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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JOSHUA A. WILLARD,  
Plaintiff,  
v.  
C. WADDLE, et al.,  
Defendants.

1:17-cv-01425-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT PLAINTIFF’S  
MOTIONS TO REOPEN CASE, AND FOR  
COPIES, BE DENIED  
(ECF Nos. 33, 34.)**

**OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS**

**I. BACKGROUND**

Joshua A. Willard (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983 against defendant C. Waddle for retaliation in violation of the First Amendment.

This case was voluntarily dismissed by stipulation of the parties. Plaintiff now seeks to re-open it. On November 8, 2019, a settlement conference was held before Magistrate Judge Barbara A. McAuliffe and the case settled. (ECF No. 30.) On December 9, 2019, the parties filed a stipulation for voluntary dismissal, with prejudice. (ECF No. 31.) On December 11, 2019, the court directed the clerk to close the case. (ECF No. 21.)

On December 19, 2019, Plaintiff filed a motion to reopen the case under Rule 60(b)(1), and on December 23, 2019, Plaintiff filed a motion for Defendant to provide him with copies of

1 the parties' settlement agreement and stipulation for voluntary dismissal. (ECF Nos. 33, 34). On  
2 February 25, 2020, defendant Waddle filed a response to Plaintiff's motions. (ECF No. 36.)  
3 Plaintiff has not filed a reply. Plaintiff's motions are now before the court. L.R. 230(l).

4 **II. MOTION TO REOPEN CASE UNDER FED. R. CIV. P. RULE 60(b)(1)**

5 "Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of  
6 his case, under a limited set of circumstances . . ." Gonzalez v. Crosby, 545 U.S. 524, 528  
7 (2005). Rule 60(b) relief is extraordinary and will not apply to a showing which does not justify  
8 its application. See Stevens v. ITT Sys., Inc., 868 F.2d 1040, 1041 n.1 (9th Cir. 1989). "Motions  
9 for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) are committed to the  
10 sound discretion of the trial judge." Blair v. Shanahan, 38 F.3d 1514, 1518 (9th Cir. 1994)  
11 (citation omitted).

12 Rule 60(b) provides for relief from a judgment or order when the moving party can show:  
13 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that  
14 could not have been discovered by due diligence before the court's decision; (3) fraud,  
15 misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) satisfaction  
16 of the judgment; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b); School Dist.  
17 1J, Multnomah Cnty. v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Whether the court  
18 should grant relief "depends on at least four factors: (1) the danger of prejudice to the opposing  
19 party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for  
20 the delay; and (4) whether the movant acted in good faith." Bateman v. United States Postal  
21 Serv., 231 F.3d 1220, 1223-24 (9th Cir. 2000) (adopting standard to determine excusable neglect  
22 as set forth in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 395 (1993)).  
23 Thus, a district court may grant a motion for relief from judgment under Rule 60(b)(1) if the  
24 moving party can show mistake, surprise, or excusable neglect. See Fed. R. Civ. P. 60(b)(1);  
25 Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985).

26 "A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1),  
27 (2), and (3) no more than a year after the entry of judgment or order" from which the moving  
28 party seeks relief. Fed. R. Civ. P. 60(c)(1). As noted above, the parties' stipulation of voluntary

1 dismissal was filed on December 9, 2019. Therefore, to the extent Plaintiff's December 19, 2019  
2 motion to reopen seeks to set aside the December 9, 2019 dismissal pursuant to Rule 60(b)(1), it  
3 is timely.

4 **III. PLAINTIFF'S MOTIONS**

5 Plaintiff moves the court to re-open this case under Rule 60 on the ground that it is not  
6 following the terms placed on the record on November 8, 2019 at the settlement conference.  
7 Plaintiff reports that Defendant and her lawyers have refused to send him a copy of the settlement  
8 agreement signed by all parties, or a copy of the voluntary dismissal of this case. Plaintiff also  
9 asserts that Defendant has refused to acknowledge receipt of Plaintiff's Payee Data Form with  
10 Plaintiff's Social Security number, which Defendant needed to provide Plaintiff the settlement  
11 funds. Plaintiff requests Defendant to provide him with copies of the settlement agreement and  
12 the voluntary dismissal.

13 **IV. DEFENDANT'S RESPONSE**

14 In response, counsel for Defendant asserts that she did not receive a fully executed copy  
15 of the settlement agreement until January 7, 2020, which contained the signature of a  
16 representative from the Office of Legal Affairs for the California Department of Corrections and  
17 Rehabilitation. Defendant asserts that on or about January 7, 2020, a copy of the fully executed  
18 settlement agreement, the stipulation of voluntary dismissal, and the payee data form were sent  
19 to Plaintiff.

20 **V. CONCLUSION**

21 Plaintiff has not disputed Defendant's assertion that Defendant has now provided Plaintiff  
22 with the documents he requests. In fact, Plaintiff has not filed any reply to Defendant's response  
23 causing an inference that Plaintiff no longer wishes to re-open this case for the reasons he stated.  
24 In such a case, Plaintiff's motions are moot.

25 Moreover, Plaintiff has not supported his motion with a basis to reopen this case. Plaintiff  
26 has not shown any mistake, surprise, or excusable neglect to support Plaintiff's motion to reopen  
27 the case. Defendant provides a reasonable explanation why she waited to provide Plaintiff with  
28 the documents he sought.

1           Therefore, based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s motion to  
2 reopen this case, filed on December 19, 2019, and motion for copies, filed on December 23, 2019,  
3 are DENIED.

4           These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
6 (14) days after the date of service of these findings and recommendations, Plaintiff may file  
7 written objections with the court. Such a document should be captioned “Objections to  
8 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
9 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
10 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
11 (9th Cir. 1991)).

12  
13 IT IS SO ORDERED.

14 Dated: April 1, 2020

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE