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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

A.C. ROBINSON,

Plaintiff,

No. CIV S-05-0342 JAM DAD P

vs.

D.L. RUNNELS,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s request to vacate the judgment in this case and plaintiff’s motion for reconsideration.

BACKGROUND

On August 28, 2008, the assigned magistrate judge issued findings and recommendations, recommending that defendant’s motion to dismiss for failure to exhaust administrative remedies be granted. The parties were given fifteen days to file and serve any objections to the findings and recommendations. On September 19, 2008, plaintiff timely filed objections to the findings and recommendations.

On October 2, 2008, the court reviewed the file and found the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. The

1 court adopted the findings and recommendations in full, granted defendant's motion to dismiss,
2 and closed this action. On October 16, 2008, plaintiff filed his objections to the findings and
3 recommendations again and noted that the order adopting the findings and recommendations had
4 erroneously stated that neither party had filed objections. Plaintiff asked the court to vacate its
5 judgment and to consider his objections to the findings and recommendations. Subsequently, on
6 May 11, 2009, plaintiff filed a motion for reconsideration asking for similar relief. The court has
7 construed plaintiff's October 16, 2008 objections and his motion for reconsideration as motions
8 brought pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

9 DISCUSSION

10 Rule 60(b) provides:

11 On motion and upon such terms as are just, the court may relieve a
12 party . . . from a final judgment, order, or proceeding for the
13 following reasons: (1) mistake, inadvertence, surprise, or
14 excusable neglect; (2) newly discovered evidence which by due
15 diligence could not have been discovered in time to move for a
16 new trial under Rule 59(b); (3) fraud (whether heretofore
17 denominated intrinsic or extrinsic), misrepresentation, or other
18 misconduct of an adverse party; (4) the judgment is void; (5) the
19 judgment has been satisfied . . .; or (6) any other reason justifying
20 relief from the operation of the judgment.

21 Fed. R. Civ. P. 60(b).

22 “[Rule 60(b)] is remedial in nature and thus must be liberally applied.” Cnty.
23 Dental Servs. v. Tani, 282 F.3d 1164, 1169 (9th Cir. 2002) (en banc). In this case, the court
24 received plaintiff's timely-filed objections but mistakenly or inadvertently failed to consider
25 them. Accordingly, under the circumstances of this case, the court finds that plaintiff is entitled
26 to relief under Rule 60(b)(1), and the court will direct the Clerk of the Court to re-open this case
and enter a new judgment in accordance with this order. See, e.g., Kingvision Pay-Per-View v.
Lake Alice Bar, 168 F.3d 347, 350 (9th Cir. 1999) (Rule 60(b)(1) includes mistakes by the
court).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
2 304, this court has conducted a de novo review of this case. Having carefully reviewed the
3 entire file, including plaintiff's objections, the court finds the findings and recommendations to
4 be supported by the record and by proper analysis.

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's October 16, 2008 and May 11, 2009 motions to vacate the judgment
8 in this case (Doc. Nos. 56 & 60) are granted;
- 9 2. The Clerk of the Court is directed to re-open this case and enter a new
10 judgment in accordance with this order;
- 11 3. The findings and recommendations filed August 28, 2008, are adopted in full;
- 12 4. Defendant's January 11, 2008 motion to dismiss (Doc No. 45) is granted; and
- 13 5. This action is dismissed without prejudice for failure to exhaust administrative
14 remedies.

15 DATED: October 16, 2009.

16
17 /s/ John A. Mendez
18 UNITED STATES DISTRICT JUDGE

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