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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEON HARDIN,
Plaintiff,
v.
R. RODRIGUEZ, et al.,
Defendants.

Case No. 1:18-cv-01419-JLT (PC)
**ORDER DENYING MOTION TO
RE-OPEN CLAIM AND DEFENDANTS
TO APPEAR OR FILE AN ANSWER**
(Doc. 14)

Plaintiff has filed a motion to re-open the case and order Defendants to appear or file an answer. (Doc. 14.) On April 4, 2019, the Court conducted a settlement conference, at which the parties entered a global settlement of CASE NOS. 2:17-CV-1340-MCE-AC, and 1:18-CV-1097-LJO-JDP and 1:18-CV-1419-JLT. (Doc. 11.) The minutes of the settlement conference indicate that Plaintiff's notice of voluntary dismissal with prejudice was signed and submitted to the Court for filing. (Doc. 12.) On the same day, Plaintiff filed a notice of dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i). On May 7, 2019, the Court directed the Clerk of Court to close this action in light of the voluntary dismissal. (Doc. 13.) The Clerk closed the case and served the order on Plaintiff by mail. *Id.*

On May 17, 2021, Plaintiff filed the instant motion to re-open his case. (Doc. 14.) Plaintiff states that he did not file a notice of voluntary dismissal, and the order closing the case was an abuse of authority that deprived Plaintiff of due process. *Id.* Plaintiff contends that “[a]nyone who

1 might have filed [the] notice did it illegally without Plaintiffs (sic) consent, and the order closing
2 the case was invalid or illegal. (Doc. 14.)

3 Plaintiff does not state a rule of procedure, but liberally construing the complaint, the
4 Court will treat the motion as a Rule 60 motion for the relief from a judgment or order. Fed. R.
5 Civ. P. 60(b). Rule 60(b) provides in pertinent part:

6 On motion and just terms, the court may relieve a party or its legal
7 representative from a final judgment, order, or proceeding for the following
8 reasons:

- 9 (1) mistake, inadvertence, surprise, or excusable neglect;
- 10 (2) newly discovered evidence that, with reasonable diligence, could not
11 have been discovered in time to move for a new trial under Rule 59(b);
- 12 (3) fraud (whether previously called intrinsic or extrinsic),
13 misrepresentation, or misconduct by an opposing party;
- 14 (4) the judgment is void;
- 15 (5) the judgment has been satisfied, released, or discharged; it is based on
16 an earlier judgment that has been reversed or vacated; or applying it prospectively
17 is no longer equitable; or
- 18 (6) any other reason that justifies relief.

19 Fed. R. Civ. P. 60(b)(1)–(6). A motion under subsections (1), (2), and (3) must be filed within one
20 year; motions made under the other subsections must be filed “within a reasonable time.” Fed. R.
21 Civ. P. 60(c)(1).

22 Under the catch-all provision of Rule 60(b)(6), the court has the power to reopen a
23 judgment even after one year. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S.
24 380, 393 (1993). Subsections (1) through (3) are mutually exclusive of subsection (6), and thus a
25 party asserting “excusable neglect” may not seek relief more than a year after the judgment by
26 relying on subsection (6). *Id.* (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847,
27 863, n.11 (1988)).

28 In this case, Plaintiff argues that the Court’s order of was “falsely and[/]or illegally”
issued. (Doc. 14). Plaintiff contends that he did not file a notice of voluntary dismissal and that
any notice filed on his behalf was filed illegally and without his consent. He filed his motion to
re-open over two years after the order directing the Clerk of Court to close this case. (*See* Doc.
13, 14.) Plaintiff offers no reason for the lengthy delay. Plaintiff has also failed to identify which

1 subsection of Rule 60(b) or any other rule he relies on for relief from the order. Accordingly, the
2 Court **DENIES** Plaintiff's motion to re-open this case. (Doc. 14.)

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4 IT IS SO ORDERED.

5 Dated: July 12, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE

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