

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 7 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEVIN L. PERRY,

Plaintiff-Appellant,

v.

SAN DIEGO COUNTY, a public entity,

Defendant-Appellee.

No. 14-56618

D.C. No. 3:14-mc-00381-JLS

MEMORANDUM*

KEVIN L. PERRY,

Plaintiff-Appellant,

v.

VEOLIA TRANSPORT, DBA Veolia
Transportation Services, Inc., A Maryland
Corporation; et al.,

Defendants-Appellees.

No. 14-56707

D.C. No. 3:11-cv-00176-LAB-
RBB

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding
Larry A. Burns, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted October 25, 2016**

Before: LEAVY, GRABER, and CHRISTEN, Circuit Judges.

In these consolidated appeals, Kevin L. Perry appeals pro se from the district court's order dismissing his action for failure to comply with a vexatious litigant order (No. 14-56618), and the district court's order denying his Federal Rule of Civil Procedure 60(b) motion for relief from judgment (No. 14-56707). We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion both the district court's denial of leave to file a complaint pursuant to a vexatious litigant order, *In re Fillbach*, 223 F.3d 1089, 1090-91 (9th Cir. 2000), and the district court's denial of a Rule 60(b) motion, *Harman v. Harper*, 7 F.3d 1455, 1458 (9th Cir. 1993). We affirm.

As to No. 14-56618, the district court did not abuse its discretion in denying Perry's motion for leave to file a complaint because Perry failed to comply with the vexatious litigant order entered against him. *See Perry v. Veolia Transp., et al.*, No. 11-CV-176-LAB-RBB, 2011 WL 4566449 at *9-12 (S.D. Cal. Sept. 30, 2011). Perry failed to submit a copy of the vexatious litigant order with his motion as required and falsely certified that his proposed complaint raised new issues not previously raised in a prior state or federal action.

** The panel unanimously concludes these cases are suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

As to No. 14-56707, the district court did not abuse its discretion in denying Perry's motion for relief from judgment where Perry never appealed from the judgment, presented no reason for the nearly three-year delay in filing his motion, and did not establish any basis for relief. *See* Fed. R. Civ. P. 60(b)(5)-(6); Fed. R. Civ. P. 60(c)(1) (Rule 60(b)(5) and 60(b)(6) motions must be filed "within a reasonable time"); *see also In re Pac. Far East Lines, Inc.*, 889 F.2d 242, 249 (9th Cir. 1989) ("What constitutes a reasonable time depends on the facts of each case.").

14-56618: AFFIRMED.

14-56707: AFFIRMED.