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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS A. GARCIA,)	1:14-cv-00459-BAM (PC)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION TO VACATE JUDGMENT
v.)	(ECF No. 13)
)	
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS AND REHABILITATION,)	ORDER DIRECTING CLERK OF COURT
et al.,)	TO VACATE THE JUDGMENT, REOPEN
)	ACTION AND PROVIDE PLAINTIFF WITH
Defendants.)	A COPY OF THE COURT’S SCREENING
)	ORDER DATED JANUARY 6, 2015
)	
)	

I. Procedural Background

Plaintiff Jesus A. Garcia (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on March 31, 2014.

On January 6, 2015, the Court dismissed Plaintiff’s first amended complaint with leave to amend within thirty days after service. 28 U.S.C. § 1915A. Plaintiff was warned that if he failed to file a second amended complaint in compliance with the order, the action would be dismissed for failure to obey a court order and failure to state a claim. (ECF No. 10.)

On February 13, 2015, after more than thirty days had passed and Plaintiff failed to respond to the Court’s order, the Court dismissed the action for failure to obey a court order and failure to state a claim. (ECF No. 11.) Judgment was entered the same date. (ECF No. 12.)

On March 23, 2015, Plaintiff filed the instant motion to vacate the judgment. (ECF No. 13.)

1 **II. Motion to Vacate Judgment**

2 Rule 60(b)(6) allows the Court to relieve a party from a final judgment for any reason
3 that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent
4 manifest injustice and is to be utilized only where extraordinary circumstances ...” exist. Harvest
5 v. Castro, 531 F.3d 737, 749 (9th Cir.2008) (internal quotations marks and citation omitted). The
6 moving party “must demonstrate both injury and circumstances beyond his control” Id.
7 (internal quotation marks and citation omitted).

8 Here, Plaintiff claims that the Court should vacate the final judgment because he did not
9 receive the Court’s screening order dismissing his amended complaint with leave to amend. In
10 his moving papers, Plaintiff indicates that he received the Court’s order dismissing this action on
11 February 18, 2015. He did not understand the order as he had recently filed a first amended
12 complaint. Plaintiff immediately went to the prison library and requested a docket search result.
13 He learned from the docket, printed on February 23, 2015, that the Court had issued a screening
14 order dismissing the amended complaint with leave to amend. (Ex. A to Pl’s Mot.) Plaintiff
15 then wrote to the mailroom and requested a CDC 199 Mail Log. (Ex. B to Pl’s Mot.) The CDC
16 119 Inmate Legal Mail History Report provides the dates for Plaintiff’s incoming and outgoing
17 legal mail for the period between February 27, 2014, and February 18, 2015. (Ex. C to Pl’s
18 Mot.) According to the report, Plaintiff did not receive any legal mail from the Court between
19 November 5, 2014, and February 18, 2015. (Ex. C. to Pl’s Mot.)

20 The Court has considered Plaintiff’s moving papers, and finds that they support relief
21 under Rule 60(b) due to highly unusual circumstances. Plaintiff has provided evidence
22 demonstrating that he did not receive the Court’s January 6, 2015 screening order. Plaintiff
23 therefore should not be penalized for failure to obey a court order that he did not receive due to
24 circumstances beyond his control. Accordingly, Plaintiff’s motion to vacate the final judgment
25 shall be granted. The Clerk of the Court will be directed to vacate the entry of judgment, reopen
26 this action and mail Plaintiff a copy of the Court’s January 6, 2015 screening order. Within
27 thirty days following service of the screening order, Plaintiff shall file a second amended
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1 complaint. If Plaintiff fails to file a second amended complaint in compliance with the screening
2 order, this action will be dismissed for failure to obey a court order and failure to state a claim.

3 **III. Conclusion and Order**

4 Based on the foregoing reasons, it is HEREBY ORDERED as follows:

- 5 1. Plaintiff's motion to vacate the judgment is GRANTED;
- 6 2. The Clerk of the Court is directed to VACATE the judgment entered on February 13,
7 2015, and reopen this action;
- 8 3. The Clerk of the Court shall mail Plaintiff a copy of the Court's screening order
9 issued on January 6, 2015;
- 10 4. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
11 second amended complaint; and
- 12 5. **If Plaintiff fails to comply with this order, this action will be dismissed, with
13 prejudice, for failure to obey a court order and failure to state a claim.**
- 14

15 IT IS SO ORDERED.

16 Dated: April 3, 2015

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE

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