

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 BENITO AGUILAR,
10 Plaintiff,
11 v.
12 KIM HOLLAND, et al.,
13 Defendants.
14

Case No. 1:13-cv-01356-LJO-EPG (PC)
ORDER DENYING PLAINTIFF'S MOTION
TO ALTER JUDGMENT
(ECF NO. 34)

15 Benito Aguilar ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in
16 this civil rights action filed pursuant to 42 U.S.C. § 1983. On August 23, 2016, the Court
17 adopted the assigned magistrate judge's findings and recommendations in full (ECF No. 32),
18 dismissed this action, with prejudice, because Plaintiff failed to state a claim (*id.*), and entered
19 judgment (ECF No. 33).

20 On September 8, 2016, Plaintiff filed a motion to alter order adopting findings and
21 recommendations and dismissing third amended complaint with prejudice ("the Motion"). (ECF
22 No. 34).

23 The Ninth Circuit has held that:

24 In general, there are four basic grounds upon which a Rule 59(e)
25 motion may be granted: (1) if such motion is necessary to correct
26 manifest errors of law or fact upon which the judgment rests; (2) if
27 such motion is necessary to present newly discovered or previously
28 unavailable evidence; (3) if such motion is necessary to prevent
manifest injustice; or (4) if the amendment is justified by an
intervening change in controlling law.

1 Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing McDowell v. Calderon,
2 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam)). Altering or amending a
3 judgment under Rule 59(e) is an “extraordinary remedy, to be used sparingly in the interests of
4 finality and conservation of judicial resources.” Kona Enters., Inc. v. Estate of Bishop, 229 F.3d
5 877, 890 (9th Cir. 2000) (internal quotation marks omitted) (quoting 12 James Wm. Moore et al.,
6 Moore’s Federal Practice § 59.30[4] (3d ed. 2000)).

7 Plaintiff argues that the judgment should be altered because he is not well educated, and
8 that he needs the assistance of appointed counsel in order to “correct his wrongs in this complaint
9 I have filed.”

10 Plaintiff has failed to establish grounds for altering the judgment. In the Motion, Plaintiff
11 simply alleges that he is not well educated, and that he needs appointed counsel. However,
12 Plaintiff already requested counsel twice in this case (ECF Nos. 6 & 15), and both of those
13 requests were denied (ECF Nos. 8 & 16). Plaintiff did not request that the previous denials be
14 reconsidered, or file a new motion to appoint counsel. However, even if he did, this Court finds,
15 as Magistrate Judge Dennis L. Beck did, that “the court cannot make a determination that
16 plaintiff is likely to succeed on the merits, and based on a review of the record in this case, the
17 court does not find that plaintiff cannot adequately articulate his claims.” (ECF No. 16, p. 2).

18 As Plaintiff has failed to establish grounds for altering the judgment, the Motion will be
19 denied.

20 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that the Motion is
21 DENIED.
22 IT IS SO ORDERED.

23 Dated: September 28, 2017

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE