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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,

Plaintiff,

vs.

MATTHEW CATE, et al.,

Defendants.

1:13-cv-00119-GSA-PC

ORDER GRANTING MOTION FOR  
RECONSIDERATION  
(Doc. 13.)

ORDER VACATING COURT'S ORDER  
ISSUED ON MAY 3, 2013  
(Doc. 10.)

ORDER GRANTING APPLICATION TO  
PROCEED IN FORMA PAUPERIS  
(Doc. 2.)

ORDER DIRECTING PAYMENT  
OF INMATE FILING FEE BY  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION

**I. BACKGROUND**

Thomas Goolsby ("Plaintiff") is proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. The Complaint commencing this action was filed on January 25, 2013. (Doc. 1.)

On January 25, 2013, Plaintiff filed an application to proceed in forma pauperis. (Doc. 2.) On May 3, 2013, the court issued an order denying Plaintiffs' application, and requiring him to pay the \$350.00 filing fee for this action in full within thirty days. (Doc. 10.) On June 5, 2013, Plaintiff filed a motion for reconsideration of the court's order. (Doc. 13.)

1 **II. MOTION FOR RECONSIDERATION**

2 The court has discretion to reconsider and vacate a prior order. Barber v. Hawaii, 42  
3 F.3d 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th  
4 Cir. 1992). Motions to reconsider are committed to the discretion of the trial court. Combs v.  
5 Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460  
6 (9th Cir. 1983) (en banc). Motions for reconsideration are disfavored, however, and are not the  
7 place for parties to make new arguments not raised in their original briefs. Zimmerman v. City  
8 of Oakland, 255 F.3d 734, 740 (9th Cir. 2001); Northwest Acceptance Corp. v. Lynnwood  
9 Equip., Inc., 841 F.2d 918, 925-26 (9th Cir. 1988). Nor is reconsideration to be used to ask the  
10 court to rethink what it has already thought. Walker v. Giurbino, 2008 WL 1767040, \*2  
11 (E.D.Cal. 2008). To succeed, a party must set forth facts or law of a strongly convincing nature  
12 to induce the court to reverse its prior decision. See Kern-Tulare Water Dist. v. City of  
13 Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in part on  
14 other grounds, 828 F.2d 514 (9th Cir. 1987). When filing a motion for reconsideration, Local  
15 Rule 230(j) requires a party to show the “new or different facts or circumstances claimed to  
16 exist which did not exist or were not shown upon such prior motion, or what other grounds  
17 exist for the motion.” L.R. 230(j).

18 **III. DISCUSSION**

19 Plaintiff argues that the court should grant his application to proceed in forma pauperis  
20 because he lacks sufficient funds to pay the \$350.00 filing fee in full. Plaintiff submits a copy  
21 of his prison trust account statement reflecting deposits and withdrawals from May 7, 2012 to  
22 May 4, 2013. (Doc. 13 at 4-23.) Plaintiff argues that his account has never had a balance of  
23 \$350.00 or more since he filed this action on January 25, 2013. Plaintiff asserts that the  
24 balance of his account was temporarily high because he received a \$1,000 settlement from a  
25 separate case in October 2012, but ordinarily he only receives periodic gifts of \$50.00 - \$75.00  
26 for hygiene and stationery supplies and other obligations.

27 Pursuant to 28 U.S.C. § 1915, a court may authorize the commencement of a case  
28 without prepayment of fees by a prisoner who submits “an affidavit that includes a statement of

1 all assets such prisoner possesses that the person is unable to pay such fees or give security  
2 therefore.” 28 U.S.C. § 1915(a)(1). In addition to filing the affidavit, the prisoner must also  
3 “submit a certified copy of the trust fund account statement ... for the prisoner for the 6-month  
4 period immediately preceding the filing of the complaint.” Id. Prisoners proceeding in forma  
5 pauperis are required to pay the full amount of a filing fee, which the court collects from the  
6 prisoner’s trust account when funds are available, pursuant to § 1915(b). 28 U.S.C. §  
7 1915(b)(1),(2). “In no event shall a prisoner be prohibited from bringing a civil action ... for  
8 the reason that the prisoner has no assets and no means by which to pay the initial filing fee.”  
9 28 U.S.C. § 1915(b)(4).

10 When this case was filed on January 25, 2013, Plaintiff submitted an application to  
11 proceed in forma pauperis and a certified copy of his prison trust account statement showing  
12 deposits, withdrawals, and balances for the 6-month period from July 1, 2012 to December 24,  
13 2012. (Doc. 2.) For the 6-month period reflected, Plaintiff’s average monthly deposits were  
14 \$220.83, and his average monthly balance was \$628.41. (Id. at 5.) On December 24, 2012,  
15 Plaintiff’s account had a balance of \$475.77. (Id. at 9.) Plaintiff did not submit any account  
16 information for the time period after December 24, 2012. Based on Plaintiff’s application and  
17 trust account statement, the court denied the application and ordered Plaintiff to pay the  
18 \$350.00 filing fee in full for this action within thirty days. (Doc. 10.)

19 Plaintiff now submits new facts which were not shown upon his prior motion.  
20 Plaintiff’s new evidence shows that on January 25, 2013, the date this case was filed, his trust  
21 account contained a balance of \$342.40.<sup>1</sup> (Doc. 13 at 18.)

22 Plaintiff’s new evidence shows that at the time he filed this action, he was unable to pay  
23 the \$350.00 filing fee in full for this action. Therefore, Plaintiff’s motion for reconsideration  
24 shall be granted, the court shall reverse its prior decision, and Plaintiff’s application to proceed  
25 in forma pauperis shall be granted. As discussed above, Plaintiff is obligated to pay the  
26 statutory filing fee of \$350.00 for this action. 28 U.S.C. 1915(b)(1). Plaintiff is obligated to

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27  
28 <sup>1</sup> Moreover, between January 2013 and May 4, 2013, the balance in Plaintiff’s account gradually fell to  
\$96.16. (Doc. 13 at 18-22.)

1 make monthly payments in the amount of twenty percent of the preceding month's income  
2 credited to Plaintiff's trust account, and the California Department of Corrections and  
3 Rehabilitation is required to send to the Clerk of the Court payments from Plaintiff's account  
4 each time the amount in the account exceeds \$10.00, until the statutory filing fee is paid in full.  
5 28 U.S.C. § 1915(b)(2).

6 **IV. CONCLUSION**

7 In accordance with the above and good cause appearing therefore, IT IS HEREBY  
8 ORDERED that:

- 9 1. Plaintiff's motion for reconsideration, filed on June 5, 2013, is GRANTED;
- 10 2. The court's order of May 3, 2013, which denied Plaintiff's application to  
11 proceed in forma pauperis and required Plaintiff to pay the \$350.00 filing fee in  
12 full for this action within thirty days, is VACATED;
- 13 3. Plaintiff's application to proceed in forma pauperis, filed on January 25, 2013, is  
14 GRANTED;
- 15 4. **The Director of the California Department of Corrections and  
16 Rehabilitation (CDCR) or his designee shall collect payments from  
17 plaintiff's prison trust account in an amount equal to twenty per cent (20%)  
18 of the preceding month's income credited to the prisoner's trust account  
19 and shall forward those payments to the Clerk of the Court each time the  
20 amount in the account exceeds \$10.00, in accordance with 28 U.S.C. §  
21 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the  
22 Clerk of the Court. The payments shall be clearly identified by the name  
23 and number assigned to this action;**
- 24 5. The Clerk of the Court is directed to serve a copy of this order and a copy of  
25 plaintiff's in forma pauperis application on the Director of the CDCR, via the  
26 court's electronic case filing system (CM/ECF); and

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6. The Clerk of the Court is directed to serve a copy of this order on the Financial Department, U.S. District Court, Eastern District of California, Fresno Division.

IT IS SO ORDERED.

Dated: June 6, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE