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**I. Jurisdiction**

Before addressing the substance of Plaintiff’s motion, the Court must consider whether it has jurisdiction to entertain a motion filed after Plaintiff filed his notice of appeal. Generally, the filing of a notice of appeal divests the district court of jurisdiction over the matters appealed. Townley v. Miller, 693 F.3d 1041, 1042 (citing Davis v. United States, 667 F.2d 822 (9th Cir. 1982)). However, under Federal Rule of Civil Procedure 62.1(a), a district court retains the authority to entertain the motion and deny it, defer consideration of it, state that it would grant the motion if the court of appeals remands for that purpose, or state that the motion raises a substantial issue. Fed. R. Civ. P. 62.1(a)(1)-(3); see also Simpson v. Evans, 525 Fed. Appx. 535, 536 (9th Cir. 2013) (pursuant to Rule 62.1(a)(2), district court retained jurisdiction to deny a timely-filed motion for leave to amend petition, even though motion was filed after notice of appeal).

Consequently, the Court retains the jurisdiction and authority to deny Plaintiff's motion to alter or amend the judgment, which it does for the reasons discussed below.

**II. Motion for Reconsideration**

Plaintiff does not dispute that he is subject to the three-strikes provision of 28 U.S.C. § 1915(g). Plaintiff argues, however, that he qualifies for the exception to this provision because he is under imminent danger of serious physical injury. As a result, he seeks relief from the judgment dismissing his action without prejudice to refiling with submission of the \$400 filing fee.

Generally, a motion for reconsideration of a final judgment is appropriately brought under Federal Rule of Civil Procedure 59(e). See Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985) (discussing reconsideration of summary judgment); see also Schroeder v. McDonald, 55 F.3d 454, 458-59 (9th Cir. 1995). The motion must be filed no later than twenty-eight (28) days after entry of the judgment. See Fed. R. Civ. P. 59(e). Under Rule 59(e), three grounds may justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. See Kern-Tulare Water Dist. v. City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986), rev'd in part on other grounds, 828 F.2d 514 (9th Cir. 1987), cert. denied, 486 U.S. 1015 (1988); see also 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999); accord School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

1 The Court finds no grounds to reconsider its final order and judgment dismissing this action  
2 pursuant to § 1915(g). Plaintiff is correct that there is an exception to the three-strikes provision in §  
3 1915(g) for prisoners “under imminent danger of serious physical injury.” However, as discussed in  
4 the Court’s January 19, 2017 order, “[p]risoners qualify for the exception based on the alleged  
5 conditions at the time the complaint was filed.” Andrews v. Cervantes, 493 F.3d 1047, 1052 (9th Cir.  
6 2007). “In other words, the availability of the exception turns on the conditions a prisoner faced at the  
7 time the complaint was filed, not at some earlier or later time.” Id. at 1053.

8 Here, Plaintiff’s complaint was filed on December 29, 2016, when he was housed at Pelican  
9 Bay State Prison (where he is currently housed). (ECF No. 1.) However, his complaint concerned  
10 alleged retaliation threats by correctional staff from March 26, 2015 through September 17, 2015, and  
11 an assault on September 15, 2015, at Kern Valley State Prison. The Court found that these events  
12 occurring over a year prior to the date of the complaint’s filing, and at an institution where he was no  
13 longer housed, did not show that Plaintiff was under any imminent danger of serious physical harm at  
14 the time he filed his complaint.

15 Plaintiff’s current motion alleges that he was assaulted at High Desert State Prison, on August  
16 11, 2016, by orders of correctional staff at that institution, more than four months prior to the filing of  
17 the complaint. These allegations concerning unrelated events from those in the complaint, at an  
18 institution where Plaintiff was no longer housed at the time of the complaint, do not show that he was  
19 under an imminent threat of serious physical injury at the time the complaint in this action was filed.  
20 These new allegations not contained in the original complaint, even if considered and construed in the  
21 light most favorable to Plaintiff, do not support reconsideration of this Court’s dismissal of this action.

22 For these reasons, it is HEREBY ORDERED that Plaintiff’s motion to alter or amend the  
23 judgment, filed February 1, 2017 (ECF No. 14), is DENIED.

24  
25 IT IS SO ORDERED.

26 Dated: February 6, 2017

/s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE