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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRANK GONZALES,

CV F 05-1070 OWW DLB P

Plaintiff,

ORDER GRANTING PLAINTIFF’S MOTION  
TO RECONSIDER DECEMBER 19, 2005  
ORDER  
[Doc. 10]

v.

J. YATES, et.al.

Defendants.

Plaintiff is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint on August 23, 2005. On September 16, 2005, the Magistrate Judge ordered plaintiff to either submit an application to proceed in forma pauperis or to pay the \$250.00 filing fee within 30 days. When plaintiff failed to do so, the Magistrate Judge recommended dismissal of the action based on plaintiff’s failure to obey the Court’s September 16, 2005 order. The recommendation informed plaintiff that he could file objections within thirty (30) days. Plaintiff did not file objections to the recommendation and the undersigned adopted the recommendation on December 27, 2005 and judgment was entered the same day.

On January 5, 2006, plaintiff filed a motion for reconsideration of the December 27, 2005 order. Plaintiff states that he was in administrative segregation during the time period described above and therefore was unable to file the in forma pauperis application or objections to the recommendation. Plaintiff requests reconsideration of the order dismissing the case based on these circumstances which he alleges were beyond his control.

1 Federal Rule of Civil Procedure 60(b)(1) permits the court to relieve a party from a final  
2 judgment, order or proceeding based on mistake, inadvertence, surprise or excusable neglect.  
3 Fed.R.Civ.Proc. 60(b)(1). It appears that plaintiff failed to file his application to proceed in  
4 forma pauperis based on circumstances beyond his control. Given plaintiff's pro per status, such  
5 mistake warrants reconsideration of the Court's order dismissing the case.

6 Plaintiff will be given one final opportunity to either pay the \$250.00 fee or file a  
7 completed application to proceed in forma pauperis with a certified copy of his prison trust  
8 account statement for the six-month period immediately preceding the filing of his complaint.

9 In accordance with the above, IT IS HEREBY ORDERED that:

- 10 1. The order of dismissal and the judgment, dated December 27, 2005 are  
11 VACATED;
  - 12 2. The Clerk of the Court is directed to send to plaintiff the form application to  
13 proceed in forma pauperis;
  - 14 3. Within thirty days of service of this order, plaintiff shall submit a completed  
15 application to proceed in forma pauperis and a certified copy of his trust account  
16 statement for the six-month period immediately proceeding the filing of the  
17 complaint, or in the alternative, to pay the \$250.00 filing fee for this action.
  - 18 4. Plaintiff's failure to comply with this order will result in dismissal of this action.
  - 19 5. This case is referred back to the Magistrate Judge for further proceedings.
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24 IT IS SO ORDERED.

25 **Dated: September 16, 2006**  
26 emm0d6

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