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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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PERCY LAVAE BACON,

Case No. 2:17-cv-01744-RFB-GWF

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Plaintiff,

ORDER

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v.

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JAMES COX et al.,

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Defendants.

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I. DISCUSSION

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On January 24, 2018, the Court denied Plaintiff's applications to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to 28 U.S.C. § 1915(g). (ECF No. 5 at 1-2). The Court also found that Plaintiff failed to plausibly allege that he was in imminent danger of serious physical injury at the time of filing the complaint. (*Id.* at 2). Specifically, Plaintiff had submitted his complaint on June 23, 2017 but was suing prison officials for events that took place in 2015. (*Id.*) The Court informed Plaintiff that it would dismiss the case without prejudice unless Plaintiff paid the \$400 filing fee in full within thirty (30) days. (*Id.*)

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On February 5, 2018, Plaintiff filed a motion to alter or amend pursuant to Federal Rule of Civil Procedure 59. (ECF No. 6). In the motion, Plaintiff alleges that prison officials had placed his life in imminent danger in 2015 when Plaintiff had to expose himself to the excessive heat warning at that time. (*Id.* at 1-5).

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The Court construes the motion as one for reconsideration. A motion to reconsider

1 must set forth “some valid reason why the court should reconsider its prior decision” and
2 set “forth facts or law of a strongly convincing nature to persuade the court to reverse its
3 prior decision.” *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003).
4 Reconsideration is appropriate if this Court “(1) is presented with newly discovered
5 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if
6 there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. Acands, Inc.*, 5
7 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not an avenue to re-
8 litigate the same issues and arguments upon which the court already has ruled.” *Brown*
9 *v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

10 The Court denies the motion for reconsideration. Plaintiff reiterates the allegations
11 in his complaint. However, as explained in the Court’s prior order, Plaintiff has not
12 established imminent danger of serious physical injury at the time of filing the complaint
13 in 2017 for events that happened in 2015. As such, Plaintiff has not demonstrated that
14 the Court committed clear error or that its initial decision was manifestly unjust.

15 **II. CONCLUSION**

16 For the foregoing reasons, it is ordered that the motion to alter or amend (ECF No.
17 6) is construed as a motion for reconsideration and denied.

18 It is further ordered that this action will be dismissed without prejudice unless
19 Plaintiff pays the \$400.00 filing fee in full within fifteen (15) days of entry of this order.

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21 DATED THIS 9th day of February 2018.

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25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE
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