

1 Plaintiff's serious medical needs. (ECF No. 20.) On December 9, 2011, the Court
2 appointed counsel for Plaintiff. (ECF No. 31.)

3 On March 28, 2012, Defendants Enenmoh, Faria, LeMay, and Oneyeje filed a
4 motion to dismiss on the ground that Plaintiff had failed to exhaust his administrative
5 remedies pursuant to 42 U.S.C. § 1997e(a). (ECF No. 45.) On April 2, 2012, Defendant
6 Byers filed a notice of joinder in the motion to dismiss. (ECF No. 48.)

7 On October 24, 2012, the Magistrate Judge issued Findings and
8 Recommendations to grant Defendant's motion to dismiss without prejudice. On
9 November 20, 2012, the District Court adopted those Findings and Recommendations
10 and dismissed the case without prejudice. (ECF Nos. 72 & 73.)

11 Before the Court is Plaintiff's December 8, 2014 motion to vacate the Court's
12 order of dismissal and reopen the case. (ECF No. 74.) Plaintiff seeks to have his case
13 reopened on the basis that his Court-appointed attorney failed to notify him of the
14 dismissal and represented that his case was still pending.

15 **II. MOTION FOR RELIEF FROM FINAL JUDGMENT**

16 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from
17 an order for any reason that justifies relief. Rule 60(b)(6) "is to be 'used sparingly as an
18 equitable remedy to prevent manifest injustice and is to be utilized only where
19 extraordinary circumstances'" exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
20 (*quoting Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).
21 The moving party "must demonstrate both injury and circumstances beyond his control."
22 *Latshaw*, 452 F.3d at 1103. In seeking reconsideration of an order, Local Rule
23 230(j) requires a party to show "what new or different facts or circumstances are claimed
24 to exist which did not exist or were not shown upon such prior motion, or what other
25 grounds exist for the motion."

26 "A motion for reconsideration should not be granted, absent highly unusual
27 circumstances, unless the . . . court is presented with newly discovered evidence,
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1 committed clear error, or if there is an intervening change in the controlling law,” *Marlyn*
2 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009),
3 and “[a] party seeking reconsideration must show more than a disagreement with the
4 Court’s decision, and ‘recapitulation . . .’” of that which was already considered by the
5 court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111,
6 1131 (E.D. Cal. 2001) (quoting *Birmingham v. Sony Corp. of Am., Inc.*, 820 F. Supp.
7 834, 856 (D. N.J. 1992)).

8 Plaintiff is represented by counsel in this action. (ECF No. 31.) Unless and until
9 Plaintiff’s counsel files a motion to withdraw, Plaintiff may not file motions on his own
10 behalf. Plaintiff’s motion is improper and will therefore be STRICKEN.

11 Even if properly filed, Plaintiff has not presented a basis for reconsideration.
12 Plaintiff’s case was dismissed after the Court found that Defendants’ had met their
13 burden of demonstrating that Plaintiff failed to exhaust his administrative remedies. The
14 failure of Plaintiff’s counsel to notify him of the dismissal is not a basis for this Court to
15 reconsider the underlying ruling. Plaintiff has not presented any new evidence or legal
16 authority which would warrant reopening the case.

17 **IV. CONCLUSION AND ORDER**

18 Based on the foregoing, Plaintiff’s motion to vacate and reopen (ECF No. 74.) is
19 HEREBY STRICKEN.

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21 IT IS SO ORDERED.

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23 Dated: May 4, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE