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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NORMAN GERALD DANIELS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 K. ALLISON, et al., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

1:12-cv-00545-LJO-GSA-PC  
ORDER DENYING MOTIONS FOR  
RECONSIDERATION  
(Docs. 17, 19.)  
ORDER EXTENDING TIME FOR  
PLAINTIFF TO FILE FIRST AMENDED  
COMPLAINT  
NEW DEADLINE: NOVEMBER 15, 2012

**I. BACKGROUND**

Norman Gerald Daniels ("Plaintiff") is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 9, 2012. (Doc. 1.)

On July 27, 2012, the Court entered an order denying Plaintiff's motion for appointment of counsel. (Doc. 14.) On August 9, 2012, Plaintiff filed objections to the order, and on October 1, 2012, Plaintiff filed additional objections. (Docs. 17, 19.) The Court treats Plaintiff's objections as a motion for reconsideration of the order denying appointment of counsel.

The Court screened the Complaint pursuant to 28 U.S.C. § 1915 and entered an order on September 17, 2012, dismissing the Complaint for failure to state a claim with leave to amend. (Doc.

1 18.) On October 1, 2012, Plaintiff filed a motion for reconsideration of the Court’s order dismissing the  
2 Complaint. (Doc. 19.)

3 Plaintiff’s two motions for reconsideration are now before the Court.

4 **II. MOTIONS FOR RECONSIDERATION**

5 **A. Legal Standard**

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

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

21 **B. Order Denying Appointment of Counsel**

22 Plaintiff argues that he is entitled to appointment of counsel because he has “extraordinary  
23 circumstances” as required under the applicable statute. Objections, Doc. 17 at 1:13-15. Plaintiff  
24 explains that he is legally blind and it is extremely hard for him to read or write. Plaintiff is incarcerated  
25 at the California Substance Abuse Treatment Facility in Corcoran, California, and lacks adequate access  
26 to the law library and the ADA computer, making it difficult to do legal work. He also claims that he

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1 is being improperly denied medical devices due to his indigency. Plaintiff has attempted to find legal  
2 representation, without success.

3 Plaintiff has not demonstrated that the Court committed clear error, or presented the Court with  
4 new information of a strongly convincing nature, to induce the Court to reverse its prior decision.  
5 Plaintiff has not demonstrated that he has the required exceptional circumstances. At this early stage  
6 in the proceedings, the court cannot make a determination that Plaintiff is likely to succeed on the merits.  
7 Plaintiff's Complaint was dismissed on September 17, 2012, for failure to state a claim, with leave to  
8 amend. To date, Plaintiff has not filed an amended complaint. Thus, there is no complaint on record  
9 in this case upon which this case can proceed. It is too early for service of process, and no other parties  
10 have yet appeared. Moreover, the Court does not find that Plaintiff cannot adequately articulate his  
11 claims or respond to the Court's orders. Plaintiff is advised that he is not precluded from renewing the  
12 motion for appointment of counsel at a later stage of the proceedings. Therefore, the motion for  
13 reconsideration shall be denied.

14 **C. Order Dismissing Complaint With Leave to Amend**

15 Plaintiff disagrees with the Court's assessment of his claims and finds it difficult to comply with  
16 the Court's order within the established deadline because it will take time to determine why the Court  
17 dismissed the Complaint. Plaintiff's remedy at this juncture is to file a First Amended Complaint, curing  
18 the deficiencies in the Complaint identified in the Court's order of September 17, 2012. Plaintiff's case  
19 cannot proceed until the Court's requisite screening process is completed. The Court is required to  
20 screen complaints such as Plaintiff's for cognizable claims, pursuant to 28 U.S.C. § 1915, and the Court  
21 will not order service of process until Plaintiff has filed a complaint containing cognizable claims.  
22 Therefore, Plaintiff's motion for reconsideration shall be denied.

23 In light of Plaintiff's difficulties in meeting the Court's deadline to file the First Amended  
24 Complaint, Plaintiff shall be granted additional time in which to prepare and file the First Amended  
25 Complaint.

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1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motions for reconsideration of the Court's orders denying appointment of  
4 counsel and dismissing the Complaint with leave to amend, filed on August 9, 2012 and  
5 October 1, 2012, are DENIED; and
- 6 2. Plaintiff is granted an extension of time until November 15, 2012 in which to file a First  
7 Amended Complaint in compliance with the Court's order of September 17, 2012.

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9 IT IS SO ORDERED.

10 **Dated: October 3, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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