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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LOUIS BRANCH,

Plaintiff,

v.

N. GRANNIS, et al.,

Defendants.

CASE NO. 1:08-cv-01655-YNP PC

ORDER GRANTING MOTIONS TO VACATE
AND REOPENING THIS ACTION

(Doc. 14, 15)

Plaintiff Louis Branch (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed two motions requesting that the Court vacate its order dismissing this action. (Doc. #14, 15.) Plaintiff seeks relief from the final judgment of this Court pursuant to Federal Rule of Civil Procedure 60(b).

On April 7, 2009, the Court screened Plaintiff’s complaint. (Doc. #10.) The Court found that Plaintiff’s complaint stated some cognizable claims and gave Plaintiff the option to either file an amended complaint that cured the deficiencies in his non-cognizable claims, or notify the Court that Plaintiff wished to only proceed on the cognizable claims. Plaintiff was given 30 days to respond to this order.

On May 11, 2009, the Court dismissed this action, noting that Plaintiff had not filed an amended complaint. (Doc. #11.) However, the same day, Plaintiff filed his amended complaint. Plaintiff filed his first motion to vacate judgment on May 20, 2009. (Doc. #14.) Plaintiff filed a second motion to vacate judgment on November 24, 2009. (Doc. #15.)

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1 Under Federal Rule of Civil Procedure 60(b)(1)-(3), the Court may relieve a party from a
2 final judgment, order or proceeding in circumstances that involve mistake, inadvertence, surprise,
3 excusable neglect, newly discovered evidence, or fraud. Rule 60(b)(6) permits relief from final
4 judgment for “any . . . reason that justifies relief.” However, relief under Rule 60(b)(6) is warranted
5 only if extraordinary circumstances exist. Maraziti v. Thorpe, 52 F.3d 252, 254-55 (9th Cir. 1995)
6 (citing Ackermann v. United States, 340 U.S. 193, 199-201 (1950); Waggoner v. R. McGray, Inc.,
7 743 F.2d 643, 645 (9th Cir. 1984)).

8 The Court finds that Plaintiff has demonstrated the necessary extraordinary circumstances
9 to warrant relief from final judgment. Accordingly, the Court will order that this action be reopened.
10 This action will proceed on Plaintiff’s amended complaint filed on May 11, 2009. Plaintiff’s
11 amended complaint will be screened by the Court pursuant to 28 U.S.C. § 1915A at a later date.

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Plaintiff’s motions for relief from final judgment under Rule 60(b) are GRANTED;
- 14 2. The Court’s May 11, 2009 order dismissing this case is VACATED; and
- 15 3. The clerk is directed to reopen this action.

16 IT IS SO ORDERED.

17 **Dated: February 26, 2010**

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE