

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

9
10 SAM CONSIGLIO, JR.,) Case No.: 1:16-cv-01268-AWI-SAB (PC)
11))
12 Plaintiff,) ORDER REGARDING PLAINTIFF'S
13 vs.) NOTICE OF APPEAL OF MAGISTRATE
14 EDMUND G. BROWN, et al.,) JUDGE'S REFUSAL TO GRANT REQUEST
15 Defendants.) FOR APPOINTMENT OF COUNSEL
16) (Doc. No. 61)

17 **I. Introduction**

18 Plaintiff Sam Consiglio, Jr., is a civil detainee proceeding *pro se* and *in forma pauperis* in
19 this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States
20 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

21 On February 20, 2018, Plaintiff made a request for the appointment of counsel, arguing
22 that his legal materials were confiscated, which interfered with his ability to litigate this matter.
23 (Doc. No. 34.) On February 23, 2018, the assigned magistrate judge denied the request, without
24 prejudice. (Doc. No. 37.) Considering the relevant factors, the magistrate judge found that
25 Plaintiff's property issue was not sufficient alone to show the extraordinary circumstances
26 necessary to begin the search for voluntary counsel. (*Id.* at 2.) Instead, the magistrate judge
27 granted Plaintiff free copies of filings in this matter to allow him to work on a pending deadline,
28 and granted an extension of time of that deadline. (*Id.*)

1 On November 2, 2018, Plaintiff filed a motion to reconsider the denial of his request for
2 the appointment of counsel. (Doc. No. 59.) On November 5, 2018, the assigned magistrate
3 judge erroneously concluded that the motion was directed to that judge, and considering
4 Plaintiff's arguments and the record, denied the motion to reconsider. (Doc. No. 60.)

5 Currently before the Court is Plaintiff's notice of appeal of the magistrate judge's
6 decision to deny the appointment of counsel, filed on November 15, 2018. (Doc. No. 61.) The
7 Court construes the notice as a motion for reconsideration pursuant to Federal Rule of Civil
8 Procedure 60.

9 **II. Motion for Reconsideration**

10 Rule 60(b)(6) allows the Court to relieve a party from an order for any reason that
11 justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy to prevent manifest
12 injustice and is to be utilized only where extraordinary circumstances . . ." exist. *Harvest v.*
13 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The
14 moving party "must demonstrate both injury and circumstances beyond his control . . ." *Id.*
15 (internal quotation marks and citation omitted). In seeking reconsideration of an order, Local
16 Rule 230(j) requires a party to show "what new or different facts or circumstances are claimed to
17 exist which did not exist or were not shown upon such prior motion, or what other grounds exist
18 for the motion."

19 "A motion for reconsideration should not be granted, absent highly unusual
20 circumstances, unless the district court is presented with newly discovered evidence, committed
21 clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals,*
22 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations
23 marks and citations omitted). "A party seeking reconsideration must show more than a
24 disagreement with the Court's decision, and recapitulation . . ." of that which was already
25 considered by the Court in rendering its decision. *U.S. v. Westlands Water Dist.*, 134 F. Supp. 2d
26 1111, 1131 (E.D. Cal. 2001) (internal quotation marks and citation omitted).

27 Plaintiff asserts in his motion that he is certain that he will prevail on the merits if he
28 were appointed counsel in this action. He further argues that he cannot win this action without

1 counsel, and that the magistrate judge denied his prior requests for the appointment of counsel
2 due to prejudice.

3 Considering the record and Plaintiff's arguments, the Court finds no clear error in the
4 assigned magistrate judge's ruling. The magistrate judge evaluated the likelihood of success on
5 the merits and the ability of Plaintiff to articulate his claims *pro se* in light of the complexity of
6 legal issues involved. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). The record
7 shows that Plaintiff can adequately articulate his claim, having stated a cognizable claim and
8 survived a motion to dismiss the claim in part. However, considering the record and,
9 specifically, the filings related to Plaintiff's motion for preliminary injunction, which was denied
10 by the undersigned, the magistrate judge found that Plaintiff has not shown a likelihood of
11 success on the merits. Plaintiff has shown no error in that determination.

12 Further, the Court finds no showing of prejudice by the assigned magistrate judge.
13 Judicial rulings that are not in a party's favor are almost never sufficient to show that a judge is
14 not impartial. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994). As noted above, the
15 magistrate judge's rulings on this issue, although not in Plaintiff's favor, are supported by
16 findings from the record and proper analysis, and do not evidence prejudice to Plaintiff.

17 **III. Conclusion**

18 Accordingly, Plaintiff's notice of appeal of the magistrate judge's denial of his request
19 for appointed counsel, filed on November 15, 2018 (Doc. No. 61) is construed as a motion for
20 reconsideration, and is HEREBY DENIED.

21
22 IT IS SO ORDERED.

23 Dated: February 25, 2019


24 SENIOR DISTRICT JUDGE