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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

STEPHANIE GORDON,

Plaintiff,

vs.

JEFF HUGHES, *et al.*,

Defendants.

CASE NO.: 2:13-cv-1072-JAD-GWF

**ORDER**

On January 15, 2014, the court dismissed plaintiff's claims without prejudice for failure to state a claim upon which relief can be granted. Doc. 3. Plaintiff was given until February 13, 2014, to file an amended complaint that cures the deficiencies noted in the order; she filed none. On July 11, 2014, I dismissed the case, and judgment was entered in favor of the defendants. *Id.*

Plaintiff now moves to set aside the judgment. Doc. 7. She represents that she never received the order directing amendment and wants an opportunity to continue to litigate this case. *Id.* I liberally construe this as a motion for relief from the judgment under Rule 60(b) and grant it.

Rule 60(b) permits a court to relieve a party from a final judgment, order, or proceeding if the movant can demonstrate: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000). The rule is "remedial in nature and . . . must be liberally applied." *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). "Determining whether neglect is

1 excusable requires a court to balance ‘the danger or prejudice to the [other party], the length of  
2 the delay and its potential impact on judicial proceedings, the reason for the delay,. . . and  
3 whether the movant acted in good faith.’” *Uche-Uwakwe v. Shinseki*, 349 F. App’x 136, 138 (9th  
4 Cir. 2009) (quoting *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)).

5 Having considered each of these factors, I find excusable neglect that justifies setting  
6 aside the judgment. Although plaintiff waited seven months from the order directing amendment  
7 to file the instant motion, she explains that she never received that order or the court’s ultimate  
8 dismissal order. Doc. 7. She claims she learned of the disposition from an attorney on July 30,  
9 2014; she filed her motion for relief nine days later. *Id.* The motion was made “within a  
10 reasonable time” as Rule 60(c) requires and, in any event, far less than a year after the entry of  
11 judgment. Fed. R. Civ. P. 60(b) & (c). It appears that the length of the delay was not excessive in  
12 light of the circumstances, and, taking plaintiff at her word, I see nothing to cause me to conclude  
13 that she did not act in good faith. I also do not see any danger or true prejudice to the defendants  
14 if the judgment is unwound and I renew plaintiff’s opportunity to file an amended complaint if  
15 she can cure the deficiencies identified in the dismissal order. When I overlay these  
16 considerations with the policy favoring deciding cases on their merits, I conclude that the motion  
17 should be granted.

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion to set aside the judgment  
19 [#7] is **GRANTED**;

20 The Clerk of Court is instructed to **set aside the judgment in favor of defendants [#6]**  
21 **and the order dismissing the case [#5]**;

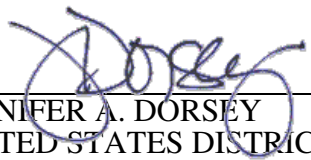
22 IT IS FURTHER ORDERED that **plaintiff has until October 22, 2014, to file an**  
23 **amended complaint** that cures the deficiencies identified in the dismissal order [#3].<sup>1</sup> Plaintiff is  
24 cautioned that her failure to file a timely and proper amended complaint in full compliance with  
25 the rules of this court and the instructions in the order [#3] may result in the dismissal of this case  
26 with prejudice and without additional prior notice.

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28 <sup>1</sup> Plaintiff has a copy of this order; she attached it to the instant motion. Doc. 7 at 5.

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The Clerk of Court is directed to mail plaintiff a copy of this order at plaintiff's record address.

Dated: October 2, 2014.

  
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JENNIFER A. DORSEY  
UNITED STATES DISTRICT JUDGE