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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATWAHN McELROY,  
  
Plaintiff,  
  
v.  
  
C. RAMOS, et al.,  
  
Defendants.

No. 2:18-cv-2771-WBS-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. His complaint was dismissed without prejudice due to plaintiff’s failure to either submit the filing fee or an application for leave to proceed in forma pauperis. ECF No. 6. Judgment was entered on the same day. ECF No. 7. After the case was closed, plaintiff filed an application for leave to proceed in forma pauperis and a “letter of recognition” stating that he submitted his application at his “earliest convenience.” ECF Nos. 8 & 9. Liberally construing the letter, the court addresses it herein as a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. So construed, the motion must be denied.

Rule 60(b) provides for reconsideration of a final judgment where one of more of the following is shown: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence, could not have been discovered within twenty-eight days of entry of judgment; (3) fraud, misrepresentation, or misconduct of an

1 opposing party; (4) voiding of the judgment; (5) satisfaction of the judgment; and (6) any other  
2 reason justifying relief. Fed. R. Civ. P. 60(b). A motion for reconsideration on any of these  
3 grounds must be brought within a reasonable time, and no later than one year, of the entry of the  
4 judgment or the order being challenged. *Id.* Additionally, Local Rule 230(j) requires a party  
5 filing a motion for reconsideration to show the “new or different facts or circumstances claimed  
6 to exist which did not exist or were not shown upon such prior motion, or what other grounds  
7 exist for the motion.” E.D. Cal. Local Rule 230(j).

8 Here, plaintiff’s motion is incoherent. It sets forth no basis for reconsideration of the  
9 court’s final order. Thus, plaintiff has failed to meet his burden under Rule 60(b).

10 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s “letter of recognition,”  
11 construed as motion for relief from judgment pursuant to Rule 60(b) (ECF No. 9), be denied.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
14 after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
17 objections shall be served and filed within fourteen days after service of the objections. The  
18 parties are advised that failure to file objections within the specified time may waive the right to  
19 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
20 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: October 15, 2019.

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23 EDMUND F. BRENNAN  
24 UNITED STATES MAGISTRATE JUDGE  
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