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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN R. MILLER,

CASE No. 1:12-cv-01288-AWI-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTIONS
FOR (1) RECONSIDERATION OF DENIAL
OF IN FORMA PAUPERIS STATUS (2) IN
FORMA PAUPERIS STATUS

v.

(ECF Nos. 12, 13)

ALBERT NAJERA, et al.,

Defendants.

_____ /

I. PROCEDURAL BACKGROUND

Plaintiff Steven R. Miller is a federal prisoner proceeding pro se in this civil rights action filed on July 30, 2012 pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). (ECF No. 1.)

Plaintiff filed a Motion to Proceed In Forma Pauperis ("IFP"). (ECF No. 2.) However, on August 13, 2012, prior to action on his IFP Motion, a relative of Plaintiff paid the filing fee in full. Accordingly, the Court denied the IFP Motion as moot on March 29, 2013. (ECF No. 11.)

Pending before the Court are Plaintiff's Motions filed April 26, 2013 for (1) Reconsideration of the March 29th Order Denying the IFP Motion (ECF No. 12), (2) IFP

1 status. (ECF No. 13.)

2 **II. ARGUMENT**

3 Plaintiff claims: his grandmother paid the fee without his knowledge; his financial
4 situation has changed and he now earns \$30/month at his prison job rather than the
5 initial \$5.25/\$10.50; he also receives \$30/month from his grandparents; and, denial of
6 IFP prejudicially deprives him of marshal's service of process and the opportunity for
7 appointed counsel.

8 Plaintiff again motions for IFP status under 28 U.S.C. § 1915 based upon his
9 updated indigency.

10 Plaintiff also asserts he requires the assistance of counsel to prosecute this
11 action.

12 **III. ANALYSIS**

13 **A. MOTION FOR RECONSIDERATION**

14 1. Legal Standard

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

24 "A motion for reconsideration should not be granted, absent highly unusual
25 circumstances, unless the . . . court is presented with newly discovered evidence,
26 committed clear error, or if there is an intervening change in the controlling law," Marlyn
27 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),
28 and "[a] party seeking reconsideration must show more than a disagreement with the

1 [c]ourt's decision, and recapitulation . . ." of that which was already considered by the
2 court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,
3 1131 (E.D. Cal. 2001).

4 2. No Basis for Reconsideration re IFP

5 Plaintiff moves to proceed as an indigent notwithstanding that the filing fee for
6 this action has been paid in full.

7 Plaintiff cites no authority supporting a right to IFP status following payment of
8 the Court's filing fee. Plaintiff has no right to proceed IFP. Franklin v. Murphy, 745 F.2d
9 1221, 1231 (9th Cir. 1984). This is so regardless of whether Plaintiff was aware his
10 family member would pay the filing fee and his financial position would improve.

11 Plaintiff provides no basis for reconsideration of his IFP status. He cites to no
12 error, newly discovered evidence, or other grounds supporting reconsideration
13 regarding his IFP status.

14 3. No Basis for Reconsideration re Appointment of Counsel

15 Plaintiff's Motion for Reconsideration also fails to the extent construed as
16 seeking reconsideration of the Court's September 7, 2012 Order denying his Motion for
17 appointment of Counsel. The Court denied the Motion on grounds Plaintiff failed to
18 show the requisite exceptional circumstances. (ECF No. 9.) Nothing before the Court
19 constitutes grounds to reconsider the September 7th Order. The instant arguments for
20 appointment of counsel were previously considered and rejected by the Court.

21 It remains that Plaintiff does not have a right to appointed counsel in this case.
22 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), partially overruled on other
23 grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998); 28 U.S.C. § 1915(e)(1).

24 Plaintiff cites to no error, newly discovered evidence, or other grounds supporting
25 reconsideration regarding appointment of counsel.

26 **B. MOTION TO PROCEED IFP**

27 Plaintiff's further Motion for IFP status (ECF No. 13) shall be denied, without
28 prejudice, for the reasons stated above

1 **IV. ORDER**

2 Accordingly, for the reasons stated above, it is HEREBY ORDERED that
3 Plaintiff's Motions for (1) Reconsideration of the March 29, 2013 Order Denying the
4 Motion to Proceed IFP (ECF No. 12), and (2) IFP status (ECF No. 13) are DENIED.

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7 IT IS SO ORDERED.

8 Dated: May 6, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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