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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 ANTHONY L. ROBINSON,

10 Plaintiff,

11 vs.

12 DAVE DAVEY, et al.,

13 Defendants.
14

1:17-cv-01524-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION TO REOPEN CASE BE DENIED
(Doc. No. 88.)**

**OBJECTIONS, IF ANY, DUE WITHIN 14
DAYS**

15 **I. BACKGROUND**

16 This civil rights action, filed under 42 U.S.C. § 1983 by Plaintiff Anthony L. Robinson,
17 was dismissed, without prejudice, on December 2, 2021 due to Plaintiff's failure to prosecute
18 and failure to keep the court apprised of his current mailing address. (Doc. No. 86.) On January
19 3, 2022, Plaintiff filed a motion for extension of time to respond to court deadlines which the
20 court construes as a motion to reopen the case. (Doc. No. 88.)

21 **II. MOTION TO REOPEN CASE**

22 **A. Legal Standards**

23 Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration of a final
24 judgment or any order where one of more of the following is shown: (1) mistake, inadvertence,
25 surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence,
26 could not have been discovered within twenty-eight days of entry of judgment; (3) fraud,
27 misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5)
28 satisfaction of the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). A

1 motion for reconsideration on any of these grounds must be brought within a reasonable time,
2 and no later than one year, of the entry of the judgment or the order being challenged. Id.
3 “Motions for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure
4 are addressed to the sound discretion of the district court . . .” Allmerica Financial Life Insurance
5 and Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

6 **B. Plaintiff’s Motion**

7 Plaintiff requests an extension of time “for righteous cause shown” to reply to any recent
8 court proceedings and court orders, or any pleadings filed by the Defendants since August 3,
9 2021. (Doc. No. 88 at 1:21.) Plaintiff reports that he was released on parole on August 3, 2021
10 and now intends to prosecute this case. He asserts that he has not received any court orders
11 through CDCR prison mail to Compton’s parole office since August 3, 2021. Plaintiff also
12 informs the court of his current street address.

13 Plaintiff does not present any basis under Rule 60 for reopening his case. Plaintiff did
14 not receive mail from the court beginning in August 2021 because he failed to keep the court
15 apprised of his change of address. Pursuant to Local Rule 183(b), “A party appearing *in propria*
16 *persona* shall keep the Court and opposing parties advised as to his or her current address. If
17 mail directed to a plaintiff *in propria persona* by the Clerk is returned by the U.S. Postal Service,
18 and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days
19 thereafter of a current address, the Court may dismiss the action without prejudice for failure to
20 prosecute.” In this case, more than eighty (80) days passed between the time Plaintiff’s mail was
21 returned to the court and his case was dismissed for failure to prosecute. Moreover, more than thirty
22 (30) additional days passed after the dismissal before Plaintiff notified the court of his current address.

23 Based on this record the court should not grant Plaintiff’s motion to reopen this case.
24 Plaintiff’s case was dismissed on December 2, 2021, *without prejudice*, and if he wishes to prosecute
25 this case now he may file a new complaint.

26 **III. RECOMMENDATIONS AND CONCLUSION**

27 Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff’s motion to reopen
28 this case, filed on January 3, 2022, be denied.

