

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,  
Plaintiff,  
v.  
K. KHAMOOSHIAN, et al.,  
Defendants.

Case No.: 3:17-cv-2053-BAS-AHG

**ORDER DENYING PLAINTIFF’S  
MOTION FOR RECONSIDERATION  
ON ORDER DENYING PLAINTIFF’S  
MOTION TO APPOINT COUNSEL**

**[ECF No. 166]**

Before the Court is Plaintiff Raymond Alford Bradford’s (“Plaintiff”) motion objecting to the Court’s order denying his motion to appoint counsel (ECF No. 156), which the Court construes as a motion for reconsideration. ECF No. 166. For the reasons set forth below, the Court **DENIES** Plaintiff’s motion.

**I. PLAINTIFF’S MOTION FOR RECONSIDERATION IS UNTIMELY**

Pursuant to Civil Local Rule 7.1(i)(2), any motion for reconsideration must be filed within 28 days after the entry of the order sought to be reconsidered. Here, the Court entered its order denying Plaintiff’s original motion to appoint counsel on August 12, 2019. ECF No. 156. Thus, Plaintiff’s motion for reconsideration was due on September 9, 2019.

Though Plaintiff’s motion for reconsideration is dated September 1, 2019, it was not received by the California State Prison until September 28, 2019, and therefore it was not

1 received by the Clerk’s Office until October 4, 2019. Compare ECF No. 166 at 1 with ECF  
2 No. 166 at 14. Courts have denied motions for consideration when they are untimely. See,  
3 e.g., *Tillisy v. Wash. Dep’t of Corr.*, No. 3:18-cv-5695-RJB-JRC, 2019 U.S. Dist. LEXIS  
4 142561, at \*1 (W.D. Wash. Aug. 21, 2019) (denying a pro se inmate’s motion for  
5 reconsideration of an order denying appointment of counsel because it was untimely).

## 6 **II. EVEN IF TIMELY, PLAINTIFF’S MOTION FAILS ON THE MERITS**

7 Though Plaintiff’s motion is untimely, the Court has considered the merits of  
8 Plaintiff’s request as other courts have done. See, e.g., *Castro v. Rassing*, No. S-11-2253-  
9 KJM-KJN-P, 2012 U.S. Dist. LEXIS 51165, at \*1 (E.D. Cal. Apr. 11, 2012) (addressing  
10 the merits briefly even though the motion for reconsideration was untimely); *Coleman v.*  
11 *Evergreen Pub. Sch.*, No. C18-556-RBL, 2018 WL 5886452, at \*1 (W.D. Wash. Nov. 9,  
12 2018) (same). However, even if Plaintiff’s motion for reconsideration was timely, it would  
13 still fail.

### 14 **a. Legal Standard**

15 Reconsideration is an “extraordinary remedy, to be used sparingly.” *Carroll v.*  
16 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003); *Kona Enters., Inc. v. Estate of Bishop*, 229  
17 F.3d 877, 890 (9th Cir. 2000). A motion for reconsideration should not be granted, absent  
18 highly unusual circumstances, unless the court is “presented with newly discovered  
19 evidence, committed clear error, or if there is an intervening change in the controlling law.”  
20 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.  
21 2009) (citation omitted); see also CivLR 7.1(i)(1) (stating that the party seeking relief must  
22 present “what new or different facts and circumstances are claimed to exist which did not  
23 exist, or were not shown, upon such prior application”). “A motion for reconsideration may  
24 not be used to raise arguments or present evidence for the first time when they could  
25 reasonably have been raised earlier in the litigation.” *Marlyn Nutraceuticals*, 571 F.3d at  
26 880 (citation and internal quotation marks omitted); *United States v. Westlands Water*  
27 *District*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) (stating that “a motion for  
28 reconsideration is not a vehicle to reargue the motion”).

1           Therefore, a party seeking reconsideration “must show more than a disagreement  
2 with the Court’s decision, and recapitulation . . . of that which was already considered by  
3 the Court in rendering its decision.” Westlands Water District, 134 F. Supp. 2d at 1131;  
4 see also Coleman v. Evergreen Pub. Sch., No. C18-556-RBL, 2018 WL 5886452, at \*1  
5 (W.D. Wash. Nov. 9, 2018) (stating that a motion for reconsideration is not “intended to  
6 provide litigants with a second bite at the apple. . . . Mere disagreement with a previous  
7 order is an insufficient basis for reconsideration[.]”).

8           **b. Discussion**

9           Here, Plaintiff contends that his motion to appoint counsel (ECF No. 152) should  
10 have been granted because (1) Plaintiff has been declared mentally insane; (2) Plaintiff is  
11 likely to succeed on the merits; (3) the case is complex; and (4) Plaintiff is indigent. ECF  
12 No. 166 at 1. In Plaintiff’s original motion to appoint counsel, counsel made similar  
13 arguments. Plaintiff contended that he was declared mentally insane and on involuntary  
14 psychotropic medication, and that the issues in the case are complex. ECF No. 152 at 1.  
15 Plaintiff also stated that the Defendant “is responsible” for his RICO, “Heck Rule,” and  
16 state law stolen property claims, which the Court construes as asserting that his claims are  
17 valid and thus likely to succeed. *Id.*; see, e.g., *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th  
18 Cir. 1987). Therefore, the only new contention<sup>1</sup> Plaintiff makes in his motion for  
19 reconsideration is that he is indigent.

20           Since Plaintiff filed his motion to proceed in forma pauperis on December 26, 2017  
21 (ECF No. 16), Plaintiff’s indigence is not a recent occurrence to be construed as “new or  
22 different circumstances” under which to request reconsideration. See CivLR 7.1(i)(1);  
23

---

24 <sup>1</sup> The only other difference between Plaintiff’s original motion to appoint counsel and his  
25 motion for reconsideration is the exhibits he included. In his motion for reconsideration,  
26 he additionally provided his medical injury report and two rules violation reports. ECF No.  
27 166 at 7–12. These are the same exhibits Plaintiff has included in previous filings. ECF  
28 No. 60 at 23–28, 32–33. Given that this information was in the purview of the Court when  
making its original decision regarding Plaintiff’s motion to appoint counsel, again, these  
exhibits are not “newly discovered evidence” to warrant reconsideration.

1 Marlyn Nutraceuticals, 571 F.3d at 880. A party seeking reconsideration must show more  
2 what “was already considered by the Court in rendering its decision.” Westlands Water  
3 District, 134 F. Supp. 2d at 1131.

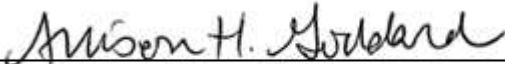
4 Additionally, even if Plaintiff’s indigence was a new circumstance, it still does not  
5 entitle Plaintiff to counsel. No constitutional right to counsel exists for an indigent plaintiff  
6 in a civil case unless the plaintiff may lose his physical liberty if he loses the litigation. See  
7 *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981). Only under “exceptional  
8 circumstances” may a court exercise its discretion and appoint counsel for indigent civil  
9 litigants. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Agyeman v. Corrs. Corp. of*  
10 *Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). Indigence alone is not an exceptional  
11 circumstance. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (stating that  
12 “exceptional circumstances” include a likelihood of success on the merits and the inability  
13 of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues  
14 involved); see, e.g., *Arrellano v. Hodge*, No. 14-cv-590-JLS-JLB, 2018 WL 637854, at \*9  
15 (S.D. Cal. Jan. 30, 2018) (denying appointment of counsel to an indigent pro se inmate  
16 because exceptional circumstances did not exist); *Eusse v. Vitela*, No. 13-cv-916-BEN-  
17 NLS, 2015 WL 4404865, at \*2 (S.D. Cal. July 16, 2015) (same).

### 18 III. CONCLUSION

19 As set forth above, Plaintiff’s motion for reconsideration is untimely. Moreover,  
20 Plaintiff has not met the standard for reconsideration; mere disagreement with the Court’s  
21 decision is not sufficient grounds for reconsideration. Accordingly, the Court **DENIES**  
22 Plaintiff’s motion for reconsideration of the Court’s previous order denying appointment  
23 of counsel.

### 24 IT IS SO ORDERED.

25 Dated: October 9, 2019

26   
27 \_\_\_\_\_  
28 Honorable Allison H. Goddard  
United States Magistrate Judge