1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 EARL D. SMITH, No. 2:13-cv-02192 JAM AC P 12 Plaintiff. 13 **ORDER** v. 14 R. RODRIGUEZ et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 18 U.S.C. § 1983. Defendants filed motions for summary judgment (ECF Nos. 69 & 76) and these 19 were granted on December 27, 2016. ECF Nos. 101 & 102. Plaintiff filed an appeal (ECF No. 20 105) and on March 7, 2017 the Ninth Circuit dismissed the appeal for failure to respond to an 21 order (ECF No. 110). On March 20, 2017, plaintiff filed a "motion for reconsideration of in 22 forma pauperis re appeal." ECF No. 111. 23 Plaintiff was allowed to proceed in forma pauperis in this action (ECF No. 10) and Fed. R. 24 App. P. 24(a)(3) provides that a party who was permitted to proceed in forma pauperis in the 25 district court action may also proceed on appeal in forma pauperis, subject to certain inapplicable 26 exceptions. The Ninth Circuit recognized the continuance of plaintiff's in forma pauperis status 27 on appeal, but ordered plaintiff to provide an authorization form which directed prison officials to 28 collect and forward the appellate filing fee. See Earl Smith v. R. Rodriguez, et al., #17-15122

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1	(Docket Entry 3). Plaintiff failed to timely comply with this order, and the case was dismissed for
2	failure to prosecute. <u>Id.</u> at Docket Entry 6. In light of this procedural history, the court finds that
3	plaintiff's current motion must fail. This court obviously lacks the authority to reconsider the
4	Ninth Circuit's dismissal for failure to prosecute. Indeed, plaintiff appears to have recognized as
5	much – on May 4, 2017 he filed a motion for reconsideration with the Ninth Circuit. <u>Id.</u> at
6	Docket Entry 7.
7	Accordingly, it is HEREBY ORDERED THAT plaintiff's motion for reconsideration
8	(ECF No. 111) is denied.
9	DATED: June 27, 2017
10	Allison Claire
11	UNITED STATES MAGISTRATE JUDGE
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