

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Diviacchi v. Stallings

No. 24-cv-07827-EMC (N.D. Cal. May 19, 2025) · No. 24-cv-07827-EMC · Decided May 19, 2025

SUMMARY

The United States District Court for the Northern District of California denies without prejudice Plaintiff Valeriano Diviacchi's motion under Federal Rule of Civil Procedure 60(b)(5) and (6) to vacate the judgment and related orders. The court finds the motion premature because an amendment to California State Bar Rule 4.41 had not yet become effective, although it directs the parties to file a joint stipulation and proposed order after the amendment's effective date. The court also grants Plaintiff an extension of time to appeal based on the case's unusual circumstances.

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5 6
VALERIANO DIVIACCHI, Case No. 24-cv-07827-EMC 7 Plaintiff, ORDER DENYING
PLAINTIFF'S 8 v. MOTION TO VACATE 9 BRANDON STALLINGS, et al., Docket Nos. 37,
39 10 Defendants. 11 12 13 14 Previously, the Court entered a final judgment against Plaintiff and
in favor of Defendants. 15 See Docket No. 29 (order).

Plaintiff subsequently filed a Rule 59(e) motion to alter or amend the 16 judgment which the
Court denied. See Docket No. 36 (order). Plaintiff intends to appeal the 17 Court's decisions but,
in the meantime, has now filed a motion to vacate the judgment and/or 18 related orders pursuant
to Rule 60(b)(5) and (6). 19 Under these provisions, a court may relieve a party from a final
judgment or order if 20 "applying it prospectively is no longer equitable" or there is "any other
reason that justifies relief." 21 Fed.

R. Civ. P. 60(b)(5), (6). "Rule 60(b)(5) and (6) allow for vacatur if the equities so demand." 22
Visto Corp. v. Sproqit Techs., Inc., No. C-04-0651 EMC, 2006 U.S. Dist. LEXIS 99486, at *11 23
(N.D. Cal. Dec. 19, 2006); see also Am. Games, Inc. v. Trade Prods., 142 F.3d 1164, 1168 (9th 24
Cir. 1998). Plaintiff argues that, in the case at bar, the equities weigh in favor of a vacatur 25
because, after the final judgment was entered, the California Supreme Court approved the State 26
Bar's proposed amendment to State Bar Rule 4.41.

Thus, once the amendment becomes effective, 27 the version of the rule challenged by Plaintiff
will no longer exist. "Where [a] case is mooted by 1 Visto, 2006 U.S. Dist. LEXIS 99486, at *11-
12, because, without vacatur, the losing party "lose[s] 2 the right to have the adverse... decision

reviewed by an appellate court.” Am. Games, 142 F.3d 3 at 1170. 4 In response, Defendants indicate that they do not agree with Plaintiff’s reasoning as to why 5 vacatur is warranted.

See Opp’n, Ex. 2 (email). However, they acknowledge that, once the 6 amendment of State Bar Rule 4.41 becomes effective, any dispute between the parties will be 7 moot – i.e., because Plaintiff will no longer be barred from submitting a moral character 8 application. See Bd. of Trs. of the Glazing Health & Welfare Trust v. Chambers, 941 F.3d 1195, 9 1197 (9th Cir.

2019) (stating that, when “the repeal, amendment, or expiration of legislation 10 renders a lawsuit challenging the legislation moot[,]... such a legislative act creates a 11 presumption that the action is moot, unless there is a reasonable expectation that the legislative 12 body is likely to enact the same or substantially similar legislation in the future”).

Defendants 13 therefore state that, in principle, they do not oppose the motion to vacate. However, they maintain 14 that, at present, Plaintiff’s motion is premature because, under either Plaintiff’s analysis or their 15 own, the amendment to Rule 4.41 has not yet become effective – and will not until June 23, 2025. 16 See Opp’n at 2 (stating that Defendants oppose the motion as “premature, [but] they do not object 17 to the vacatur [sic] of the judgment on mootness grounds once the revised Rule 4.41 takes 18 effect”).

19 The Court agrees with Defendants that Plaintiff’s motion at this juncture is premature. His 20 motion is therefore denied. However, the Court directs the parties to file a joint stipulation and 21 proposed order on June 23, 2025 (i.e., once the State Bar Rule becomes effective), asking that the 22 judgment be vacated in light of the amended rule.

The Court is inclined to sign off on the 23 stipulation, once filed. 24 The Court acknowledges that Plaintiff is in somewhat of a predicament in that he is 25 obligated to file an appeal by May 28, 2025 – i.e., before the amendment becomes effective. An 26 appeal seems a pointless exercise if the Court will be signing off on the stipulation. Plaintiff, 27 however, has asked for an extension of time (30 days) to appeal.

The Court now grants that 1 request for an extension.! This means that the Court can approve the stipulation prior to the 2 || deadline for Plaintiff to appeal. 3 Accordingly, Plaintiff’s motion for relief is denied but without prejudice.

As stated above, 4 || the parties shall file a joint stipulation and proposed order on June 23, 2025. 5 This order disposes of Docket Nos. 37 and 39. 6 7 IT IS SO ORDERED. 8 9 Dated: May 19, 2025 10 11 EDWA 12 United States District Judge © 15 16 = 17 Z 18 19 20 21 22 23 24 ' Defendants have opposed the request for an extension, arguing that Plaintiff has failed to 25 establish good cause.

See Fed. R. App. P. 4(a)(5). While the Court agrees that a desire not to pay appellate filing fees does not constitute good cause, it still finds that there are independent grounds 26 || warranting an extension. This case involves unique circumstances — e.g., the California Supreme Court did not adopt the proposed amendment until more than 30 days after the final judgment in 07 this case, and Defendants agree that the case will be moot once the amendment becomes effective.

In this situation, an appeal would be a pointless exercise, and it would be a waste of the appellate 28 court's time if this Court were to force Plaintiff to initiate an appeal now that would concededly be moot.