



1 to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .”  
2 exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and  
3 citation omitted). The moving party “must demonstrate both injury and circumstances beyond his  
4 control . . .” *Id.* (internal quotation marks and citation omitted). Further, Local Rule 230(j)  
5 requires, in relevant part, that Plaintiff show “what new or different facts or circumstances are  
6 claimed to exist which did not exist or were not shown upon such prior motion, or what other  
7 grounds exist for the motion,” and “why the facts or circumstances were not shown at the time of  
8 the prior motion.”

9 “A motion for reconsideration should not be granted, absent highly unusual  
10 circumstances, unless the district court is presented with newly discovered evidence, committed  
11 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to  
12 raise arguments or present evidence for the first time when they could reasonably have been  
13 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571  
14 F.3d 873, 880 (9th Cir. 2009) (emphasis in original).

15 Plaintiff has not shown any new or different facts or circumstances, newly discovered  
16 evidence, or an intervening change of law to support his motion for reconsideration. Plaintiff  
17 objects that, rather than filing two motions to appoint counsel, his second motion (Doc. 59)  
18 merely sought to be provided a copy of the list of pro bono attorneys that the Chief Judge is  
19 required to administer. (Doc 62, pp. 2-3.) Plaintiff argues that the Chief Judge is required to  
20 administer a list of pro bono attorneys under 28 U.S.C. § 1915(e)(1) and cites *Nelson v.*  
21 *Lithograph Pringing*, 728 F.2d 1003, 1005 (8th Cir. 1984) to support his argument. However,  
22 rulings from the Ninth Circuit, not the Eighth Circuit, are binding on District Courts within the  
23 Ninth Circuit. While this district does maintain contact with counsel who have indicated they  
24 may be willing to assist in pro se inmate cases on a pro bono basis, this list is for the Court's use  
25 and is not for disclosure and/or dissemination to pro se inmate plaintiffs. Thus, Plaintiff's second  
26 motion, in which it is noted he asked for counsel to be appointed, *or* in the alternative for  
27 disclosure of the names and addresses on the list, was properly construed as a motion for  
28 appointment of counsel.

1 Plaintiff also objects that the Magistrate Judge abused her discretion by using the wrong  
2 standard. (Doc. 62, pp. 4-6.) To this end, Plaintiff argues that, since there is an opinion from the  
3 Third Circuit that finds the use of the word "only" to be contrary to "discretionary" that  
4 exceptional circumstances are not required to justify appointment of counsel. (*Id.* citing *Tabron*  
5 *v. Grace*, 6 F.3d 147, 155 (3rd Cir. 1993). This Court is in the Ninth Circuit, and while opinions  
6 from other circuits may provide guidance on issues that the Ninth has not addressed, they do not  
7 take precedence over opinions directly on point from the Ninth Circuit. The Magistrate Judge did  
8 not err by relying on *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). None of this shows  
9 that the Magistrate Judge's denial without prejudice of Plaintiff's motions for counsel to be  
10 appointed was clearly erroneous.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this  
12 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
13 Court finds the Magistrate Judge's order denying Plaintiff's motions for counsel to be appointed to  
14 be supported by the record and proper analysis.

15 Accordingly, Plaintiff's motion for reconsideration of the Magistrate Judge's order  
16 denying Plaintiff's motions to have counsel appointed, filed May 27, 2014 (Doc. 62), is HEREBY  
17 DENIED and any objections based thereon are OVERRULED.

18 IT IS SO ORDERED.

19 Dated: September 4, 2014

20   
21 SENIOR DISTRICT JUDGE