

1 **II. Discussion and Order**

2 Pursuant to Federal Rule of Civil Procedure 60(b), the Court may relieve a party from a
3 final judgment, order, or proceeding based on: (1) mistake, inadvertence, surprise, or excusable
4 neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or
5 discharged judgment; or (6) “extraordinary circumstances” which would justify relief. Fed. R.
6 Civ. Pro. 60(b); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
7 Cir. 1993).

8 In his motion for reconsideration, Plaintiff attests under penalty of perjury that after the
9 Court dismissed his amended complaint with leave to amend on April 4, 2014, he mailed a second
10 amended complaint on April 23, 2014, but he did not keep a copy due to institutional procedures.
11 (Doc. 30.) Plaintiff also attests that the Court granted him an extension of time on April 30, 2014.
12 (*Id.*)

13 A review of the docket, however, reveals that Plaintiff filed a motion for an extension of
14 time to file a second amended complaint on April, 30, 2014. (Doc. 26.) The motion was granted
15 on May 2, 2014, and Plaintiff’s failure to file a second amended complaint following that
16 extension of time led to the dismissal of this action. (Docs. 27, 28.)

17 Plaintiff’s present representation that he mailed his second amended complaint on April
18 23, 2014, is directly contradicted by the record, which reflects that Plaintiff mailed a motion
19 seeking an extension of time to file a second amended complaint on April 23, 2014. Given that
20 Plaintiff’s present representation is belied by the record, he is not entitled to relief from dismissal,
21 whether his motion is treated as brought pursuant to Rule 60(b)(1) or Rule 60(b)(6). *See Harvest*
22 *v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (Rule 60(b)(6) is to be used sparingly to prevent
23 manifest injustice); *Lemoge v. U.S.*, 587 F.3d 1188, 1192 (9th Cir. 2007) (excusable neglect
24 determination is equitable in nature and movant must demonstrate he acted in good faith); *TCI*
25 *Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696-97 (9th Cir. 2001) (excusable neglect
26 ordinarily shown by lack of culpability).

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Accordingly, Plaintiff's motion for reconsideration is HEREBY DENIED, with prejudice;
and the Clerk's Office is DIRECTED to serve a copy of this order on the Ninth Circuit.

IT IS SO ORDERED.

Dated: September 10, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE