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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 JESSE L. YOUNGBLOOD,

10 Plaintiff,

11 v.

12 D. URIBE, *et al.*,

13 Defendants.
14
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Case No. 1:17-cv-01132-AWI-EPG (PC)

ORDER DENYING MOTION FOR RELIEF
FROM DISMISSAL AND JUDGMENT

(ECF No. 16)

16 Jesse L. Youngblood (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights
17 action pursuant to 42 U.S.C. § 1983. Plaintiff filed an application to proceed *in forma pauperis*
18 on August 23, 2017. (ECF No. 2). The matter was referred to United States Magistrate Judge
19 Erica P. Grosjean pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On January 26, 2018, the Magistrate Judge issued findings and recommendations,
21 finding that Plaintiff had incurred more than three strikes under 28 U.S.C. § 1915(g) and did not
22 qualify for the imminent danger of serious physical injury exception, and recommending that the
23 application to proceed *in forma pauperis* be denied. On April 13, 2018, the Court adopted the
24 findings and recommendations, denied the application to proceed *in forma pauperis*, and directed
25 Plaintiff to pay the \$400.00 filing fee within thirty days from the date of service of the order.
26 (ECF No. 12). The order advised Plaintiff that the failure to pay the required filing fee within the
27 time provided would result in dismissal of this action. *Id.* The thirty-day period has expired, and
28 Plaintiff has failed to pay the filing fee.

1 On April 27, 2018, Plaintiff filed a motion seeking waiver of payment of the filing until
2 he has sufficient funds in his prisoner trust account to be billed 20% of any amount exceeding
3 ten dollars. (ECF No. 13). Plaintiff, in effect, was again requesting to proceed *in forma pauperis*.
4 See 28 U.S.C. § 1915(b)(1) (“[I]f a prisoner brings a civil action or files an appeal in forma
5 pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall
6 assess and, when funds exist, collect, as a partial payment of any court fees required by law, an
7 initial partial filing fee of 20 percent of the greater of—(A) the average monthly deposits to the
8 prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month
9 period immediately preceding the filing of the complaint or notice of appeal.”). The Court,
10 finding that Plaintiff had again failed to establish that he faces any imminent danger of serious
11 physical injury, denied the renewed request for *in forma pauperis* status and dismissed this action,
12 without prejudice, for Plaintiff’s failure to comply with the Court’s order of April 13, 2018, (ECF
13 No. 12), and his failure to pay the filing fee. (ECF No. 14). The Clerk of Court entered judgment
14 in accordance with the Court’s order on June 11, 2018. (ECF No. 15).

15 On June 20, 2018, Plaintiff filed a motion for reconsideration, seeking relief from the
16 dismissal and judgment. (ECF No. 16). Plaintiff states that this action is “[n]ot frivolous,
17 malicious, or fails to state a claim,” and that he is “eligible for fee waiver as to proceed by 28
18 U.S.C. § 1915 and 28 U.S.C. § 1915(g) for all court costs and court fees.” *Id.* at 2. Plaintiff further
19 explains that he has a claim to which the State of California’s two-year statute of limitations for
20 personal injury actions would apply, and he had to file the instant action before expiration of two
21 years.

22 Federal Rule of Civil Procedure 60 governs grounds for relief from an order and
23 judgment:

24 On motion and just terms, the court may relieve a party or its legal
25 representative from a final judgment, order, or proceeding for the
26 following reasons: (1) mistake, inadvertence, surprise, or
27 excusable neglect; (2) newly discovered evidence that, with
28 reasonable diligence, could not have been discovered in time to
move for a new trial under Rule 59(b); (3) fraud (whether
previously called intrinsic or extrinsic), misrepresentation, or
misconduct by an opposing party; (4) the judgment is void; (5) the

1 judgment has been satisfied, released, or discharged; it is based on
2 an earlier judgment that has been reversed or vacated; or applying
3 it prospectively is no longer equitable; or (6) any other reason that
4 justifies relief.

5 Fed. R. Civ. P. 60(b). “A motion under Rule 60(b) must be made within a reasonable time--and
6 for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the
7 date of the proceeding.” Fed. R. Civ. P. 60(c)(1). “A motion for reconsideration should not be
8 granted, absent highly unusual circumstances, unless the district court is presented with newly
9 discovered evidence, committed clear error, or if there is an intervening change in the
10 controlling law,” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
11 880 (9th Cir. 2009) (internal quotations marks and citations omitted), and “[a] party seeking
12 reconsideration must show more than a disagreement with the Court’s decision, and
13 recapitulation” of that which was already considered by the Court in rendering its decision,
14 *U.S. v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) (internal quotation
15 marks and citation omitted).

16 Plaintiff fails to establish any reason justifying relief from the Court’s order and
17 judgment. He merely states that this action is not frivolous and that he is required to comply
18 with the applicable statute of limitations. However, Plaintiff’s action may not proceed absent
19 the submission of the filing fee. *See* 28 U.S.C. § 1914. Plaintiff has not paid the filing fee, and
20 is ineligible to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(g)(“In no event shall a
21 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
22 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court
23 of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to
24 state a claim upon which relief may be granted, unless the prisoner is under imminent danger of
25 serious physical injury.); *see also Youngblood v. Clark*, No.:1:15-cv-01746 (E. D. Cal. Aug.
26 15, 2017) (dismissing action for failure to state a claim); *Youngblood v. Warden*, Case No.
27 4:13-cv-04366 (N. D. Cal. Nov. 12, 2013) (dismissing action for failure to state a claim);
28 *Youngblood v. Evans*, Case No. 4:13-cv-02097 (N. D. Cal. May 14, 2013) (dismissing action as

1 frivolous and for failure to state a claim); *Youngblood v. Warden*, Case No. 4:12-cv-04423 (N.
2 D. Cal. Feb. 4, 2013) (dismissing action as frivolous and for failure to state a claim);
3 *Youngblood v. State of California*, 2:05-cv-0727-LKK-DAD (E. D. Cal. Sept. 11, 2006)
4 (dismissing action for failure to state a claim); *Youngblood v. State of California*, 4:11-cv-
5 4064-PJH (N. D. Cal. Mar. 16, 2012) (dismissing action for failure to state a claim);
6 *Youngblood v. Lamarque*, 4:12-cv-4423-PJH (N. D. Cal. Feb. 4, 2013) (dismissing action for
7 failure to state a claim and for frivolousness); *Youngblood v. Feather Falls Casino*, 4:13-cv-
8 128-PJH (N. D. Cal. Feb. 28, 2013.) (dismissing action for failure to state a claim and for
9 frivolousness). Accordingly, Plaintiff's motion for reconsideration, filed on June 20, 2018,
10 (ECF No. 16), is HEREBY DENIED.

11 IT IS SO ORDERED.

12 Dated: September 6, 2018



SENIOR DISTRICT JUDGE