issues of needing assistance from  
8 other inmates and difficulties during discovery are not more exceptional than the circumstances facing  
9 other prisoner litigants in civil actions. Clearly, any pro se litigant would be better served with the  
10 assistance of counsel, but that is not the test. *Id.* Plaintiff appears capable of articulating his positions.  
11 This Court finds that the Magistrate Judge's August 20 order was not clearly erroneous or contrary to  
12 law.

13 **CONCLUSION AND ORDER**

14 For the reasons discussed above, plaintiff fails to substantiate the burden for reconsideration of  
15 the August 20 order, and this Court DENIES plaintiff's request for reconsideration.

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18 IT IS SO ORDERED.

19 **Dated:** November 17, 2009

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

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