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

10 || JAMES E. SMITH, 1:09-cv-00139-GSA-PC

11 || Plaintiff,

12 || vs.

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

14 || Defendants.

1:09-cv-00139-GSA-PC

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 9.)

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*

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.

20 || IT IS SO ORDERED.

21 || Dated: April 20, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE