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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SUSAN MAE POLK,	)	1:11-cv-00728-AWI- BAM (PC)
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF’S MOTION
	)	FOR RELIEF FROM ORDER FINDING
v.	)	PLAINTIFF’S OBJECTIONS UNTIMELY
	)	(ECF No. 93)
PITTMAN, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

Plaintiff Susan Mae Polk (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On December 22, 2014, the Magistrate Judge screened Plaintiff’s third amended complaint pursuant to 28 U.S.C. § 1915A, and determined that it failed to comply with Federal Rules of Civil Procedure 8 and 18. The Magistrate Judge dismissed Plaintiff’s third amended complaint with leave to amend within thirty days. (ECF No. 83.)

On January 22, 2015, Plaintiff requested an extension of time to March 26, 2015, to file her amended complaint. (ECF No. 84.) On the same date, Plaintiff filed objections to the Magistrate Judge’s screening order dismissing the third amended complaint with leave to amend. (ECF No. 85.)

On March 31, 2015, the Court denied Plaintiff’s objections as untimely. The Court determined that Plaintiff filed her objections more than thirty days after service of the Magistrate

1 Judge's screening order, which was after the fourteen-day deadline set forth in Local Rule 303(b)  
2 and Federal Rule of Civil Procedure 72. (ECF No. 91.)

3 On April 8, 2015, Plaintiff filed the instant motion for relief from the Court's order  
4 pursuant to Federal Rule of Civil Procedure 60. Plaintiff requests that the Court vacate the order  
5 denying her objections as untimely, arguing that she signed and mailed her objections to the  
6 Court on January 8, 2015, fourteen days after receiving the Magistrate Judge's screening order  
7 on December 25, 2014. (ECF No. 93.)

8 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, "[o]n motion and just  
9 terms, the court may relieve a party or its legal representative from a final judgment, order, or  
10 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . .  
11 . ." This may include mistake and inadvertence by the court.<sup>1</sup> See *Kingvision Pay-Per-View Ltd.*  
12 *v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999).

13 Plaintiff argues that the Court mistakenly determined that she filed her objections on  
14 January 22, 2015. According to the record, the Magistrate Judge issued a screening order  
15 dismissing Plaintiff's third amended complaint with leave to amend on December 22, 2014.  
16 (ECF No. 83.) Based on a service date of December 22, 2014, Plaintiff's objections, if any, were  
17 due on or before January 8, 2015 (14 days, plus 3 for mailing). Fed. R. Civ. P. 6(d) (adding three  
18 days after certain kinds of service); 72(a) (objections filed within fourteen days); Local Rule 303.  
19 Plaintiff asserts that she signed and mailed her objections on January 8, 2015, and thus her  
20 objections were timely.

21 Generally, the Court applies the mailbox rule to section 1983 filings. *Douglas v. Noelle*,  
22 567 F.3d 1103, 1107 (9th Cir. 2009). According to the mailbox rule, a prisoner's pleading or  
23 other paper is deemed filed at the time he or she delivers it to prison authorities for forwarding to  
24 the court clerk. *Id.* at 1106 (quoting *Houston v. Lack*, 487 U.S. 266, 276, 108 S.Ct. 2379, 101  
25 L.Ed.2d 245 (1988)). Plaintiff correctly points out that her objections are signed and dated  
26 January 8, 2015. (ECF No. 85, p. 20.) However, the record does not allow the Court to

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27 <sup>1</sup> Plaintiff alternatively moves for relief pursuant to Rule 60(a) or 60(b). Rule 60(a) relates to clerical mistakes,  
28 oversights or omissions. The Court finds that Plaintiff's motion is directed at the Court's purported mistake  
regarding the filing of date of Plaintiff's objections and is more appropriately addressed by Rule 60(b).

1 determine the date on which the filing was turned over to prison authorities. *Caldwell v. Amend*,  
2 30 F.3d 1199, 1202 (9th Cir. 1994). First, there is no evidence in the objections themselves  
3 demonstrating that the document was delivered to prison authorities for mailing on January 8,  
4 2015, such as a proof of service. (ECF No. 85.) Second, in her moving papers, Plaintiff offers  
5 no evidence demonstrating when the document was delivered to prison authorities for mailing.  
6 Although Plaintiff provides her sworn statement that she handed the objections to a guard for  
7 placement in the internal mail system on January 8, 2015, she does not identify the guard or  
8 provide any other details or support for her claim, such as a prison mail log or declaration from  
9 the guard or other witness. (ECF No. 93, p. 6.) Third, and finally, circumstantial evidence  
10 suggests that Plaintiff did not deliver her objections for mailing until, at the very earliest, January  
11 15, 2015. According to the record, the Clerk of the Court received not only Plaintiff's  
12 objections, but also her motion to extend time to file a fourth amended complaint on January 22,  
13 2015. Plaintiff's motion for an extension of time was signed and dated January 15, 2015. (ECF  
14 No. 84, p. 11.) As both documents were received by the Clerk on the same date, the evidence  
15 suggests that Plaintiff's objections and motion were sent to the Court at the same time, but not  
16 before January 15, 2015. Thus, Plaintiff's objections were untimely.

17 Even assuming that Plaintiff's objections were timely, which they were not, this Court  
18 has conducted a de novo review of this case in accordance with the provisions of 28 U.S.C. §  
19 636(b)(1)(C). Having reviewed the entire file, particularly Plaintiff's objections, the Court sees  
20 no reason to depart from the reasoning or outcome of the Magistrate Judge's findings and  
21 recommendations (ECF No. 83) as adopted by this Court (ECF No. 91).

22 For these reasons, Plaintiff's motion for relief from the order finding her objections  
23 untimely, filed on April 8, 2015, is HEREBY DENIED.

24  
25 IT IS SO ORDERED.

26 Dated: July 6, 2015

27   
28 SENIOR DISTRICT JUDGE