

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

PAMELA DRAWSAND,

Plaintiff,

No. C 13-00410 WHA

v.

CHRISTOPHER CUTONELLI, CHRISTOPHER
 CHEN, BEVERLY DANIELS-GREENBERG,
 ALAMEDA COUNTY BOARD OF
 SUPERVISORS, ALAMEDA COUNTY
 DISTRICT ATTORNEY'S OFFICE, ALAMEDA
 COUNTY SHERIFFS' DEPARTMENT, and
 DOES 1-7,

**ORDER DENYING
 MOTION TO SET
 ASIDE JUDGMENT**

Defendants,

INTRODUCTION

In this 42 U.S.C. 1983 action, plaintiff files a motion to set aside the judgment entered
 against her, following dismissal of the action for failure to prosecute. For the reasons stated
 below, her motion is **DENIED**.

STATEMENT

Pro se plaintiff Pamela Drawsand filed a complaint against several Alameda County
 entities and officials alleging various civil rights violations. She concurrently filed an
 application to proceed in forma pauperis. Upon review of the application, an order issued
 on February 20, 2013, dismissing her complaint for failure to state a claim and denying her
 application as moot. That order was mailed to plaintiff on February 21, and allowed her to seek

1 leave to file an amended complaint by March 13. Plaintiff failed to do so. Accordingly, by order
2 dated March 25, plaintiff’s action was dismissed for failure to prosecute, and judgment was
3 entered against plaintiff. On April 17, plaintiff filed the instant motion to set aside the judgment.
4 She simultaneously filed an appeal with our court of appeals. Her appeal was held in abeyance,
5 pending resolution of the instant motion.

6 **ANALYSIS**

7 FRCP 60 allows courts to set aside judgment under six grounds, just two of which
8 may be relevant here. “On motion and just terms, the court may relieve a party or its legal
9 representative from a final judgment, order, or proceeding for the following reasons:
10 (1) mistake, inadvertence, surprise, or excusable neglect . . . [or] (6) any other reason that
11 justifies relief.” FRCP 60(b)(1), (b)(6). The Supreme Court, however, has noted that when
12 parties are “faultless,” and circumstances like “incarceration, ill health, and other factors beyond
13 . . . reasonable control” prevent them from making timely filings, they cannot seek relief under
14 FRCP 60(b)(1), and must seek relief under FRCP 60(b)(6). *See Pioneer Inv. Servs. Co. v.*
15 *Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993). “To justify relief under subsection
16 (6), a party must show ‘extraordinary circumstances’ suggesting that the party is faultless
17 in the delay.” *Ibid.* (citations omitted). Furthermore, our court of appeals has noted that
18 “Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice.”
19 *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993).

20 According to plaintiff, she was unable to meet the March 13 deadline to seek leave to
21 amend because she was sick and a victim of computer hacking. If true, this places her under
22 FRCP 60(b)(6), as circumstances beyond her control prevented her from meeting the deadline,
23 and not her own negligence. *See Pioneer Inv. Servs. Co.*, 507 U.S. at 393. This order, however,
24 cannot find that she has shown the extraordinary circumstances warranting relief under
25 FRCP 60(b)(6).

26 Plaintiff claims she contracted a bacterial infection from a restaurant the same day
27 an order dismissed her complaint and application to proceed in forma pauperis (April 20).
28 She appends a copy of a discharge note for an emergency room visit nineteen days later.

1 According to the note, she had a “possible infection” and was discharged the same day
2 she visited the hospital (March 9). The note makes no mention of what the cause for the
3 possible infection could have been, and does not impose any “activity restrictions” upon her.
4 Therefore, this order finds that her illness does not constitute an extraordinary circumstance.

5 Plaintiff also claims she filed a police report regarding the alleged computer hacking on
6 the same day she visited the emergency room (March 9). Her motion states that she appended
7 the police report, but she did not. Nor does plaintiff provide any specific details or sworn
8 statement setting forth when the hacking occurred and what effect it had on her ability to
9 comply with the order dated April 20. This order then, cannot find when this alleged hacking
10 occurred, or that she actually filed a police report the same day she visited the emergency room.
11 Therefore, the alleged hacking cannot comprise an extraordinary circumstance either.

12 **CONCLUSION**

13 Plaintiff’s motion to set aside judgment is **DENIED**. This order reminds plaintiff that
14 this Court waited twelve days after the deadline to dismiss her complaint for failure to prosecute
15 (March 25). Furthermore, plaintiff’s original complaint failed to state a claim and her instant
16 motion makes no effort to explain how or why any amended complaint could cure the defects.
17 In her original complaint, plaintiff essentially alleged that an Alameda County deputy sheriff
18 demanded plaintiff “stay” and also asked to see the latter’s driver’s license. As this court
19 observed in the order dismissing the complaint, “[n]ot even the most generous reading of the
20 complaint reveals a claim on which relief may be granted” (Dkt. No. 9). Finally, this order also
21 reminds plaintiff that pursuant to an order from our court of appeals dated April 23, plaintiff
22 shall — within five days of this ruling — “notify [our court of appeals] in writing of the ruling
23 and shall advise whether [she] intends to prosecute [the] appeal.”

24
25 **IT IS SO ORDERED.**

26
27 Dated: May 2, 2013.

28 

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE