

1 **such a failure occurs prior to the undersigned’s order on the now-pending findings and**
2 **recommendations concerning the screening of the sixth amended complaint. Plaintiff**
3 **should consider this her final warning in this regard.”** (*Id.*) On July 19, 2018, shortly after
4 this final warning issued and before the assigned magistrate judge had occasion to screen
5 plaintiff’s sixth amended complaint, plaintiff filed a motion for reconsideration, requesting the
6 court reconsider its prior decisions and to appoint counsel or an inmate to represent her in the
7 action.² (Doc. No. 347.) On August 20, 2018, the court dismissed plaintiff’s case for failure to
8 obey a court order. (Doc. No. 353.)

9 ANALYSIS

10 Under Federal Rule of Civil Procedure 60(b), the court may relieve a party from a final
11 judgment or order for various reasons, including: “(1) mistake . . . ; (3) fraud . . . ,
12 misrepresentation, or misconduct by an opposing party; or (6) any other reason the justifies
13 relief.” “Generally, a motion for reconsideration ‘should not be granted, absent highly unusual
14 circumstances, unless the district court is presented with newly discovered evidence, committed
15 clear error, or if there is an intervening change in the controlling law.’” *Gibson v. Hagerty Ins.*
16 *Agency*, No. 1:16-CV-00677-BAM, 2018 WL 4071242, at *1 (E.D. Cal. Aug. 27, 2018) (quoting
17 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)).
18 The party seeking reconsideration must do more than disagree with the court’s prior decision—it
19 “must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
20 decision.” *Id.* (citations omitted). Pursuant to Local Rule 230(j), a party moving for
21 reconsideration must identify “what new or different facts or circumstances are claimed to exist
22 which did not exist or were not shown upon such prior motion, or what other grounds exist for the
23 motion; and [] why the facts or circumstances were not shown at the time of the prior motion.”

24 Plaintiff moves for reconsideration pursuant to Rule 60(b)(3), but does not allege that
25 defendants engaged in fraud, misrepresentation, or misconduct. (*See* Doc. No. 355). Instead, her
26 motion for reconsideration contends: (1) the court improperly dismissed her case; (2) that the

27 ² A prior court order noted that at least eight such requests for appointment of counsel by
28 plaintiff had been denied. (Doc. No. 353 at 1–2; *see also* Doc. No. 346 at 2.)

1 undersigned has exhibited prejudice against plaintiff's case; and (3), as a result of said prejudice,
2 the undersigned should recuse himself from this matter. Plaintiff's motion for reconsideration is
3 therefore construed as a motion for reconsideration pursuant to Rule 60(b)(6). The court answers
4 each of plaintiff's arguments below.

5 First, the court properly dismissed plaintiff's case for failure to obey a court order.
6 Plaintiff argues that the court violated Federal Rule of Civil Procedure 11(c), but the court did not
7 impose sanctions pursuant to Rule 11. Plaintiff does not dispute, and the court will not repeat
8 here, the inherent authority the court possesses to dismiss an action due to a plaintiff's failure to
9 comply with a court order. (*See* Doc. No. 353 at 2.) Plaintiff contends that the court never
10 defined or explained why her previous motions were "frivolous," (Doc. No. 355 at 7), but the
11 court has explained to plaintiff why her requests for appointment of counsel are repetitive and
12 groundless, (*see, e.g.* Doc. Nos. 14, 37, 54, 73, 110, 156, 202, 267), and has warned plaintiff
13 multiples times of the need for her to comply with court orders and litigate this matter in a
14 reasonable manner, and in particular to cease filing frivolous motions and other requests, (*see,*
15 *e.g.*, Doc. No. 237 at 4-7; Doc. No. 282 at 4 n.3; Doc. No. 293 at 3-4, Doc. No. 346 at 3).
16 Moreover, before the order of dismissal, the court expressly warned plaintiff that her filing of
17 further frivolous requests, especially if filed before the undersigned had reviewed the pending
18 findings and recommendations screening her most recent complaint, would almost certainly result
19 in the imposition of terminating sanctions. (Doc. No. 346 at 3.) Nonetheless, plaintiff disobeyed
20 that order. (*See* Doc. No. 347.) Plaintiff does not contend the court lacks authority to dismiss a
21 case for failure to obey a court order but rather merely disagrees with the court's order of
22 dismissal.

23 Second, plaintiff has not demonstrated the undersigned is prejudiced against her. Plaintiff
24 contends the undersigned: "vehemently oppose[s] plaintiff getting an attorney," (Doc. No. 255 at
25 2); "personally does not want plaintiff to have a chance to win damages," (*id.* at 3); and has
26 "behaved improperly by retaliating against plaintiff for appealing his decision to deny an
27 attorney," (*id.* at 5). As an initial matter, these conclusory allegations of prejudice do not
28 establish the undersigned is prejudiced against plaintiff. Moreover, plaintiff's allegations are

1 refuted by the record in this action. As discussed above and in numerous prior orders, the court
2 only advised plaintiff that she is not entitled to appointed counsel in a civil action and that
3 continuously asking the court to appoint counsel or otherwise revisit issues the court has already
4 addressed, would result in the imposition of terminating sanctions. The court was not “eager[]
5 [to] issue and justify terminating sanctions.” (Doc. No. 355 at 4.) Rather, the court gave plaintiff
6 multiple warnings to comply with court orders and litigate her case in a reasonable manner and
7 also gave plaintiff two explicit warnings—with the final one bolded and explicitly noted as her
8 final warning—to cease submitting frivolous motions with the court or face terminating sanctions.
9 The plaintiff nevertheless chose to file another frivolous motion.

10 Finally, plaintiff’s request that the undersigned recuse himself from this matter is not
11 persuasive. “In federal court, 28 U.S.C. § 144 provides for recusal where a party files a timely
12 and sufficient affidavit that the judge before whom the matter is pending has a personal bias or
13 prejudice either against the party or in favor of an adverse party. The affidavit must state the facts
14 and reasons for such belief.” *Bolin v. Davis*, No. 1:17-cv-00985-LJO-SAB, 2018 WL 2010435,
15 at *2 (E.D. Cal. Apr. 30, 2018). Here, plaintiff has not provided a timely or sufficient affidavit in
16 support of her request. Additionally, plaintiff’s motion makes conclusory allegations of prejudice
17 based on the undersigned’s rulings, but these allegations, even if included in a timely affidavit,
18 would “fall short of stating facts that would justify recusal.” *Id.* (citing *United States v.*
19 *\$292,888.04 in U.S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995), *as amended* (May 24, 1995)).
20 “Disqualification of a federal judge [is also] available under 28 U.S.C. § 455 in cases where the
21 judge’s impartiality might reasonably be questioned.” *Id.* However, “[u]nsubstantiated
22 allegations of personal bias or prejudice do not require disqualification” and “[t]here is a
23 presumption of honesty and integrity in those serving as adjudicators.” *Id.* (internal quotation
24 marks and citations omitted). Here, because plaintiff’s allegations are unsubstantiated, they are
25 not sufficient to warrant disqualification. *See id.* (“[R]ulings by a court . . . are not a basis for
26 disqualification unless the judge’s actions display a deep-seated favoritism or antagonism that
27 would make fair judgment impossible.”) (internal quotation marks and citation omitted).

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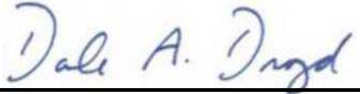
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For the reasons explained above,

1. Plaintiff's motion for reconsideration (Doc. No. 355) is denied;
2. The case is to remain closed; and
3. No further orders will issue in response to unauthorized filings by plaintiff.

IT IS SO ORDERED.

Dated: October 22, 2018


UNITED STATES DISTRICT JUDGE