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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELDON DAVIS,  
Plaintiff,  
v.  
J.A. ZAMORA, et al.,  
Defendants.

No. 2:15-cv-0010 KJN P

ORDER

Plaintiff consented to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c). On May 4, 2016, plaintiff filed a motion to amend and a third amended complaint. However, this civil rights action was closed on March 17, 2016. Good cause appearing, the undersigned construes plaintiff’s filing as a motion for relief from judgment.

Rule 60(b) provides as follows:

**Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

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1 (3) fraud (whether previously called intrinsic or extrinsic),  
2 misrepresentation, or misconduct by an opposing party;

3 (4) the judgment is void;

4 (5) the judgment has been satisfied, released or discharged; it is  
5 based on an earlier judgment that has been reversed or vacated; or  
6 applying it prospectively is no longer equitable; or

7 (6) any other reason that justifies relief.

8 Fed. R. Civ. P. 60(b). Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent  
9 manifest injustice and is to be utilized only where extraordinary circumstances. . .” exist. Harvest  
10 v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The  
11 moving party “must demonstrate both injury and circumstances beyond his control. . . .” Id.  
(internal quotation marks and citation omitted).

12 In his motion, plaintiff contends he would suffer hardship and prejudice if his motion to  
13 amend is not granted. In addition, he argues that he has been required to pay the court’s filing  
14 fee. However, in his proposed amended complaint, plaintiff again raises the same allegations the  
15 court found barred under Edwards v. Balisok, 520 U.S. 641, 648 (1997) (dismissing a § 1983  
16 action seeking declaratory relief and money damages because a successful challenge to the  
17 procedures used in a prison disciplinary hearing would necessarily imply the invalidity of the  
18 punishment imposed), and Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that a state  
19 prisoner may not recover damages under § 1983 for allegedly unconstitutional imprisonment, or  
20 for any other harm caused by “actions whose unlawfulness would render the imprisonment  
21 invalid,” unless he can prove that the conviction or other basis for confinement has been reversed  
22 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to  
23 make such a determination, or called into question by a federal court’s issuance of a writ of  
24 habeas corpus).

25 As plaintiff was previously informed,

26 plaintiff’s civil rights action must be dismissed without prejudice so  
27 that plaintiff may first seek habeas relief with respect to the prison  
28 disciplinary conviction at issue. See Butterfield v. Bail, 120 F.3d  
1023 (9th Cir. 1997) (complaint barred where prisoner sought  
damages based on allegations that prison officials relied on false

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information to find him ineligible for parole); Hernandez v. Lozano, 2014 WL 1096937 (E.D. Cal. March 19, 2014) (§ 1983 claim that prison officials participated in a cover-up of a fraudulent rules violation charge barred because success would necessarily call into question the validity of prison disciplinary proceeding).

(ECF No. 13 at 4.) Review of this court’s records reflects that petitioner has not filed a petition for writ of habeas corpus challenging the November 13, 2013 prison disciplinary.

Moreover, plaintiff’s filing provides no facts, circumstances, or evidence to support an order vacating the judgment. Plaintiff fails to allege mistake, inadvertence, surprise, or excusable neglect, or any other facts demonstrating that relief under Rule 60(b) is appropriate. Thus, plaintiff’s motion for relief from judgment is denied.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s May 4, 2016 motion (ECF No. 15) is construed as a motion for relief from judgment, and
2. Plaintiff’s motion for relief from judgment (ECF No. 15) is denied.

Dated: October 18, 2016

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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