

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

IRVING C. HUMPHREY,

Case No.: 1:14-cv-01787-LJO-JLT (PC)

Plaintiff,

**ORDER DENYING PLAINTIFF'S REQUEST  
FOR REVIEW/RECONSIDERATION PER  
FED. R. CIV. P. 60(b)(2) & (6)**

v.

IGBINOSA, et al.,

(Doc. 27)

Defendants.

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Plaintiff, Irving Charles Humphrey, is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action on August 5, 2014 ("Humphrey II"). (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The Magistrate Judge screened Plaintiff's Complaint and issued a Findings and Recommendations to dismiss the action with prejudice as barred by res judicata as Plaintiff admitted it was duplicative of and intended to resurrect an action that Plaintiff had previously brought which had been dismissed on summary judgment -- Humphrey v. Yates, 1:09-cv-00075-LJO-DLB ("Humphrey I"). (Doc. 11.) The Findings and Recommendations was served on Plaintiff on March 2, 2015 and contained notice that any objections to the Findings and Recommendations were to be filed within thirty days. (Id.) Plaintiff filed timely objections in which he argued that the ruling in the Northern California District Court's rulings in Marciano Plata, et al. v. Edmund G. Brown, Jr. et al, C01-1351 TEH obviated the need for litigation of all issues other than damages in Humphrey I and requested that judicial notice be taken of the ruling in Plata. (Docs. 12, 13.) The order adopting the Findings and Recommendations which dismissed this action, found that this action was barred by res judicata. (Doc. 14.)

On April 24, 2015, Plaintiff filed a notice of appeal. (Doc. 16.) On April 27, 2015, the

1 Court of Appeals for the Ninth Circuit referred the matter to this Court for the limited purpose of  
2 determining whether in forma pauperis should continue for this appeal. 28 U.S.C. § 1915(a)(3);  
3 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). This Court filed a responsive  
4 order delineating the reasons this action was dismissed and finding that Plaintiff was not entitled  
5 to proceed in forma pauperis on appeal. (Doc. 21.) Plaintiff was thereafter ordered to pay the  
6 filing fee for his appeal (Doc. 26) and when he failed to do so, his appeal was dismissed (Doc.  
7 28). After being ordered to pay the filing fee, on June 15, 2015, Plaintiff filed a motion for relief  
8 from the judgment that had been entered in this action. (Doc. 27.)

9 Rule 60(b) of the Federal Rules of Civil Procedure provides that “[o]n motion and upon  
10 such terms as are just, the court may relieve a party . . . from a final judgment, order, or  
11 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;  
12 (2) newly discovered evidence that, with reasonable diligence could not have been discovered in  
13 time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct  
14 by an opposing party; . . . or (6) any other reason justifying relief from the operation of  
15 judgment.” Motions under Rule 60(b) “must be made within a reasonable time -- and for reasons  
16 (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the  
17 proceeding.”

18 Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest  
19 injustice and is to be utilized only where extraordinary circumstances . . .” exist. *Harvest v.*  
20 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotation marks and citation omitted)  
21 (addressing reconsideration under Rules 60(b)(1)-(5)). The moving party “must demonstrate  
22 both injury and circumstances beyond his control . . .” *Id.* (internal quotation marks and  
23 citation omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what  
24 new or different facts or circumstances are claimed to exist which did not exist or were not  
25 shown” previously, “what other grounds exist for the motion,” and “why the facts or  
26 circumstances were not shown” at the time the substance of the order which is objected to was  
27 considered.

28 “A motion for reconsideration should not be granted, absent highly unusual

1 circumstances, unless the district court is presented with newly discovered evidence, committed  
2 clear error, or if there is an intervening change in the controlling law,” and it “may not be used to  
3 raise arguments or present evidence for the first time when they could reasonably have been  
4 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571  
5 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in  
6 original).

7 It is noteworthy that it was not until after the Ninth Circuit ordered him to pay docketing  
8 and filing fees for his appeal (which he apparently failed to do), that Plaintiff filed the present  
9 motion (Doc. 27), seeking reconsideration of the order, which issued on April 13, 2015 (Doc.  
10 14), on which judgment (Doc. 15) was entered against him. In his motion, Plaintiff once again  
11 asserts that the findings and rulings in *Plata v. Brown, et al.*, C01-1351-TEH provide new  
12 evidence that supports his claims in his prior suit (*Humphrey v. Yates*, 1:09-cv-00075-LJO-DLB  
13 (“Humphrey I”)) which he attempted to resurrect in this action (“Humphrey II”). The  
14 inapplicability of new rulings on issues regarding prisoners' exposure to and treatment for Valley  
15 Fever (of which Plaintiff complains in this action) to resurrect claims that Plaintiff proceeded on  
16 in *Humphrey I* have been repeatedly addressed in this action. Plaintiff raises neither evidence  
17 nor law that has not previously been considered and there is no other basis upon which it would  
18 be just to relieve him from judgment that has been entered in this action.

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this  
20 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the  
21 Court finds the both the Findings and Recommendation upon which this action was found to be  
22 barred by res judicata (Doc. 12) and the Order Adopting it (Doc. 14) which resulted in dismissal  
23 of this action and entry of judgment to be supported by the record and proper analysis.

24 Accordingly, Plaintiff's motion for relief from judgment, filed on June 27, 2015 (Doc.  
25 27), is HEREBY DENIED and any objections based thereon are OVERRULED.  
26 IT IS SO ORDERED.

27 Dated: July 21, 2015

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE