

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
EASTERN DISTRICT OF CALIFORNIA

ISABEL TUBACH,

Plaintiff,

v.

A. VASUDEVA, et al.,

Defendants.

CASE NO. 1:10-cv-1340-AWI-MJS (PC)

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER

(ECF No. 5)

Plaintiff Isabel Tubach ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 2, 2010, the Court denied Plaintiff's motion to proceed in forma pauperis and ordered Plaintiff to pay the full filing fee. (ECF No. 4.) The Court found that Plaintiff had at least three prior cases dismissed for failure to state a claim and, pursuant to 28 U.S.C. § 1915(g), Plaintiff was not entitled to proceed in forma pauperis absent a showing that she was in imminent danger of serious physical injury. The Court reviewed Plaintiff's Complaint and found that, although containing complaints regarding the medical care she was receiving in prison, Plaintiff had not alleged facts showing that she was in imminent danger of serious physical injury. (Id. at n.2)

Before the Court's is Plaintiff's Motion to Reconsider. (ECF No. 5.) The Court has reviewed the allegations in Plaintiff's Complaint and is satisfied that its finding on the applicability of the imminent danger exception is correct based on the allegations in Plaintiff's Complaint. The instant motion, however, contains more detailed allegations regarding Plaintiff's medical condition and the care she is receiving from prison authorities.

1 Based on the Court's cursory review of these allegations, it appears that Plaintiff may be
2 able to satisfy the imminent danger exception. This observation does not cause the Court
3 to reconsider its prior order, however, because in determining whether a party has satisfied
4 18 U.S.C. § 1915(g), the Court can consider only the allegations contained in the complaint
5 and cannot consider the additional facts contained in Plaintiff's later-filed motion papers.
6 See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007) (imminent danger
7 exception must be judged at the time the plaintiff filed the complaint based on the
8 allegations contained in the complaint).

9 Accordingly, Plaintiff's Motion to Reconsider is DENIED.

10
11 IT IS SO ORDERED.

12 Dated: September 20, 2010

13 
14 CHIEF UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28