

1 appointed counsel for Plaintiff. (ECF No. 31.)

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

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

10 On December 8, 2014, Plaintiff moved to vacate the Court's order of dismissal
11 and reopen the case on the basis that his Court-appointed attorney failed to notify him of
12 the dismissal and represented that his case was still pending. (ECF No. 74.) The Court
13 struck the motion in light of it not having been filed by counsel of record for Plaintiff and
14 because it did not, in any event, present a basis for relief. (ECF No. 75.)

15 Before the Court is Plaintiff's July 1, 2015 motion for appointment of new counsel
16 based on counsel's alleged abandonment of Plaintiff. (ECF No. 77.)

17 **II. LEGAL STANDARD**

18 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from
19 an order for any reason that justifies relief. Rule 60(b)(6) "is to be 'used sparingly as an
20 equitable remedy to prevent manifest injustice and is to be utilized only where
21 extraordinary circumstances'" exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
22 (*quoting Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).
23 The moving party "must demonstrate both injury and circumstances beyond his control."
24 *Latshaw*, 452 F.3d at 1103. In seeking reconsideration of an order, Local Rule
25 230(j) requires a party to show "what new or different facts or circumstances are claimed
26 to exist which did not exist or were not shown upon such prior motion, or what other
27 grounds exist for the motion."
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1 “A motion for reconsideration should not be granted, absent highly unusual
2 circumstances, unless the . . . court is presented with newly discovered evidence,
3 committed clear error, or if there is an intervening change in the controlling law,” *Marlyn*
4 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009),
5 and “[a] party seeking reconsideration must show more than a disagreement with the
6 Court’s decision, and ‘recapitulation . . .’” of that which was already considered by the
7 court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111,
8 1131 (E.D. Cal. 2001) (*quoting Birmingham v. Sony Corp. of Am., Inc.*, 820 F. Supp.
9 834, 856 (D. N.J. 1992)).

10 **III. DISCUSSION**

11 Plaintiff has not presented a basis for relief. Plaintiff’s case was dismissed after
12 the Court found Defendants’ had met their burden of demonstrating that Plaintiff failed to
13 exhaust his administrative remedies. The failure of Plaintiff’s counsel to notify him of the
14 dismissal is not a basis for this Court to reconsider the underlying ruling. Plaintiff has not
15 presented any new evidence or legal authority which would warrant reopening the case.
16 There is no basis for appointing Plaintiff counsel in this closed case.

17 Additionally, the cases cited by Plaintiff are inapposite. In *Cnty. Dental Servs. v.*
18 *Tani*, 282 F.3d 1164, 1168-69 (9th Cir. 2002), the Ninth Circuit found that counsel’s
19 “gross negligence” in failing entirely to defend the action, resulting in default judgment,
20 could constitute a basis for Rule 60(b) relief. This reasoning was extended to dismissals
21 for failure to prosecute in *Lai v. California*, 610 F.3d 518, 524 (9th Cir. 2010). Here,
22 however, counsel opposed Defendants’ motion to dismiss, although unsuccessfully.
23 Counsel’s failure to communicate with Plaintiff following dismissal did not affect the
24 Court’s ability to reach the merits of Plaintiff’s case.

25 **IV. CONCLUSION AND ORDER**

26 Based on the foregoing, IT IS HEREBY ORDERED that:
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1. Plaintiff's motion for the Court to intervene and appoint new counsel (ECF No. 77.) is DENIED; and

2. The Clerk of the Court is directed to serve a copy of this Order upon Rebecca C. Sudtell, Law Offices of Rebecca C. Sudtell, Post Office Box R, San Rafael, California 94913, and also directly, on Plaintiff at Donald B. Williams, AC-2954, Chuckawalla Valley State Prison (2349), P.O. Box 2349, Blythe, CA 92226.

IT IS SO ORDERED.

Dated: September 1, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE