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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAMAVIS A. COMUNDOIWILLA,

Plaintiff,

1: 04 CV 6 721 AWI WMW PC

vs.

ORDER RE MOTION (DOC 21)

M. EVANS, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff's November 24, 2008, motion for reconsideration of the October 30, 2008, order adopting the findings and recommendations and dismissing this action for failure to state a claim on which relief may be granted.

On August 28, 2008, an order was entered, dismissing the operative pleading and granting Plaintiff thirty days in which to file an amended complaint. Plaintiff failed to do so, and on October 2, 2008, a recommendation of dismissal was entered. Plaintiff failed to file objections to the findings and recommendations and on October 30, 2008, the findings and recommendations were adopted and this action was dismissed.

On November 24, 2008, Plaintiff filed a motion to vacate the judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). The court has discretion to reconsider and vacate a

1 prior order. Barber v. Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology,
2 Inc., 982 F.2d 394, 396 (9th Cir. 1992). Pursuant to Rule 60(b), the court may relieve a party
3 from a final judgment based on specific grounds, such as: (1) mistake, inadvertence, surprise, or
4 excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied
5 or discharged judgment; or (6) “extraordinary circumstances” which would justify relief. School
6 Dist. No. 1J Multnomah County v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). The court
7 finds that Plaintiff has submitted evidence that reasons outside his control resulted in Plaintiff not
8 receiving the October 2, 2008, findings and recommendations. Therefore, Plaintiff is entitled to
9 relief from judgment pursuant to Federal Rule of Civil Procedure 60(b).

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff’s motion to vacate the judgment is granted.

12 2. The Clerk of the Court is directed to reopen this case.

13 3. Plaintiff is granted twenty days from the date of service of this order in which to file
14 an amended complaint in compliance with the order of August 27, 2008.

15 IT IS SO ORDERED.

16 **Dated:** April 9, 2009

/s/ Lawrence J. O’Neill
UNITED STATES DISTRICT JUDGE