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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS L. GOFF,
Plaintiff,
v.
GAMEZ, et al.,
Defendants.

Case No. 1:15-cv-00937-AWI-EPG (PC)
ORDER GRANTING PLAINTIFF’S MOTIONS
FOR RECONSIDERATION
(ECF NOS. 15, 17, 18, & 25)
ORDER DIRECTING CLERK TO REOPEN
CASE
ORDER DIRECTING CLERK TO SEND
PLAINTIFF A COPY OF THE SCREENING
ORDER (ECF NO. 11)

Thomas Goff (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 22, 2015. (ECF No. 1). On September 29, 2016, Magistrate Judge Erica P. Grosjean screened the complaint. (ECF No. 11). The Judge Grosjean found that the complaint stated an Eighth Amendment claim against defendants Gamez and Doe, and a Fourth Amendment claim against defendants Everhart and Doe. (Id.). Judge Grosjean gave Plaintiff the option of proceeding against these defendants, filing an amended complaint, or notifying the Court that he stands on his complaint, subject to the issuance of findings and recommendations consistent with the screening order. (Id.).

1 Plaintiff never responded to the screening order (it was returned as undeliverable), and
2 Plaintiff's case was dismissed without prejudice for failure to prosecute and obey Local Rules
3 (ECF No. 12).

4 Plaintiff has filed several motions (ECF Nos. 15, 17, 18, & 25), which the Court construes
5 as motions for reconsideration.¹ These motions are now before the Court. Plaintiff alleges that
6 he discovered that his case was dismissed while doing legal research in the Wasco State Prison
7 law library in the beginning of August 2017. Plaintiff asks that his case be reopened because he
8 was under a doctor's care for physical and emotional trauma. Additionally, he was homeless and
9 so had no forwarding address to provide.

10 Federal Rule of Civil Procedure 60(b) governs grounds for relief from an order:

11 On motion and just terms, the court may relieve a party or its legal
12 representative from a final judgment, order, or proceeding for the
13 following reasons: (1) mistake, inadvertence, surprise, or excusable
14 neglect; (2) newly discovered evidence that, with reasonable
15 diligence, could not have been discovered in time to move for a
16 new trial under Rule 59(b); (3) fraud (whether previously called
17 intrinsic or extrinsic), misrepresentation, or misconduct by an
opposing party; (4) the judgment is void; (5) the judgment has been
satisfied, released, or discharged; it is based on an earlier judgment
that has been reversed or vacated; or applying it prospectively is no
longer equitable; or (6) any other reason that justifies relief.

18 Fed. R. Civ. P. 60(b). "A motion under Rule 60(b) must be made within a reasonable time--and
19 for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the
20 date of the proceeding." Fed. R. Civ. P. 60(c)(1).

21 Plaintiff's motions will be granted under Rule 60(b)(1) and (6). Plaintiff's motions were
22 made within a year of the entry of the order and judgment, and promptly after Plaintiff realized
23 his case was dismissed. Moreover, the Court's screening order was returned as undeliverable, so
24 Plaintiff never received a copy of it. He did not provide an updated address because he was
25 homeless (he was also under a doctor's care for emotional and physical trauma).

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27 ¹ Plaintiff also asks to receive "all related information on [his] case." (ECF No. 15). The Court will provide
28 Plaintiff with a copy of the screening order, and give him another 30 day period to decide whether to proceed on the
claims found cognizable by Judge Grosjean, file an amended complaint, or stand on his complaint.

1 Additionally, granting the motions serves the interest of judicial economy. Plaintiff's case
2 was dismissed without prejudice, so he could simply re-file it. If he did refile his complaint, his
3 complaint would need to be screened under 28 U.S.C. § 1915A(a). In this case Plaintiff's
4 complaint has already been screened.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's motions for reconsideration are GRANTED;
- 7 2. The Clerk of Court is directed to reopen this case;
- 8 3. The Clerk of Court is directed to send Plaintiff a copy of the order that was entered
9 on September 29, 2016 (ECF No. 11); and
- 10 4. Within THIRTY (30) days from the date of service of this order, Plaintiff shall
11 either:

- 12 a. Notify the Court in writing that he does not wish to file a First Amended
13 complaint and is instead willing to proceed only on the excessive force
14 claim under the Eighth Amendment against Defendant Gamez and Doe
15 defendant, the failure to protect claim under the Eighth Amendment against
16 Doe defendants, and the unreasonable visual body cavity search claim
17 against Defendant Everhart and Doe defendants under the Fourth
18 Amendment;
- 19 b. File a First Amended Complaint attempting to cure the deficiencies
20 identified in the screening order; or
- 21 c. Notify the Court in writing that he wishes to stand on the Complaint as
22 written.

23 If Plaintiff fails to comply with this Order, this action will be dismissed without
24 leave to amend.

25 IT IS SO ORDERED.

26 Dated: December 4, 2017

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28 _____
 SENIOR DISTRICT JUDGE