



1 counsel. (ECF No. 30.)

2 Plaintiff now files a motion for substitution of attorney along with a new motion for  
3 reconsideration. (ECF No. 31.) Defendants opposed the motion. (ECF No. 32.) On  
4 September 30, 2015, Plaintiff filed a motion for status on his motion for reconsideration.  
5 (ECF No. 33.) These matters are deemed submitted. Local Rule 230(l).

## 6 **II. MOTION FOR SUBSTITUTION OF ATTORNEY**

7 Plaintiff filed a motion to substitute himself for his attorney of record, Mark  
8 William Kelsey. The motion is signed by both Mr. Kelsey and Plaintiff. (ECF No. 31 at  
9 87.) However, Plaintiff is not an attorney. Therefore, the motion is more appropriately  
10 construed as a motion for withdrawal.

11 Local Rule 182(d) provides that an attorney may withdraw “leaving the client in  
12 propria persona” by filing a motion and notice to the client and all other parties. The  
13 attorney must also submit “an affidavit stating the current or last known address . . . of  
14 the client and the efforts made to notify the client of the motion to withdraw.” The Rules  
15 of Professional Conduct of the State Bar of California allow an attorney to withdraw from  
16 a case when “[t]he client knowingly and freely assents to termination of the  
17 employment.” Rules of Prof’l Conduct R. 3-700(C)(5) (CA 2015).

18 It appears from Plaintiff’s motion that he wishes to proceed *pro se* and agrees to  
19 the termination of his counsel. Plaintiff’s whereabouts and awareness of the motion are  
20 known; he filed the motion. Mr. Kelsey consented to the withdrawal by signing Plaintiff’s  
21 motion. Defendants did not contest the issue of the withdrawal of Mr. Kelsey in their  
22 response to Plaintiff’s motion. Therefore, the Court will GRANT Plaintiff’s motion.

## 23 **III. MOTION FOR RECONSIDERATION**

24 Federal Rule of Civil Procedure 60(b)(1) allows the Court to relieve a party from  
25 an order due to “mistake, inadvertence, surprise, or excusable neglect.” In seeking  
26 reconsideration of an order, Local Rule 230(j) requires a party to show “what new or  
27 different facts or circumstances are claimed to exist which did not exist or were not  
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1 shown upon such prior motion, or what other grounds exist for the motion.”

2 “A motion for reconsideration should not be granted, absent highly unusual  
3 circumstances, unless the . . . court is presented with newly discovered evidence,  
4 committed clear error, or if there is an intervening change in the controlling law,” *Marlyn*  
5 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009),  
6 and “[a] party seeking reconsideration must show more than a disagreement with the  
7 Court’s decision, and ‘recapitulation . . .’” of that which was already considered by the  
8 court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111,  
9 1131 (E.D. Cal. 2001) (*quoting Bermingham v. Sony Corp. of Am., Inc.*, 820 F. Supp.  
10 834, 856 (D. N.J. 1992)).

11 A. Parties’ Arguments

12 Plaintiff seeks reconsideration of this Court’s Order dismissing his case on statute  
13 of limitations grounds. Plaintiff argues that this case and his previous case *Flores v.*  
14 *Sumaya*, No.1:07-cv-853-GSA (E.D. Cal.), were litigated by a next friend because  
15 Plaintiff lacked the mental capacity to file suit. Plaintiff is a Mexican national and does  
16 not have the language, legal, or mental capacity to litigate his cases. Plaintiff submits  
17 voluminous medical records to support his position that the statute of limitations period  
18 should be tolled due to his mental illness and incapacity.

19 Defendants contend that Plaintiff has not cited any new evidence, law, or  
20 argument that would warrant reconsideration of this Court’s Order.

21 B. Analysis

22 Plaintiff has not presented a basis for reconsideration. The Court noted in its  
23 ruling granting Defendant’s motion to dismiss that even if Plaintiff had submitted the  
24 necessary medical records to support his argument at the time, it would not have  
25 changed the Court’s ruling. The Court also considered the fact that Plaintiff may have  
26 had someone assist him in litigating his previous case. Plaintiff’s motion is DENIED.

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**IV. MOTION FOR STATUS**

Plaintiff filed a motion requesting a status on his motion for reconsideration. To the extent that this Order rules on Plaintiff's motion for reconsideration, his motion for status is GRANTED.

**V. CONCLUSION AND ORDER**

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's motion for substitution of attorney is GRANTED. Mr. Kelsey is allowed to withdraw and Plaintiff shall proceed *pro se*. (ECF No. 31.);
2. Plaintiff's motion for reconsideration is DENIED (ECF No. 31.); and
3. Plaintiff's motion for status is GRANTED (ECF No. 33.).

IT IS SO ORDERED.

Dated: November 30, 2015

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE