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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ANTHONY RECARDO G. TURNER,

12 Plaintiff,

13 vs.

14 CONNIE GIBSON, et al.,

15 Defendants.  
16

1:13-cv-01612-LJO-GSA-PC

ORDER DENYING APPLICATION TO  
PROCEED IN FORMA PAUPERIS AS  
MOOT  
(Doc. 11.)

ORDER DENYING MOTION FOR  
RECONSIDERATION  
(Doc. 12.)

17 **I. BACKGROUND**

18 Anthony Recardo G. Turner ("Plaintiff") is a state prisoner proceeding pro se in this  
19 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint on August 30,  
20 2013 at the United States District Court for the Northern District of California, together with a  
21 request for leave to proceed in forma pauperis under 28 U.S.C. § 1915. (Doc. 1.) The case was  
22 subsequently transferred to the Eastern District of California on October 1, 2013. (Doc. 4.) On  
23 October 10, 2013, the court entered an order denying Plaintiff's request to proceed in forma  
24 pauperis, and dismissing the case under 28 U.S.C. § 1915(g), without prejudice to refiling the  
25 case with submission of the \$400.00 filing fee in full. (Doc. 8.)

26 On October 21, 2013, Plaintiff submitted an application to proceed in forma pauperis.  
27 (Doc. 11.) Plaintiff also filed a declaration in which he requests reconsideration of the court's  
28 order dismissing this action. (Doc. 12.)

## II. APPLICATION TO PROCEED IN FORMA PAUPERIS

In light of the fact that this case was dismissed on October 10, 2013, without prejudice to refiling the case with submission of the \$400.00 filing fee in full, Plaintiff's application to proceed in forma pauperis is moot and shall be denied as such.

## III. MOTION FOR RECONSIDERATION

### A. Legal Standard

The Court has discretion to reconsider and vacate a prior order. Barber v. Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th Cir. 1992). Motions to reconsider are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. See Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987). When filing a motion for reconsideration, Local Rule 230(j) requires a party to show the "new or different facts or circumstances claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion." L.R. 230(j).

### B. Plaintiff's Motion

Plaintiff argues that the court should reconsider its order dismissing this action because he was allowed to proceed in forma pauperis in two other cases which he filed in the Sacramento Division of the Eastern District of California. Plaintiff also argues that he continues to be under "Imminent Threat of Serious Injuries and Irreparable Harm by the Defendants Conspiracy Retaliation as described in the Complaint." Motion, Doc. 12 ¶5.

### C. Discussion

Plaintiff's argument that this case should be reopened because he was allowed to proceed in forma pauperis in other cases is unpersuasive. Plaintiff's argument that he is presently in imminent danger is also unpersuasive, because the imminent danger exception of 28 U.S.C. § 1915(g) is based on whether a prisoner is under imminent danger at the time he

1 filed the complaint, not afterward. Plaintiff has not made any new argument or set forth facts  
2 or law of a strongly convincing nature to induce the court to reverse its prior decision.  
3 Therefore, the motion for reconsideration shall be denied.

4 **IV. CONCLUSION**

5 Based on the foregoing, IT IS HEREBY ORDERED that:

6 1. Plaintiff's application to proceed in forma pauperis, filed on October 21, 2013,  
7 is DENIED as moot; and

8 2. Plaintiff's motion for reconsideration, filed on October 21, 2013, is DENIED.

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11 IT IS SO ORDERED.

12 Dated: **October 23, 2013**

**/s/ Lawrence J. O'Neill**  
UNITED STATES DISTRICT JUDGE