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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CARLOS D. GABARRETE,

Plaintiff,

v.

C. B. HAZEL, et al.,

Defendants.

CASE No. 1:11-cv-00324-MJS (PC)

ORDER DENYING RECONSIDERATION  
OF ORDER DENYING APPOINTMENT OF  
COUNSEL

(ECF No. 50)

**I. PROCEDURAL HISTORY**

Plaintiff Carlos D. Gabarrete, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on February 25, 2011 pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.)

This matter proceeds on Plaintiff's Fourth Amended Complaint claims against Defendants Hazel, Medina, Prudhel, Navarro, Esquivel, G. Hernandez and F. Hernandez for excessive force, failure to protect, and medical indifference. (Order re Cognizable Claims, ECF No. 37.) Defendants filed a Motion to Dismiss the action on January 1, 2013. (Mot. Dismiss., ECF No. 49.)

On November 27, 2012 the Court denied Plaintiff's Motion for Appointment of Counsel. (Order Den. Counsel, ECF No. 48.) On January 7, 2013, Plaintiff filed a

1 Motion for Reconsideration of that Order. (Mot. Recons., ECF No. 50.) The Motion for  
2 Reconsideration is now before the Court.

3 **II. LEGAL STANDARD**

4 Rule 60(b)(6) allows the Court to relieve a party from an order and judgment for  
5 any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable  
6 remedy to prevent manifest injustice and is to be utilized only where extraordinary  
7 circumstances . . .” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008). The  
8 moving party “must demonstrate both injury and circumstances beyond his control . . . .”  
9 Id. In seeking reconsideration of an order, Local Rule 230(j) requires a party to identify  
10 the motion or order in issue and when it was made, and show “what new or different  
11 facts or circumstances are claimed to exist which did not exist or were not shown upon  
12 such prior motion, or what other grounds exist for the motion.”

13 “A motion for reconsideration should not be granted, absent highly unusual  
14 circumstances, unless the . . . court is presented with newly discovered evidence,  
15 committed clear error, or if there is an intervening change in the controlling law,” Marlyn  
16 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),  
17 and “[a] party seeking reconsideration must show more than a disagreement with the  
18 [c]ourt’s decision, and recapitulation . . .” of that which was already considered by the  
19 court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,  
20 1131 (E.D. Cal. 2001).

21 **III. ARGUMENT**

22 Plaintiff asserts that he can not represent himself because his ability to read, write  
23 and speak English is very limited; he has less than a fourth grade education; his is a  
24 disabled ADA inmate; and he relies on other inmates to translate, draft documents and  
25 assist in prosecuting this action. He can not afford counsel. He has sought out volunteer  
26 counsel without success.

27 He rests his right to counsel on authority for appointment of counsel in criminal  
28 proceedings. He includes with his motion supporting declarations from fellow inmates.

1 **IV. ANALYSIS**

2 Plaintiff seeks reconsideration based upon facts and circumstances previously  
3 considered and ruled upon. His limited English and education and his reliance on fellow  
4 inmates in prosecuting this matter do not demonstrate exceptional circumstances for  
5 appointment of counsel. The Court has had before it hundreds of such cases which  
6 have progressed through discovery, law and motion activity and even trial despite  
7 plaintiffs' limited communication skills and education.

8 Plaintiff's arguments for appointment of counsel were previously considered and  
9 rejected by the Court (Order Den. Counsel, ECF No. 48), as were his arguments for  
10 injunctive relief against threats and interference with access to court. (Order Directing  
11 Re-Issue of Service Doc., ECF No. 41.) Plaintiff presents no basis for reconsideration of  
12 these orders.

13 The record in this matter suggests that, even assuming the limitations he asserts,  
14 Plaintiff can sufficiently prosecute what appear to be relatively straightforward Eighth  
15 Amendment claims. The present motion does not suggest new or different facts or  
16 circumstances, not previously considered by the Court, suggesting otherwise.

17 Plaintiff does not have a right to appointed counsel in this case. His reference to  
18 rights to counsel under the Sixth Amendment are not applicable. 28 U.S.C. § 1915(e)(1);  
19 Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296,  
20 298 (1989). Plaintiff provides no basis for granting a motion for reconsideration. He cites  
21 to no error, newly discovered evidence, or other grounds supporting reconsideration.

22 **V. CONCLUSIONS AND ORDER**

23 Plaintiff has not met the burden imposed upon a party moving for reconsideration.  
24 Marlyn Nutraceuticals, Inc., 571 F.3d at 880. He has not shown clear error or other  
25 meritorious grounds for relief from the November 27, 2012 Order Denying Counsel.

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1           Accordingly, for the foregoing reasons, it is HEREBY ORDERED that Plaintiff's  
2 Motion for Reconsideration of the Court's November 27, 2012 Order Denying  
3 Appointment of Counsel (ECF No. 50) is DENIED.

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5 IT IS SO ORDERED.

6 Dated: January 23, 2013

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE

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