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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERRIS J. LEE,
Plaintiff,
v.
E. KNOX, et al.,
Defendants.

Case No. [18-cv-03689-HSG](#)

**ORDER DENYING REQUEST TO
VACATE JUDGMENT**

Re: Dkt. No. 67

Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983. Dkt. No. 1. On March 30, 2022, the Court dismissed this action without prejudice for failure to prosecute and failure to respond to the Court's order, pursuant to Fed. R. Civ. P. 41(b); and entered judgment in favor of Defendants. Dkt. Nos. 65, 66. Now pending before the Court is Plaintiff's motion to vacate the dismissal and entry of judgment. Dkt. No. 67. For the reasons set forth below, the Court DENIES without prejudice the request to vacate the dismissal and entry of judgment. Dkt. No. 67.

DISCUSSION

I. Procedural History

Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983 alleging that, on April 12, 2015, Salinas Valley State Prison ("SVSP") officers Knox, Curry III, Medina, Streeper, Gasca, and McGuckin physically attacked him, in violation of the Eighth Amendment's prohibition against the use of excessive force. Dkt. Nos. 1, 7, 10.

On January 3, 2022, Defendants notified the Court that, since March 19, 2021, Plaintiff had failed to respond to Defendants' discovery requests and has not sought an extension of time to respond. Dkt. No. 61. On January 5, 2022, Defendants filed a motion for summary judgment, arguing that the Court should deem admitted Defendants' discovery requests because Plaintiff had

1 failed to respond to these requests and that the admissions would entitle Defendants to summary
2 judgment. Dkt. No. 62. That same day, Defendants also filed a motion to compel Plaintiff to
3 respond the discovery requests. Dkt. No. 63. On March 5, 2022, the Court ordered Plaintiff to
4 show cause, by March 25, 2022, why the Court should not either (1) grant Defendants’ summary
5 judgment motion, or (2) dismiss this action for failure to prosecute pursuant to Fed. R. Civ. P.
6 41(b). Dkt. No. 64. Plaintiff did not respond to the Court’s Order to Show Cause by the specified
7 deadline. On March 30, 2022, the Court dismissed this action without prejudice for failure to
8 prosecute and failure to respond to the Court’s order, pursuant to Fed. R. Civ. P. 41(b); and
9 entered judgment in favor of Defendants. Dkt. Nos. 65, 66.

10 **II. Motion to Vacate**

11 Plaintiff has filed a motion to vacate the dismissal and judgment. Dkt. No. 67. The
12 entirety of Plaintiff’s argument is as follows:

13 I Perris J. Lee, (Plaintiff) move forward to appeal judgment of “Dismissal” in favor of
14 defendants, for “Erroneous” that doesn’t apply under the United States of law. Therefore
15 judgment should be reversed in favor of Plaintiff allow Courts to correct error. (see Ex.
16 “A-D”) mailbox rule – Adams v. Lindsell (1818), Palo Alto v. BBPTC Co. 11 Cal. 3d 494
17 (1974) as “All” documents timely filed.

18 Dkt. No. 67 at 1. Plaintiff attaches the following exhibits to his motion: a March 25, 2022 letter
19 from the Clerk of the Court returning his discovery material; a copy of Cal. Civ. Code § 1583
20 which defines consent in the context of contracts; an excerpt of a treatise explaining the mailbox
21 rule as it applies to contracts; and a copy of *Palo Alto Town & Country Village*, 11 Cal. 3d 494
22 (Cal. 1974). It is unclear what is the basis of Plaintiff’s request to vacate the dismissal and
23 judgment. The basis of the dismissal was Plaintiff’s failure to prosecute the case by responding to
24 Defendants’ discovery requests and his failure to respond to the Court’s March 5, 2022 Order to
25 Show Cause. Plaintiff appears to be arguing that he timely filed a response with the Court that
26 was incorrectly returned to him. However, Plaintiff has not provided a copy of what he sent to the
27 Court so the Court cannot assess whether the documents sent to the Court answered the March 5,
28 2022 Order to Show Cause and whether these documents would have successfully opposed

1 Defendants' summary judgment motion or otherwise showed an intent to prosecute.¹ Plaintiff's
2 remaining exhibits are inapplicable in this context. This is not a contract case, and the Court is not
3 governed by state law regarding contracts. Plaintiff's request to vacate the dismissal and judgment
4 is DENIED. The denial is without prejudice filing a post-judgment motion pursuant to Fed. R.
5 Civ. P. 60(b) seeking relief from a final judgment or order. Any motion for post-judgment relief
6 must specify how Plaintiff has satisfied the requirements for post-judgment relief.


7 **CONCLUSION**

8 For the reasons set forth above, the Court DENIES without prejudice the request to vacate
9 the dismissal and entry of judgment. Dkt. No. 67.

10 This order terminates Dkt. No. 67. This case remains closed.

11 **IT IS SO ORDERED.**

12 Dated: 4/12/2022

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14 HAYWOOD S. GILLIAM, JR.
15 United States District Judge
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28 ¹ If the documents that Plaintiff attempted to file with the Court were Plaintiff's discovery responses, they should be served on opposing party and not on the Court. Discovery is exchanged between the parties and not filed with the Court. Fed. R. Civ. P. 5(d)(1).