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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHN MARVIN BALLARD,

No. 2:12-cv-226-CMK-P

Plaintiff,

vs.

ORDER

SAMUEL WONG, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a civil detainee, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for reconsideration (Doc. 5) and application to proceed in forma pauperis (Doc. 6).

The court issued an order requiring plaintiff to resolve his fee status in order to proceed in this action, as he had neither paid the filing fee nor submitted an application to proceed in forma pauperis. Petitioner’s motion for reconsideration states he is not subjected to the requirements of 28 U.S.C. § 1915(a) as he is a civil detainee not a prisoner.

The court may grant reconsideration of any order under Federal Rules of Civil Procedure 60 based on, among other things: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence, could not have been

1 discovered within ten days of entry of judgment; and (3) fraud, misrepresentation, or misconduct  
2 of an opposing party. A motion for reconsideration on any of these grounds must be brought  
3 within a reasonable time and no later than one year of entry of the order being challenged. See  
4 Fed. R. Civ. P. 60(c)(1).

5 Here, plaintiff apparently brings this motion on the basis that he believes the court  
6 erred in determining § 1915(a) applies to this action. The court understands that petitioner is a  
7 civil detainee, not a prisoner. However, 28 U.S.C. § 1915(a) applies to all cases wherein the  
8 plaintiff wishes to proceed in an action without prepayment of fees, regardless of whether the  
9 plaintiff is a prisoner or not. Thus, no mistake was made, and plaintiff's motion for  
10 reconsideration will be denied.

11 Plaintiff has, however, also filed the necessary application for leave to proceed in  
12 forma pauperis. Plaintiff's affidavit shows that plaintiff is unable to prepay fees and costs or give  
13 security therefor. His motion for leave to proceed in forma pauperis will therefore be granted.  
14 Plaintiff's complaint, and service thereof by the United States Marshal if appropriate, will be  
15 addressed separately. The Clerk of the Court shall not issue summons or set this matter for an  
16 initial scheduling conference unless specifically directed by the court to do so.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion for reconsideration (Doc. 5) is denied; and
- 19 2. Plaintiff's motion for leave to proceed in forma pauperis (Doc. 6) is  
20 granted.

21  
22 DATED: September 30, 2013

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24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE  
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