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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ROBERT P. BENYAMINI,

Plaintiff,

v.

L. JOHNSON, et al.,

Defendants.

CASE NO. 1:07-CV-00907-LJO-DLB PC

ORDER DENYING OBJECTIONS,  
CONSTRUED AS REQUEST FOR RELIEF  
FROM FINAL JUDGMENT (DOC. 39)

ORDER DENYING MOTION TO FILE  
AMENDED COMPLAINT AS MOOT (DOC.  
40)

Plaintiff Robert P. Benyamini (“Plaintiff”) is in the custody of the California Department of Corrections and Rehabilitation. This action was dismissed on July 27, 2010, for Plaintiff’s failure to obey a court order. Plaintiff had been ordered to submit service documents, but failed to do so. Pending before the Court are Plaintiff’s objections, filed August 5, 2010. (Doc. 39.) The Court construes these objections as a motion for relief from final judgment pursuant to Federal Rule of Civil Procedure 60(b).

A court may relieve a party from a final judgment for, *inter alia*, mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1). Here, Plaintiff contends that he submitted the service documents on June 7, 2010 for mailing to the Court. (Pl.’s Obj. ¶ 1.) Plaintiff also contends that he submitted objections to the Court’s Findings and Recommendations on July 11, 2010, in which he stated that he submitted the service documents on June 7, 2010. (*Id.* ¶ 2.)

The Court did not receive the service documents until August 3, 2010. (Doc. 41, Lodged Documents, 7 USM-285 forms, one summons.) There is no record of Plaintiff’s objections that

1 were allegedly sent on July 11, 2010. While Plaintiff seeks relief from final judgment, Plaintiff  
2 does not provide a sufficient showing that he complied with the Court's previous orders.  
3 Accordingly, Plaintiff's objections, filed August 5, 2010 and construed as a motion for relief  
4 from final judgment, are DENIED.

5 On August 6, 2010, Plaintiff filed a motion for leave to file an amended complaint.  
6 Because this action is closed and Plaintiff has provided an insufficient showing that the case  
7 should be reopened, Plaintiff's motion is DENIED as moot.

8 IT IS SO ORDERED.

9 **Dated:** September 9, 2010

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