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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

TANIS JOCELYN WATT,

No. C 05-05234 SBA

Plaintiff,

**ORDER**

v.

[Docket No. 38]

DAVID LEE ROTH, *et al.*,

Defendants.

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Before the Court is plaintiff's Motion to Vacate Judgment according to FRCP 60(a) (b)(1, 2, 6) (the "Motion") [Document No. 38]. On July 10, 2006, the Court dismissed this matter as frivolous. Docket No. 12. It has a lengthy procedural history which the Court will not repeat here. On September 5, 2008, the Court ordered plaintiff to file a declaration as to (1) why she delayed for over a year in filing her motions to reopen; and (2) why she was unaware of the Court's dismissal of her matter. Docket No. 36. Plaintiff was warned if she failed to file the declaration or provide either explanation by September 19, 2008, the Court would deny her pending motions to set aside its prior dismissal. *Id.* Plaintiff failed to file a response, and on September 24, 2008, the Court denied her pending motions to vacate. Docket No. 37.

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On October 3, 2008, plaintiff filed the Motion before the Court. In it, plaintiff raises three issues. First, she claims she did not receive an e-mail or a copy of an e-mailed order dated September 5, 2008. Mot. at 1. The Court notes the docket shows the Clerk of the Court mailed both the September 5 and September 24, 2008 orders to plaintiff's Palo Alto address, which she provided to the Court as her correct address, on September 7, 2007. *See* Docket No. 20. There is no indication these items were undelivered by the Postal Service. Further, plaintiff, who is in propria persona, does not receive notices via e-mail, and was thus properly noticed by the Clerk via the United States Postal Service.

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Second, plaintiff declares that the Clerk of the Court incorrectly served her at the wrong address, from March through July 2008. Mot. at 1-2 & Exs. 108-12, 133. In its September 5, 2008


1 Order the Court explained in detail that the Clerk of Court directed notices pursuant to plaintiff's  
2 instructions. Docket No. 36 at 1-2. Any mis-directed mail was thus solely attributable to plaintiff's  
3 failure to update the Court with her current addresses.

4 Finally, plaintiff declares she changed her Palo Alto mailing address, effective September 8,  
5 2008. Mot. at 2 & Ex. 133. The Court notes, even if true, (1) the Clerk sent her the Court's first  
6 order on September 5, 2008; (2) if plaintiff completed the proper documents, the Postal Service  
7 would forward first-class mail to her new address; and (3) plaintiff did not notify the Clerk of her  
8 new address until October 3, 2008, via the Motion before the Court.<sup>1</sup>

9 In conclusion, the Court finds that plaintiff's assertions do not indicate that she failed to  
10 receive timely notice of the Court's September 5, 2008 Order. Further, the Court finds the assertions  
11 made in response to the Court's September 5, 2008 Order, are untimely. Even if deemed timely,  
12 however, they do not explain why she delayed for over a year to prosecute her matter or seek to  
13 vacate its dismissal. Accordingly, the Court DENIES plaintiff's Motion to Vacate Judgment  
14 according to FRCP 60(a) (b)(1, 2, 6) [Document No. 38].

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16 IT IS SO ORDERED.

17  
18 October 21, 2008

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20 Saundra Brown Armstrong  
21 United States District Judge

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28 <sup>1</sup> The remainder of the Motion is an attempt to argue the merits of plaintiff's complaint, which  
issue is not relevant to why she delayed prosecuting her matter. See Mot. at 3-5.

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

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6 WATT et al,

Case Number: CV05-05234 SBA

7 Plaintiff,

**CERTIFICATE OF SERVICE**

8 v.

9 ROTH et al,

10 Defendant.  
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12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
Northern District of California.

13 That on October 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

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18 Tanis Jocelyn Watt  
C/O 337-A6 UPS  
19 580 Crespi Drive  
Pacifica, CA 94044

20 Dated: October 22, 2008

21 Richard W. Wiekling, Clerk  
By: LISA R CLARK, Deputy Clerk

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