

1 On January 12, 2015, defendant Baker filed notice stating that it did not appear the
2 Ninth Circuit would address plaintiff's motion for reconsideration in view of a prior order stating
3 no motions for reconsideration would be addressed in the pending appeal. ECF No. 63 at 3-4.
4 On March 5, 2015, the court granted plaintiff fourteen days to respond. ECF No. 65. On April 3,
5 2015, plaintiff filed a response. ECF No. 66. Good cause appearing, the court has considered
6 plaintiff's response despite its apparent untimeliness.

7 Review of the record shows that plaintiff has twice taken appeals to the Ninth
8 Circuit from orders issued in this action. *See* ECF Nos. 44, 55. In both appeals, the Ninth Circuit
9 issued orders finding that plaintiff "has three or more prior actions or appeals dismissed as
10 frivolous or for failure to state a claim and because appellant has not alleged any imminent danger
11 of serious bodily injury. *See* 28 U.S.C. § 1915(g)." Case No. 11-17218 (9th Cir.), Dkt. Entry 6,
12 Page 1; *see also* Case No. 12-16031 (9th Cir.), Dkt. Entry 7, Page 1. In the latter appeal, the
13 Ninth Circuit denied plaintiff's motion to proceed in forma pauperis on appeal based on the
14 finding. Case No. 12-16031, Dkt. Entry 7, Page 1. In both cases, the Ninth Circuit required
15 plaintiff to pay the filing fee and then dismissed the appeals for his failure to do so. *See* Case No.
16 11-17218, Dkt. Entry 11; Case 12-16031, Dkt. Entry 9.

17 The Ninth Circuit did not identify the three or more actions that formed the basis
18 of its orders. Absent a showing that the Ninth Circuit's orders were based on cases other than
19 those identified as strikes in this court's original order or that one of the strikes relied on by the
20 Ninth Circuit was incurred after this action was filed, the Ninth Circuit's findings are binding on
21 this court. No such showing has been made.

22 Accordingly, IT IS HEREBY ORDERED that this action will not be reopened.
23 DATED: September 25, 2017.

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27 UNITED STATES DISTRICT JUDGE
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