

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANTON MCCLENDON,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. 17-cv-00408-PJH

**ORDER TO SHOW CAUSE WHY THE
COURT SHOULD SET ASIDE
JUDGMENT**

Re: Dkt. No. 9

On January 31, 2017, the court ordered pro se plaintiff Stanton McClendon to re-file his application to proceed in forma pauperis (“IFP application”) by February 21. Dkt. 4. The deadline passed without action from plaintiff. On February 27, the court extended the deadline to March 17, and warned the plaintiff that the case would be dismissed if he did not respond. Dkt. 5. Again, plaintiff failed to respond by the deadline. As a result, on March 24, the court dismissed this case for failure to prosecute and entered judgment against plaintiff. Dkt. 7, 8.

However, a week after the dismissal, plaintiff filed a new IFP application, which was signed and dated on March 31, 2017 (two weeks after the extended deadline). Dkt. 9. Although the court is mindful that plaintiff is proceeding pro se, this cannot excuse repeated failure to comply with the court’s orders. Plaintiff is admonished that he must comply with court orders and deadlines if this case is to continue.

Before the court can consider plaintiff’s re-filed IFP application, plaintiff must explain why he did not comply with the court’s earlier deadlines. The court has already entered judgment in this case. Under Federal Rule of Civil Procedure 60(b), a judgment can be set aside only in certain circumstances. Such circumstances include “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1). To determine

1 whether there has been “excusable neglect” by a party, the court examines “(1) the
2 danger of prejudice to the opposing party; (2) the length of the delay and its potential
3 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant
4 acted in good faith.” Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1261 (9th Cir.
5 2010). The court cannot determine whether plaintiff’s neglect was excusable until he
6 explains why he failed to meet the deadlines.

7 The court also has equitable discretion to provide relief from a judgment for “any
8 other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6); see generally Lal v. California,
9 610 F.3d 518 (9th Cir. 2010). However, relief from judgment under Rule 60(b)(6) is to be
10 “used sparingly as an equitable remedy to prevent manifest injustice . . . where
11 extraordinary circumstances prevented a party from taking timely action to prevent or
12 correct an erroneous judgment.” United States v. Alpine Land & Reservoir Co., 984 F.2d
13 1047, 1049 (9th Cir. 1993). The party seeking relief under Rule 60(b)(6) bears the
14 burden of demonstrating “both injury and circumstances beyond his control that
15 prevented him from proceeding with the prosecution . . . of the action in a proper fashion.”
16 Community Dental Servs. v. Tani, 282 F.3d 1164, 1168 (9th Cir. 2002).

17 Plaintiff shall provide the court with an explanation of why he failed to meet the
18 earlier deadline by **April 26, 2017**. The explanation must include the case number and
19 be submitted to the Clerk’s Office in San Francisco or Oakland, or mailed to: Clerk’s
20 Office, United States District Court, 1301 Clay Street, Suite 400 South, Oakland, CA
21 94612. Resources and information for pro se litigants may be found at
22 <https://www.cand.uscourts.gov/pro-se>.

23 **IT IS SO ORDERED.**

24 Dated: April 5, 2017



25
26
27 PHYLLIS J. HAMILTON
United States District Judge