

1 **II. Reconsideration Standards**

2 Rule 60(b) of the Federal Rules of Civil Procedure provides that “[o]n motion and upon
3 such terms as are just, the court may relieve a party . . . from a final judgment, order, or
4 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;
5 (2) newly discovered evidence that, with reasonable diligence could not have been discovered in
6 time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by
7 an opposing party; . . . or (6) any other reason justifying relief from the operation of judgment.”
8 Motions under Rule 60(b) “must be made within a reasonable time -- and for reasons (1), (2), and
9 (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”

10 Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest
11 injustice and is to be utilized only where extraordinary circumstances . . .” exist. *Harvest v.*
12 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted)
13 (addressing reconsideration under Rules 60(b)(1)-(5)). The moving party “must demonstrate both
14 injury and circumstances beyond his control . . .” *Id.* (internal quotation marks and citation
15 omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or
16 different facts or circumstances are claimed to exist which did not exist or were not shown”
17 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
18 not shown” at the time the substance of the order which is objected to was considered.

19 “A motion for reconsideration should not be granted, absent highly unusual
20 circumstances, unless the district court is presented with newly discovered evidence, committed
21 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
22 raise arguments or present evidence for the first time when they could reasonably have been
23 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
24 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
25 original).

26 As correctly stated in the F&R, 28 U.S.C. § 1915 governs proceedings *in forma pauperis*.
27 “In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or
28 more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in

1 a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or
2 fails to state a claim upon which relief may be granted, unless the prisoner is under imminent
3 danger of serious physical injury.” 28 U.S.C. § 1915(g).

4 Plaintiff’s application to proceed *in forma pauperis* was properly denied since Plaintiff had
5 three actions which were dismissed as frivolous, malicious, or for failure to state a claim prior to
6 Plaintiff’s filing of this action and the complaint does not meet the imminent danger exception as
7 none of his allegations show that he was under an imminent danger at the time he filed this action.
8 *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007). Plaintiff fails to show newly
9 discovered evidence, clear error, or an intervening change in the controlling law for reconsideration to
10 be granted on this issue. *Marlyn Nutraceuticals*, 571 F.3d at 880.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this
12 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
13 Court finds the Findings and Recommendation, which issued on June 12, 2017 (Doc. 7) and
14 Order Adopting which issued on July 13, 2017 (Doc. 10), which denied Plaintiff’s motion to
15 proceed *in forma pauperis* and required him to pay the filing fee in full, are supported by the
16 record and proper analysis.

17 **III. Order**

18 Accordingly, **IT IS HEREBY ORDERED** that:

- 19 1. Plaintiff’s motion for reconsideration, filed on July 26, 2017 (Doc. 11), is **DENIED**;
- 20 2. Plaintiff is required to pay the full \$400.00 filing fee for this action **within 14 days** of
21 the date of service of this order; and
- 22 3. **Plaintiff’s failure to comply with this order shall result in the dismissal of this**
23 **action without prejudice.**

24 IT IS SO ORDERED.

25 Dated: August 1, 2017

26 /s/ Lawrence J. O’Neill
27 UNITED STATES CHIEF DISTRICT JUDGE