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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 ALEX ISTOK ACUNA,
12 CDCR #P-85538

13 Plaintiff,

14 vs.

15 MARCUS POLLARD, Warden, R.
16 VARGAS, Deputy Warden, M. GLENN, B.
17 HENDRICKS, HOWARD MOSLEY, S.
18 GATES, STEADMAN,

19 Defendants.

Case Nos.: 21cv1910-LL-AGS;
22cv319-LL-AHG

**ORDER: (1) SETTING ASIDE
JUDGMENT IN 21cv1910-LL-AGS
(2) DIRECTING CLERK TO FILE
COMPLAINT IN 22cv319-LL-AHG
[ECF No. 1] AS AMENDED
COMPLAINT IN 21cv1910-LL-AGS
(3) ADMINISTRATIVELY
CLOSING 22cv0319-LL-AHG AS
OPENED IN ERROR**

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24 **I. Introduction and Background**

25 On October 29, 2021, Alex Istok Acuna (“Plaintiff” or “Acuna”), an inmate
26 currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”), located in San
27 Diego, California and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C.
28

1 § 1983. The case was assigned case number 21cv1910-LL-AGS.¹ Plaintiff also filed a
2 Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). On January
3 20, 2022, the Court granted Plaintiff’s motion to proceed IFP and dismissed the complaint
4 without prejudice for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and
5 1915A(b). *See* 21cv1910-LL-AGS, ECF No. 7. The Court gave Plaintiff leave to file an
6 amended complaint by March 6, 2022. *See id.* at 10–11. The Court notified Plaintiff that
7 failure to file an amended complaint by that date would result in his civil action being
8 dismissed for failure to state a claim and failure to prosecute. *Id.* On April 11, 2022, the
9 Court dismissed the action in its entirety.

10 In the meantime, the Clerk of Court received a civil complaint from Plaintiff on
11 March 7, 2022. Because the complaint did not include a case number or reference to
12 Plaintiff’s pending case in 21cv1019-LL-AGS, it was opened as a new case and given the
13 case number 22-cv-319-BAS-AHG. Upon an initial review of the new complaint, however,
14 the Court discovered it should have been filed as an amended complaint in case number
15 21cv1910-LL-AGS. On April 28, 2022, the Court issued a low-number order, transferring
16 22cv319-BAS-AHG to the undersigned judge. *See* 22-cv-0319-LL-AHG, ECF No. 3. On
17 April 29, 2022, the Court received a letter from Plaintiff confirming that he intended that
18 22cv319-LL-AHG be filed as an amended complaint in 20cv1910-LL-AGS. *See* 22cv319-
19 LL-AHG, ECF No. 5.

20 **II. Discussion and Order**

21 The Court construes Plaintiff’s April 29, 2022 letter as a Motion to Set Aside
22 Judgment in case number 21cv191-LL-AGS. Under Federal Rule of Civil Procedure
23 60(b)(1), a Court may set aside judgment because of mistake, either Plaintiff’s or the
24 Clerk’s Office, or excusable neglect. Fed. R. Civ. P. 60(b)(1). Here, Plaintiff’s amended
25 complaint was inadvertently docketed as a new civil action by the Clerk of Court. To
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28 ¹ The case was originally filed in the United States District Court for the Northern District of California
and was transferred to this Court on November 8, 2021. ECF No. 3.

1 correct this administrative error, the Court grants Plaintiff's request that judgment be set
2 aside in 21cv1910-LL-AGS. The Court further directs the Clerk of Court to file the
3 document previously filed as a new complaint in 22cv319-LL-AHG [ECF No. 1] as an
4 amended complaint in 21cv1910-LL-AGS. The Court further orders the Clerk to
5 administratively close 22cv319-LL-AHG as opened in error. Plaintiff's civil case will
6 proceed under 21cv1910-LL-AGS and the Court will screen the amended complaint in due
7 course. Finally, the Court directs the Clerk of Court to file a copy of this Order in both
8 Civil Case No. 21cv1910-LL-AGS and Civil Case No. 22cv319-LL-AHG.

9 **IT IS SO ORDERED.**

10 Dated: May 6, 2022



Honorable Linda Lopez
United States District Judge