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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY WYATT,

Plaintiff,

v.

SUNDARAM,

Defendant.

No. 1:15-cv-00895-DAD-SAB

ORDER DENYING MOTION FOR
RECONSIDERATION

(Doc. No. 59)

On January 31, 2017, the undersigned issued an order declining to adopt the findings and recommendations recommending plaintiff's *in forma pauperis* status be revoked. (Doc. No. 42.)

On August 7, 2017, defendant filed a motion to reconsider on the basis of a recently-issued decision in *Harris v. Mangum*, 863 F.3d 1133 (9th Cir. 2017). (Doc. No. 59-1.)

Generally, a motion for reconsideration may be brought in three instances, including "when there has been an intervening change of controlling law." *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001). Here, defendant maintains that the decision in *Harris* represents an intervening change in controlling law, and justifies reconsideration of the court's January 31, 2017 order. In *Harris*, the Ninth Circuit held that "when (1) a district court dismisses a complaint on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal counts as a strike under § 1915(g)." 863 F.3d at 1143.

1 The holding in *Harris* is inapplicable here. Defendant contends that the dismissal in
2 *Wyatt v. Johnson*, Case No. 2:97-cv-01789 LKK GGH (E.D. Cal.), should be counted as one of
3 three strikes against plaintiff. The court in *Wyatt v. Johnson*, however, dismissed plaintiff's
4 complaint with leave to amend because plaintiff had failed to indicate what relief he sought, not
5 because he failed to state a legally sufficient claim. (See Doc. Nos. 29-1 at 2; 31 at 4.) Thus, the
6 dismissal in *Wyatt v. Johnson* was a dismissal under Rule 8(a), which requires every pleading,
7 whether it states a legally sufficient claim or not, to contain "a demand for the relief sought."
8 Fed. R. Civ. P. 8(a)(3). Rule 12(b)(6), on the other hand, concerns "the legal sufficiency of the
9 pleadings, not the appropriateness of the relief sought." *United States v. Maricopa Cty.*, 915 F.
10 Supp. 2d 1073, 1082 (D. Ariz. 2012); see also *Traylor v. Avnet, Inc.*, No. CV-08-0918-PHX-FJM,
11 2008 WL 2945509, at *1 (D. Ariz. July 28, 2008) ("[F]ailure to specify relief to which a plaintiff
12 is entitled would not warrant dismissal for failure to state a claim under Rule 12(b)(6).") In
13 considering whether a complaint was dismissed for failing to state a claim under Rule 8 for
14 purposes of the Prison Litigation Reform Act, the Ninth Circuit has recognized that the district
15 court must look at "the reasons underlying [the dismissal]." *Knapp v. Hogan*, 738 F.3d 1106,
16 1109–10 (9th Cir. 2013) (concluding that "a Rule 8(a) dismissal is [not] categorically included or
17 excluded from counting as a § 1915(g) 'strike'"). In *Wyatt v. Johnson*, this court said nothing
18 about the legal sufficiency of plaintiff's claims raised in his complaint, and it was not dismissed
19 because it failed to state a claim. (Doc. No. 29-2 at 5, 13–14.) Instead, it was dismissed because
20 plaintiff did not indicate what relief was sought.

21 Because the holding in *Harris* is inapposite here, defendant's motion for reconsideration is
22 denied.

23 IT IS SO ORDERED.

24 Dated: September 25, 2017

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27 UNITED STATES DISTRICT JUDGE
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