

1 the prior motion.”

2 “A motion for reconsideration should not be granted, absent highly unusual
3 circumstances, unless the district court is presented with newly discovered evidence, committed
4 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
5 raise arguments or present evidence for the first time when they could reasonably have been
6 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
7 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
8 original).

9 Plaintiff has not shown any new or different facts or circumstances, newly discovered
10 evidence, or an intervening change of law to support his motion. Plaintiff argues that the
11 dismissal of Defendants Briggs and Jones for Plaintiff’s failure to state cognizable claims against
12 them shows that the Magistrate Judge committed clear error by finding that Plaintiff can
13 adequately articulate his claims and failing to cite the precise evidence in the record relied on to
14 make that finding. (Doc. 33, at 6:5-21.) Plaintiff further argues: (1) that the fact that discovery
15 was opened in this case shows that his case is meritorious (*id.*, at 6:21-25); (2) that most cases are
16 won or lost in discovery (*id.*, at 7:10); (3) that discovery is not considered early an early stage in
17 litigation (*id.*, at 7:10-11); (4) that the basis for finding exceptional circumstances did not exist
18 were not identified (*id.*, at 7:14-25); (5) that discovery may be able to defeat some of the
19 affirmative defenses raised, but discovery is complex and he "has no clue how to utilize
20 discovery" (*id.*, at 8:1-7); and (6) that his ability to pursue this case is severely hindered by his
21 confinement in Administrative Segregation (*id.*, at 8:8-15). None of this shows that the
22 Magistrate Judge's denial without prejudice of Plaintiff's motion for counsel to be appointed was
23 clearly erroneous.

24 Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v.*
25 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997); the Court cannot require an attorney to represent
26 Plaintiff pursuant to 28 U.S.C. § 1915(e)(1), *Mallard v. United States District Court for the*
27 *Southern District of Iowa*, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989), and exceptional
28 circumstances are not present at this time for the Court to seek the voluntary assistance of counsel

1 pursuant to section 1915(e)(1), *Rand*, 113 F.3d at 1525. Plaintiff's trepidation with pursuing this
2 case on his own, while understandable, is not sufficient grounds for reconsideration of the
3 Magistrate Judge's order denying appointment of counsel without prejudice. Further, nothing in
4 the Magistrate Judge's order, nor this order prohibits Plaintiff from attempting to secure counsel
5 on his own.

6 Having carefully considered this matter, the Court finds the Magistrate Judge's order
7 denying Plaintiff's request for appointment of counsel to be supported by the record and proper
8 analysis.

9 Accordingly, Plaintiff's motion for reconsideration of the Magistrate Judge's order
10 denying Plaintiff's motion for counsel to be appointed in this case, filed December 19, 2013 (Doc.
11 33), is HEREBY DENIED.

12 IT IS SO ORDERED.

13 Dated: February 4, 2014

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16 SENIOR DISTRICT JUDGE