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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RUDOLF SHTEYNBERG,  
  
Plaintiff,  
  
v.  
  
SAN DIEGO COUNTY JAIL  
SHERIFF'S DEPARTMENT MEDICAL  
TEAM,  
  
Defendant.

Case No.: 17-CV-1098 JLS (KSC)  
  
**ORDER DENYING PENDING  
MOTIONS**  
  
(ECF Nos. 72, 74, 76)

Presently before the Court are Plaintiff Rudolf Shteynberg's Motion to Reopen Case ("1st Mot." ECF No. 72) and Motion to Request for a Hearing on Damages ("2nd Mot.," ECF No. 74). Plaintiff also filed a Notice to the Ethical Committee of the Judicial Performances Recusal of District Judge ("Notice," ECF No. 76). After considering Plaintiff's Motions and the applicable law, the Court **DENIES** Plaintiff's Motions for the following reasons.

**BACKGROUND**

On May 30, 2017, Plaintiff filed a complaint against the San Diego County Jail Sheriff's Department Medical Team alleging "violations of civil rights," "medical

1 negligence,” “mass tort,” “false arrests,” “personal injuries,” “time spen[t],” and “\$  
2 spen[t].” ECF No. 1. Plaintiff also filed a Motion to Proceed In Forma Pauperis (“IFP”).  
3 ECF No. 2. On June 30, 2017, the Court granted Plaintiff’s Motion to Proceed IFP and  
4 screened Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(a). ECF No. 6. The Court  
5 determined that Plaintiff did not plead sufficient factual allegations for the Court to  
6 determine whether he stated a claim under 42 U.S.C. § 1983. *Id.* at 4. The Court dismissed  
7 Plaintiff’s Complaint and allowed Plaintiff thirty days to file an amended complaint.

8 Nearly a year after the Court’s order dismissing his original Complaint, Plaintiff  
9 filed a First Amended Complaint on April 6, 2018 (ECF No. 57). On June 12, 2018, the  
10 Court screened Plaintiff’s First Amended Complaint pursuant to 28 U.S.C. § 1915(a) and  
11 found Plaintiff’s amended complaint failed to state a claim for relief. ECF No. 67. The  
12 Court granted Plaintiff thirty days from the date of that order to file an amended complaint  
13 and cautioned that “[s]hould Plaintiff fail to file an amended complaint within the time  
14 provided, the Court may enter a final order dismissing this civil action with prejudice.” *Id.*  
15 at 6 (emphasis omitted). Plaintiff failed to file an amended complaint, and on July 13,  
16 2018, the Court issued an Order to Show Cause (“OSC”) why this case should not be  
17 dismissed without prejudice for failure to file an amended complaint. (ECF No. 68). The  
18 Court granted Plaintiff until August 17, 2018 to respond to the OSC. *Id.* When Plaintiff  
19 failed to respond to the Court’s OSC or file an amended complaint, the Court issued an  
20 order dismissing this case without prejudice on August 20, 2018. ECF No. 69. Plaintiff  
21 filed the present Motions nunc pro tunc to September 14, 2021—more than three years  
22 after the Court’s order dismissing this case. *See* ECF Nos. 72, 74, 76.

### 23 **LEGAL STANDARD**

24 Under Rule 60, a motion for “relief from a final judgment, order or proceeding” may  
25 be filed within a “reasonable time,” but usually must be filed “no more than a year after  
26 the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c).  
27 Reconsideration under Rule 60 may be granted in the case of: (1) mistake, inadvertence,  
28 surprise, or excusable neglect; (2) newly discovered evidence; or (3) fraud; or if (4) the

1 judgment is void; (5) the judgment has been satisfied; or (6) for any other reason justifying  
2 relief. Fed. R. Civ. P. 60(b).

### 3 ANALYSIS

4 In a single page filing captioned Motion to Reopen Case, Plaintiff states:

5 This is a request to reopen the case Rudolf Shteynberg vs.  
6 Sherriff's Department of the San Diego County on legal matters  
7 as tort/civil rights violations/title 1983 monetary request for  
8 restitution to compensate illegal tort and battery while being in a  
9 custody of the Sheriff's Department. San Diego City  
10 Correctional Facility and false arrest by a police officers during  
[illegible] done to indirect misconduct of Lady (Lilianna) while  
in [illegible] services.

11 1st Mot. at 1.

12 Plaintiff further states that the Motion "is to notify [illegible] Judge assigned to these  
13 legal matters! And Administrator of the Court House of San Diego County." The Court  
14 construes this filing as a motion for reconsideration of the Court's August 20, 2018 Order  
15 (the "Order") dismissing Plaintiff's action for failing to respond to the OSC or file an  
16 amended complaint.

17 As an initial matter, Plaintiff's Motion is untimely pursuant to Rule 60. Plaintiff  
18 filed the Motion more than three years after the Court issued the Order dismissing this case  
19 without prejudice. Even examining the motion on the merits, however, Plaintiff provides  
20 no information warranting relief from the Order. In the OSC, "[t]he Court ordered Plaintiff  
21 to respond or file an amended complaint on or before August 17, 2018." Order at 1.  
22 Plaintiff did not do so. *Id.* at 2. The Court allowed Plaintiff multiple opportunities to  
23 amend his complaint, but Plaintiff failed to do so. Even three years later, Plaintiff's present  
24 filings cannot be construed as pleadings. The present Motion is void of any reasons why  
25 Plaintiff should be granted relief to reopen this case. A motion for reconsideration cannot  
26 be granted merely because Plaintiff is unhappy with the judgment, frustrated by the Court's  
27 application of the facts to binding precedent, or because he disagrees with the ultimate  
28 decision. *See* 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*

1 § 2810.1 (3d ed.) (“[R]econsideration of a judgment after its entry is an extraordinary  
2 remedy which should be used sparingly.”). The Court finds that Plaintiff has failed to  
3 provide any factual or evidentiary support for any basis that would justify vacating the  
4 Court’s August 20, 2018 Order. Accordingly, Plaintiff’s Motion to Reopen Case is  
5 **DENIED**.

6 Plaintiff’s Motion to Request a Hearing on Damages is similarly brief and provides  
7 no factual information regarding Plaintiff’s claims. As the Court has denied Plaintiff’s  
8 motion to reconsider the Order dismissing this case, Plaintiff’s Motion to Request a  
9 Hearing on Damages is **DENIED AS MOOT**.

10 Finally, Plaintiff filed a Notice that he captioned Notice to the Ethical Committee of  
11 the Judicial Performances Recusal of District Judge. Plaintiff states the purpose of the  
12 notice is “to notify that [illegible] master/Judge Sammartino has been recused from  
13 presiding over the case as a [illegible] judge, since she refused to appoint a legal counsel  
14 to represent the plaintiff on damages claim!” Plaintiff is appearing pro se, and thus his  
15 pleadings must be liberally construed. *See Eldridge v. Block*, 832 F.2d 1132, 1137 (9th  
16 Cir. 1987) (“The Supreme Court has instructed the federal courts to liberally construe the  
17 ‘inartful pleading’ of pro se litigants.” (citing *Boag v. MacDougall*, 454 U.S. 364, 365  
18 (1982) (per curiam))). Therefore, the Court construes Plaintiff’s notice as a request that  
19 the undersigned recuse herself and a request for appointment of counsel. The Court  
20 addresses these requests in turn.

21 Under § 455(a), “[a]ny justice, judge, or magistrate judge of the United States shall  
22 disqualify [her]self in any proceeding in which h[er] impartiality might reasonably be  
23 questioned.” The test for recusal under § 455(a) is an objective one; a judge must recuse  
24 herself if “a reasonable person with knowledge of all the facts would conclude that the  
25 judge’s impartiality might reasonably be questioned.” *United States v. Holland*, 519 F.3d  
26 909, 913 (9th Cir. 2008) (quoting *Clemens v. U.S. Dist. Court*, 428 F.3d 1175, 1178 (9th  
27 Cir. 2005)) (internal quotation marks omitted); *accord Liteky v. United States*, 510 U.S.  
28 540, 548 (1994). “The ‘reasonable person’ is not someone who is ‘hypersensitive or

1 unduly suspicious,’ but rather is a ‘well-informed, thoughtful observer.’” *Holland*, 519  
2 F.3d at 913 (quoting *In re Mason*, 916 F.3d 384, 386 (7th Cir.1990)). Plaintiff failed to  
3 present any facts to suggest partiality or bias on the part of the undersigned. Plaintiff  
4 appears to solely base his request for recusal on the Court’s denial of his motion for  
5 appointment of counsel. Notice at 1. On June 12, 2018, the Court denied Plaintiff’s motion  
6 to appoint counsel without prejudice. *See* ECF No. 67 at 5. In denying Plaintiff’s request,  
7 the Court reasoned that “Plaintiff’s First Amended Complaint provides the barest  
8 information necessary and the Court has dismissed it, per 28 U.S.C. § 1915(e)(2).” *Id.*  
9 Because there is no basis for recusal or disqualification, Plaintiff has not provided any  
10 reason why the undersigned’s impartiality might reasonably be questioned. Denying a  
11 motion without prejudice is not a basis for recusal. *United States v. Ford*, 293 F. Supp. 3d  
12 1138, 1140 (E.D. Cal. 2018) (“Prior judicial rulings unfavorable to defendant are a basis  
13 for appeal, not recusal.”). Therefore, to the extent Plaintiff’s Notice requests the  
14 undersigned recuse from the case, that request is **DENIED**.

15 As to Plaintiff’s request for appointment of counsel, that request is also **DENIED**.  
16 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t of Social Servs.*  
17 *of Durham Cnty.*, 452 U.S. 18, 25 (1981). This case has remained closed for more than  
18 three years, and Plaintiff never filed an amended complaint. Without an operative  
19 pleading, the Court declines to entertain a motion to appoint counsel. As this case remains  
20 closed, appointment of counsel is not appropriate.

### 21 **CONCLUSION**

22 For the reasons set forth above, the Court **DENIES** Plaintiff’s Motion to Reopen  
23 Case (ECF No. 72) and **DENIES** Plaintiff’s Motion to Request a Hearing on Damages  
24 (ECF No. 74). To the extent Plaintiff’s Notice to the Ethical Committee of the Judicial  
25 Performances Recusal of District Judge (ECF No. 76) requests the undersigned recuse

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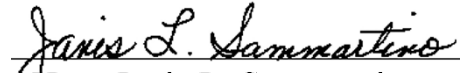
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1 herself and requests appointment of counsel, the Court **DENIES** those requests. This case  
2 remains closed.

3 **IT IS SO ORDERED.**

4 Dated: October 25, 2021

  
5 Hon. Janis L. Sammartino  
6 United States District Judge

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