

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHARLES CHATMAN,

CASE NO. 1:03-cv-06636-AWI-SMS PC

Plaintiff,

ORDER DENYING PLAINTIFF’S REQUEST  
FOR SETTLEMENT CONSENT TO BE  
DEEMED VOID

v.

SERGEANT C. TYNER, et al.,

(Doc. 200)

Defendants.

**I. Relevant Procedural History**

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Charles Chatman, a state prisoner proceeding pro se and in forma pauperis. This action was set for jury trial to commence May 18, 2010. However, Defendants submitted a notice of disposition based on Plaintiff’s acceptance of an offer pursuant to Federal Rule of Civil Procedure 68<sup>1</sup> – which resulted in entry of judgment and case closure. (Docs. 194 and 199.) At proceedings held May 13, 2010, Plaintiff expressed his desire to be relieved from the settlement such that a briefing schedule was set for motions for enforcement of acceptance of the Rule 68 offer. (Doc. 195.) Rather than Defendants filing motions to enforce Plaintiff’s acceptance of the offer, Plaintiff filed the present request that his settlement consent be deemed void. (Doc. 200.) Defendants filed oppositions. (Docs. 201 and 202.) Plaintiff did not file a reply.

///

---

<sup>1</sup> All references herein to rules are to the Federal Rules of Civil Procedure unless otherwise specified.

1           Though Plaintiff did not correctly identify his motion, it is construed as, a motion for  
2 relief from a judgment or order under Rule 60(b). The matter is deemed submitted. For the  
3 reasons discussed below, Plaintiff’s request is denied.

4 **II. Plaintiff’s Motion**

5           Plaintiff requests that his consent to settlement be voided based on his uncertainty in as  
6 much as he was not aware when the payment of settlement monies would be made, where the  
7 settlement monies would be deposited, and what, if any, tax ramifications he would encounter  
8 (i.e. mistake, inadvertence, surprise or excusable neglect under Rule 60(b)(1)); that Defendants’  
9 counsel were secretive in the process as to how it was presented, in answering his questions, and  
10 in discussing Plaintiff’s desire to be relieved from the settlement in the May 13, 2010 court  
11 proceeding (i.e. fraud and/or misrepresentations under Rule 60(b)(3)); and that he signed the  
12 acceptance under duress. (Doc. 200, Plntf. Mot.)

13 **A. Rule 60(b)(1)**

14           Pursuant to Rule 60(b)(1), “[o]n motion and upon such terms as are just, the court may  
15 relieve a party . . . from a final judgment, order, or proceeding for . . . mistake, inadvertence,  
16 surprise, or excusable neglect . . . .” Misunderstanding an offer’s terms is not the same as  
17 misunderstanding factors to be weighed in deciding whether to accept the offer. *Latshaw v.*  
18 *Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1102 (9th Cir. 2006) (the plaintiff understood the  
19 unambiguous settlement terms – that she would receive \$15,000 in exchange for terminating the  
20 litigation – when signing the offer of judgment such that the district court did not abuse its  
21 discretion in denying the plaintiff relief under Rule 60(b)(1)).

22           Plaintiff has shown that when he signed the offer of judgment, he understood the  
23 unambiguous settlement terms – that he would receive \$10,000 in exchange for an entry of  
24 judgment of dismissal with prejudice in this matter.<sup>2</sup> The timing of payment, where settlement  
25

---

26           <sup>2</sup> None of the parties have requested an evidentiary hearing on this matter. *Erdman v. Chochise County*,  
27 *Ariz.*, 926 F.2d 877, 879 n. 2 (9th Cir. 1991) (evidentiary hearing neither held nor requested by either side). The  
28 terms of the Rule 68 offer, \$10,000.00 in exchange for judgment of dismissal with prejudice are articulated in  
writing, Doc. 194, Def. Offer of Judg. & Plntf Accept., p. 3-5, and are not in dispute so as to necessitate an  
evidentiary hearing as was required in *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987), noted in *Erdman*.

1 monies would be deposited, and possible tax consequences thereof were not part of the  
2 settlement terms. Ramifications caused by and/or factors to be weighed in deciding to accept the  
3 offer (i.e. when he would receive the settlement monies payment, that the monies would be  
4 deposited into his trust account, and whether he would be taxed on the monies) do not equate to a  
5 misunderstanding of the terms of settlement offered by Defendants. Plaintiff's subsequent  
6 concerns as to the timing of, place of deposit, and possible tax consequences of payment of the  
7 settlement monies are collateral matters, insufficient to void his consent to the settlement offer.  
8 An offer under Rule 68, "once made, is non-negotiable; it is either accepted, in which case it is  
9 automatically entered by the clerk of court, or rejected, in which case it stands as the marker by  
10 which the plaintiff's results are ultimately measured." *Nusom v. Comh Woodburn, Inc.*, 122 F.3d  
11 803, 834 (9th Cir. 1997). "[A] party who simply misunderstands or fails to predict the legal  
12 consequences of his deliberate acts cannot later, once the lesson is learned, turn back the clock to  
13 undo those mistakes." *Latshaw*, 452 F.3d at 1011, quoting *Yapp v. Excel Corp.*, 186 F.3d 1222,  
14 1231 (10th Cir. 1999). Plaintiff's retrospective contemplations of possible settlement  
15 ramifications do not equate to his mistake, inadvertence, surprise, or excusable neglect to entitle  
16 him to have the settlement voided under Rule 60(b)(1).

17 **B. Rule 60(b)(3)**

18 Plaintiff also seeks to be relieved from his acceptance of Defendants' Rule 68 offer on the  
19 basis that Defense counsel did not tell the Court of his requirement that he be paid within forty-  
20 eight (48) hours or he would void the settlement. (Doc. 200, Plntf. Mot., 3:10-15, 20-22.)

21 Pursuant to Rule 60(b)(3), "[o]n motion and upon such terms as are just, the court may  
22 relieve a party . . . from a final judgment, order, or proceeding for . . . fraud . . . ,  
23 misrepresentation, or misconduct by an opposing party. . . ." "Acts of 'fraud on the court' can  
24 sometimes constitute extraordinary circumstances meriting relief under Rule 60(b)(6)." *Latshaw*,  
25 452 F.3d at 1104, ref. *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916-17 (9th Cir.1991).  
26 "Such fraud on the court 'embrace[s] only that species of fraud which does or attempts to, defile  
27 the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can  
28 not perform in the usual manner its impartial task of adjudging cases that are presented for

1 adjudication.’ ” *Id.* quoting *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir.1989) quoting J.  
2 Moore & J. Lucas, *Moore’s Federal Practice* ¶ 60.33, at 515 (2d ed.1978)). “Liberal application  
3 is not encouraged, as fraud on the court ‘should be read narrowly, in the interest of preserving the  
4 finality of judgments.’ ” *Id.* quoting *Toscano v. Comm’r*, 441 F.2d 930, 934 (9th Cir.1971). The  
5 Ninth Circuit “places a high burden on a plaintiff seeking relief from a judgment based on fraud  
6 on the court. For example, in order to provide grounds for relief, the fraud must ‘involve an  
7 “unconscionable plan or scheme which is designed to improperly influence the court in its  
8 decision.” ’ ” *Id.* quoting *Abatti v. Comm’r*, 859 F.2d 115, 118 (9th Cir.1988) quoting *Toscano*,  
9 441 F.2d at 934. Even a forged signature on a settlement agreement that is submitted to the court  
10 was found to fall far short of “defiling the court itself” and did not resemble “an unconscionable  
11 plan or scheme which is designed to improperly influence the court in its decision.” *Id.*

12 Plaintiff’s allegation that Defendants did not advise the Court of his forty-eight (48) hour  
13 payment requirement – that was not one of the terms of the Rule 68 offer and acceptance, does  
14 not even begin to approach “defiling the court itself” and is not “an unconscionable plan or  
15 scheme which is designed to improperly influence the court in its decision.” *Id.* Accordingly,  
16 Plaintiff is not entitled to have the settlement voided under Rule 60(b)(1).

17 **C. Rule 60(b)(6)**

18 Rule 60(b)(6) allows a court to “relieve a party . . . from a final judgment, order, or  
19 proceeding for . . . any other reason justifying relief from the operation of judgment.”

20 “Judgments are not often set aside under Rule 60(b)(6). Rather, the Rule is “ “used  
21 sparingly as an equitable remedy to prevent manifest injustice” and “is to be utilized only where  
22 extraordinary circumstances prevented a party from taking timely action to prevent or correct an  
23 erroneous judgment.” ’ ” *Latshaw*, 452 F.3d at 1103 quoting *United States v. Washington*, 394  
24 F.3d 1152, 1157 (9th Cir.2005) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d  
25 1047, 1049 (9th Cir.1993)). “Accordingly, a party who moves for such relief ‘must demonstrate  
26 both injury and circumstances beyond his control that prevented him from proceeding with . . .  
27 the action in a proper fashion.’ ” *Id.*, quoting *Community Dental Services v. Tani*, 282 F.3d 1164,  
28 1168 (9th Cir.2002).

1 Plaintiff's willing and voluntary signing of acceptance of a Rule 68 offer, which he later  
2 regrets and/or seeks to add additional terms to, does not present extraordinary circumstances so  
3 as to justify relieving him from a settlement under Rule 68.

4 **D. Duress**

5 Plaintiff also appears to seek relief from his acceptance of the Rule 68 by asserting that  
6 his agreement was secured under duress. (Doc. 200, Plntf. Mot., 3:9.) While Plaintiff uses the  
7 word "duress" in his motion, *id.*, he fails to identify any factual basis upon which this assertion is  
8 based. Plaintiff's only argument on this point is that "defendants' were secretive in presenting it  
9 by failing to answer [his] questions surrounding the process and [his] voice in the matter." *Id.*  
10 Defendants evidence shows that not only did they properly serve Plaintiff with a Offer of  
11 Judgment under Rule 68, their offer was accompanied by a letter of explanation which advised  
12 Plaintiff of the results in cases similar to his, of the potential negative effects of if he did not  
13 accept the offer, and of the time frame within which Plaintiff must accept if he so desired. (Doc.  
14 201, Def. Opp., Attach. A., pp. 10-11.) It is common knowledge in the practice of law that  
15 receipt of an offer under Rule 68, and the possible ramifications of nonacceptance, gives even  
16 seasoned lawyers some pause. However, requiring a party to assess his chance of success at trial  
17 and whether he wants to risk the negative effects of failing to obtain a better result than that made  
18 in an offer under Rule 68 is not duress, but "is the sword which encourages plaintiffs to settle."  
19 *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 295 (6th Cir. 1989). Indeed, the  
20 purpose of Rule 68 is to force plaintiffs to "think very hard before proceeding with their suits."  
21 *Id.* Plaintiff has not shown that he was placed under duress at the time he signed the acceptance  
22 of Defendants Rule 68 offer.

23 **III. Conclusion**

24 Plaintiff failed to show: (1) that he was laboring under a mistake, inadvertence, surprise,  
25 or excusable neglect at the time he signed the offer of judgment; (2) that Defendants engaged in  
26 fraud, made misrepresentations, or engaged in misconduct; (3) that there is any legal basis to  
27 justify relieving him from the Rule 68 settlement; and/or (4) that he was under duress at the time  
28 he executed the acceptance of Defendants Rule 68 offer For these reasons, Plaintiff's Request

1 for Settlement Consent to Be Deemed Void, filed May 28, 2010, is DENIED WITH  
2 PREJUDICE.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.

**Dated: July 21, 2010**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**