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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSE BONILLA,

Plaintiff,

vs.

D. URIBE; K. BERKLER; T.L.
ROSENKRANS; E. FISCHER; E.
VARGAS; J. ESCOBEDO; A.
MONARREZ,,

Defendant.

Case No. 3:11-cv-1274-GPC-WMC

**ORDER DENYING PLAINTIFF'S
EX PARTE MOTION FOR
RECONSIDERATION**

(ECF NO. 155)

INTRODUCTION

On June 9, 2011, plaintiff Jose Bonilla ("Plaintiff"), a state prisoner proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. Defendants E. Fischer, E. Vargas, J. Escobedo, D. Uribe, K. Berkler, and T. Rosenkraus ("Defendants") filed a motion to dismiss Plaintiff's Third Amended Complaint ("TAC") on grounds of, among other things, the doctrine of res judicata. (ECF No. 132.) The Honorable William McCurine, Jr., United States Magistrate Judge, submitted a report and recommendation ("Report"), recommending that this Court grant Defendants' Motion to Dismiss with prejudice. (ECF No. 144.) This Court adopted the Report in its entirety and thus dismissed Plaintiff's TAC with prejudice. (ECF No. 152.)

Presently before the Court is Plaintiff's Ex Parte Motion for Reconsideration

1 brought under Federal Rule of Civil Procedure 60(b), in which Plaintiff claims the
2 state-court determination on which this Court partly relied to apply the doctrine of res
3 judicata, was obtained through extrinsic fraud. (ECF No. 155.) After a careful
4 consideration, Plaintiff’s Ex Parte Motion for Reconsideration is **DENIED** for the
5 reasons that follow.

6 BACKGROUND

7 The relevant background information is recited in the Report, (ECF No. 144),
8 and in this Court’s September 30, 2013 Order (“Order”), (ECF No. 152), which the
9 Court incorporates herein by reference. In short, Plaintiff asserts his federal civil rights
10 were violated by his gang validation while in state custody. In the Order, the Court
11 dismissed Plaintiff’s claims under the doctrine of res judicata, relying in part on a state
12 trial court’s denial of a habeas petition Plaintiff filed in 2009. (Id.)

13 LEGAL STANDARD

14 “A motion for reconsideration may be brought under Federal Rule of Civil
15 Procedure 60(b).” Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985). Rule
16 60(b)(3) allows a court to relieve a party of a final judgment, if that judgment was
17 obtained through “fraud, misrepresentation, or misconduct by an opposing party.” To
18 prevail on a motion brought under Rule 60(b)(3), “the moving party must establish that
19 a judgment was obtained by fraud, misrepresentation, or misconduct, and that the
20 conduct complained of prevented the moving party from fully and fairly presenting the
21 case.” In re M/V Peacock On Complaint of Edwards, 809 F.2d 1403, 1404-05 (9th Cir.
22 1987). “The rule is aimed at judgments which were unfairly obtained.” (Id.) (citing
23 Rozier v. Ford Motor Co., 573 F.2d 1332, 1339 (5th Cir.1978)).

24 DISCUSSION

25 Plaintiff claims he is the victim of extrinsic fraud due to the California Attorney
26 General’s failure to provide a copy of a court-ordered “informal response” in a 2009
27 state-court habeas proceeding. (ECF No. 155.)

28 In this 2009 proceeding, Plaintiff, as in this case, challenged his gang validation

1 while in state custody.¹ On August 20, 2009, the state court issued an order finding
2 that two out of the three pieces of evidence relied on to validate Plaintiff's gang
3 membership were sufficient and requiring an informal response to Plaintiff's petition
4 as to the third piece of evidence challenged by Plaintiff. (ECF No. 143-1 at 62-63.)
5 The state-court order denying Plaintiff's petition indicates that it "read and considered
6 the informal response by [the Attorney General] and [Plaintiff]'s reply thereto on
7 October 8, 2009 and October 27, 2009 respectively." (*Id.* at 68.) Thus, contrary to
8 Plaintiff's present contention that he did not receive the Attorney General's informal
9 response, the record implies that he not only received the informal response, but that
10 he also filed a reply thereto.

11 After the denial of his habeas petition in the Kern County Superior Court,
12 Plaintiff filed a habeas petition in the California Court of Appeal, raising the same
13 arguments he raised before the Superior Court. (ECF No. 143, Ex. E.) The Attorney
14 General's office filed an informal response, and the appellate court denied the petition.
15 (ECF No. 143, Ex. E at 151-52 & Ex. G.) Plaintiff then filed a petition in the
16 California Supreme Court, which denied the petition en banc. (ECF No. 143, Ex. I.)

17 After the denial of his habeas petitions in the state courts, Plaintiff filed a habeas
18 petition in the U.S. District Court for the Eastern District of California, again
19 challenging his gang validation. (ECF No. 141, Ex. A at 4.) The Eastern District
20 ultimately dismissed the petition and declined to issue a certificate of appealability.
21 (ECF No. 141, Ex. B.)

22 "[F]ederal courts must give the same full faith and credit to a state court order
23 as state courts would give the order." S.E. Res. Recovery Facility Auth. v. Montenay
24 Int'l Corp., 973 F.2d 711, 713 (9th Cir. 1992). Under California law, "the doctrine of
25 res judicata gives certain conclusive effect to a former judgment in subsequent
26 litigation involving the same controversy." Boeken v. Philip Morris USA, Inc., 48 Cal.
27 4th 788, 797-98 (2010). The elements for applying the doctrine include:

28 ¹ Superior Court of California for Kern County, Case No. HC011288A.

1 (1) A claim or issue raised in the present action is identical to a claim or
2 issue [2] litigated in a prior proceeding; [3] the prior proceeding resulted
3 in a final judgment on the merits; and [4] the party against whom the
4 doctrine is being asserted was a party or in privity with a party to the prior
5 proceeding.

6 Id.

7 Interpreting Plaintiff's Ex Parte Motion liberally, Plaintiff asserts the Kern
8 County Superior Court's denial of his habeas petition was fraudulently obtained
9 because he did not receive the Attorney General's October 8, 2009 informal response
10 to his habeas petition. (ECF No. 155 at 4-5.) He therefore claims the state court's
11 denial of his habeas petition cannot be used to satisfy the "final judgment on the
12 merits" element for applying the doctrine of res judicata.

13 Plaintiff has only recently raised the issue of not receiving the Attorney
14 General's October 8, 2009 informal response. Plaintiff did not raise the issue of
15 extrinsic fraud in any of the previous complaints filed in this case. Indeed, Plaintiff did
16 not raise the issue of extrinsic fraud before the California Court of Appeals, the
17 California Supreme Court, or the U.S. District Court for the Eastern District of
18 California. Thus even if this Court somehow had the authority to set aside the state
19 trial court's denial of Plaintiff's habeas petition, several other final determinations
20 provide a sufficient basis for this Court's application of res judicata.

21 CONCLUSION

22 For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff's Ex Parte
23 Motion for Reconsideration is **DENIED**. Plaintiff is advised that this case is closed
24 and that no further filings will be accepted.

25 DATED: December 3, 2013

26 
27 HON. GONZALO P. CURIEL
28 United States District Judge