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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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10 JAMES E. SMITH,

1:09-cv-00139-GSA-PC

11 Plaintiff,

12 vs.

ORDER DENYING MOTION FOR  
RECONSIDERATION  
(Doc. 9.)

13 EDMUND G. BROWN, JR., et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 James E. Smith ("plaintiff") is a state prisoner proceeding pro se in this civil rights action.  
17 Plaintiff filed this action on January 20, 2009. (Doc. 1.) On February 4, 2009, plaintiff consented to  
18 Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). (Doc. 3.)

19 **I. RELEVANT PROCEDURAL HISTORY**

20 On February 23, 2009, pursuant to 28 U.S.C. § 1915(g), the court issued an order finding  
21 plaintiff ineligible to proceed in forma pauperis and ordering plaintiff to pay the \$350.00 filing fee in  
22 full within thirty days. (Doc. 4.) The thirty day period expired, and plaintiff failed to pay the filing  
23 fee. On March 30, 2009, this action was dismissed without prejudice by the undersigned for  
24 plaintiff's failure to obey the court's order to pay the filing. (Doc. 6.) On April 17, 2009, plaintiff  
25 filed a motion for reconsideration. (Doc. 9.)

26 **II. MOTION FOR RECONSIDERATION**

27 Motions to reconsider are committed to the discretion of the trial court. Combs v. Nick Garin  
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1 Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983)  
2 (en banc). The Local Rules provide that when filing a motion for reconsideration, a party show that  
3 the “new or different facts or circumstances claimed to exist which did not exist or were not shown  
4 upon such prior motion, or what other grounds exist for the motion.” Local Rule 78-230(k)(3).

5 Plaintiff argues that under Federal Rules of Procedure 55(c) and 60(b), the court was without  
6 authority to render judgment because defendants failed to respond to the summons after being  
7 served. Plaintiff also argues that the Federal Rules should be “liberally construed to effectuate the  
8 general provision of seeing that cases are tried on the merits and to dispense with technical  
9 procedur[e].” Plaintiff claims that he served process as required by Rule 4, but defendant refused to  
10 acknowledge or respond to the summons.

11 Because plaintiff’s case was dismissed for his failure to pay the filing fee, his arguments are  
12 without merit. It is of no consequence here whether plaintiff properly served the summons or  
13 whether defendant refused to respond.

### 14 **III. CONCLUSION**

15 Based on the foregoing, the court finds that plaintiff has not shown good cause or any new or  
16 different facts or circumstances to warrant reconsideration by the court of its order dismissing this  
17 action. Therefore, IT IS HEREBY ORDERED that plaintiff’s motion for reconsideration is  
18 DENIED.

19  
20 IT IS SO ORDERED.

21 **Dated: April 20, 2009**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE