

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 ANTHONY PAUL MAXWELL,

12 Plaintiff,

13 v.

14 RYON MITCHELL, et al.,

15 Defendants.
16

No. 2:15-CV-0015-JAM-DMC-P

ORDER

17 Plaintiff, who is proceeding pro se, brought this civil rights action pursuant to 42
18 U.S.C. § 1983. Final judgment was entered on April 27, 2021, and this action is closed. Pending
19 before the Court is Plaintiff's motion, ECF No. 74, for relief from judgment pursuant to Federal
20 Rule of Civil Procedure 60(b)(1).

21 The Court may grant reconsideration under Federal Rules of Civil Procedure
22 59(e) and 60. Under Rule 60(b), the Court may grant reconsideration of a final judgment and
23 any order based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
24 discovered evidence which, with reasonable diligence, could not have been discovered within
25 ten days of entry of judgment; and (3) fraud, misrepresentation, or misconduct of an opposing
26 party. See Fed. R. Civ. P. 60(b)(1)-(3). A motion for reconsideration on any of these grounds
27 must be brought within one year of entry of judgment or the order being challenged. See Fed.
28 R. Civ. P. 60(c)(1).

1 Plaintiff argues relief is warranted due to excusable neglect. See ECF No. 74,
2 pg. 1. According to Plaintiff, he never received the Court's March 22, 2021, findings and
3 recommendations, which were adopted in full on April 27, 2021. See id. at 2. Plaintiff states:
4 "Mail delivery to Plaintiff's address has been compromised, either through theft or slow
5 delivery." Id. The Court finds Plaintiff has established excusable neglect and will provide
6 Plaintiff an opportunity to file objections.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion, ECF No. 74, for relief from judgment is granted;
- 9 2. The Court's order, ECF No. 72, adopting the March 22, 2021, findings
10 and recommendations and the final judgment, ECF No. 73, issued on April 27, 2021, are
11 vacated;
- 12 3. The Clerk of the Court is directed to re-open this action;
- 13 4. The Clerk of the Court is further directed to re-serve a copy of the
14 Court's March 22, 2021, findings and recommendations on Plaintiff with a copy of this order;
15 and
- 16 5. Plaintiff may file objections to the findings and recommendations
17 within 20 days of the date of this order.

18
19
20 Dated: September 1, 2021

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE