



1 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 In his motion, Plaintiff states that he previously pursued his claims against Defendant  
10 Naftzger via habeas corpus proceedings in the Fresno County Superior Court. (Doc. 16.)  
11 Plaintiff states that counsel was appointed for him in that action, handled everything for Plaintiff,  
12 and obtained a finding in Plaintiff’s favor. (*Id.*) These facts were not presented in Plaintiff’s first  
13 motion for appointment of counsel and Plaintiff does not explain why he did not present them in  
14 his initial motion. However, simply because counsel was appointed for Plaintiff in his state court  
15 action, does not require or even necessarily justify it here. Plaintiff has not demonstrated that this  
16 Court’s denial without prejudice of Plaintiff’s motion for appointment of counsel was clearly  
17 erroneous.

18 Plaintiff’s First Amended Complaint is in line for screening. (Doc. 13.) The Court notes  
19 that Plaintiff’s first pleading attempt successfully stated a cognizable claim and he chose to file an  
20 amended complaint rather than proceed on that claim. (*See* Docs. 10, 13.) Thus, at this stage, it  
21 cannot be said that Plaintiff is incapable of adequately representing his own interests in this  
22 action.

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

1 Plaintiff's trepidation with pursuing this case on his own, while understandable, is not  
2 sufficient grounds for reconsideration of this Court's order denying appointment of counsel  
3 without prejudice. Nothing in this Court's orders prohibit Plaintiff from contacting counsel who  
4 represented him in the state court action, or from contacting other counsel to request their services  
5 in this action. If Plaintiff's prior counsel is willing to represent Plaintiff in this action, the Court  
6 will consider a motion for his appointment or will approve a substitution for that attorney to act as  
7 Plaintiff's legal representative in this action. Finally, while the Court wishes it were able to  
8 appoint counsel for all indigent *pro se* litigants who desire representation, there is a shortage of  
9 attorneys who are willing to undertake such appointments.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this  
11 Court has conducted a *de novo* review. Having carefully reviewed the entire file, the Court finds  
12 the order denying Plaintiff's request for appointment of counsel that issued on December 1, 2017,  
13 (Doc. 15), to be supported by the record and proper analysis.

14 Accordingly, Plaintiff's motion for reconsideration of the order denying Plaintiff's motion  
15 for appointment of counsel in this case, filed December 15, 2017, (Doc. 16), is **HEREBY**  
16 **DENIED.**

17 IT IS SO ORDERED.

18 Dated: December 19, 2017

19 /s/ Sheila K. Olerto  
20 UNITED STATES MAGISTRATE JUDGE