UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LIONELL G. MILLER,	:	
	:	Civil Action No. 12-4470 (MAS)
Plaintiff,	:	
	:	
v.	:	MEMORANDUM ORDER
	:	
GARY M. LANIGAN, et al.,	:	
	:	
Defendants.	:	

THIS MATTER comes before the Court by motion filed of Plaintiff, Lionell G. Miller, for relief from judgment or order pursuant to Federal Rule of Civil Procedure 60(b). (ECF No. 6.) This motion is being considered on the papers pursuant to Rule 78 of the Federal Rules of Civil Procedure, and it appearing that:

1. On July 18, 2012, Plaintiff submitted a 91-page compilation of documents with an application to proceed *in forma pauperis* ("IFP"). (ECF No. 1.) In an Opinion and Order issued on April 23, 2013, this Court granted Plaintiff's IFP application, but dismissed with prejudice Plaintiff's claims based on failure to respond to his grievances or letters as impermissibly based on a theory of *respondeat superior*; and dismissed without prejudice Plaintiff's remaining claims as conclusory and lacking in factual allegations sufficient to state a plausible claim for relief under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and because the 91-page submission did not meet the pleading requirements of Fed.R.Civ.P. 8. (ECF Nos. 3, 4.) The Court allowed Plaintiff the opportunity to file an amended Complaint to cure the deficiencies as set forth in its Opinion. (*Id.*)

2. On June 6, 2013, Plaintiff filed this motion for relief from the Court's April 23, 2013 Order dismissing his Complaint, pursuant to Fed.R.Civ.P. 60(b)(1). (ECF No. 6.) Plaintiff appears to suggest that he had filed a sufficiently-pled Complaint in July 2012. Namely, Plaintiff alleges that, on June 7, 2012, he sent a 33-page Complaint with a 73-page exhibit list to Theresa Miller to forward same for filing with the United States District Court. Ms. Miller attests by affidavit, that she did mail said documents for filing with the United States District Court on July 15, 2012. A copy of the 33-page Complaint is attached to Plaintiff's motion. Plaintiff makes no further argument in support of his motion for relief from the April 23, 2013 Order.

3. On June 13, 2013, Plaintiff submitted an Amended Complaint in this action. (ECF No. 7.)

4. Rule 60(b)(1) provides that the court may relieve a party from a final order if "mistake, inadvertence, surprise, or excusable neglect" is shown. Fed.R.Civ.P. 60(b)(1). Here, it would appear that Plaintiff contends that this Court's dismissal of Plaintiff's action on April 23, 2013 is based on mistake because he had sent another complaint to be filed in this action.

5. The docket in this action shows no other pleading or submission filed in this case other than the 91-page submission reviewed by this Court and found to be deficient and subject to dismissal as stated in the April 23, 2013 Opinion. Accordingly, the Court denies Plaintiff's motion for relief from judgment on this ground.

6. Nevertheless, Plaintiff now has submitted an Amended Complaint on June 13, 2013, which purports to cure the deficiencies of his earlier submission as set forth in this Court's April 23, 2013 Opinion. Thus, the Court will direct the Clerk of the Court to re-open this case for consideration and screening of Plaintiff's Amended Complaint pursuant to 28 U.S.C. § 1915 (e)(2).

THEREFORE, BASED ON THE FOREGOING,

IT IS ON THIS 30th day of January, 2014

ORDERED that Plaintiff's motion for relief from judgment or order pursuant to Fed.R.Civ.P. 60(b)(1), (ECF No. 6), is hereby DENIED; and it is further

ORDERED that the Clerk of the Court shall re-open this matter for consideration and screening of Plaintiff's Amended Complaint (ECF No. 7); and it is finally

ORDERED that the Clerk of the Court is directed to serve a copy of this Order upon Plaintiff by regular mail.

MICHAEL A. SHIPP
United States District Judge