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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

MICHAEL ANTHONY MILLER,	)	Case No.: 1:12-cv-01589-LJO-BAM (PC)
	)	
Plaintiff,	)	ORDER DENYING MOTION TO REOPEN CASE
	)	FOR CAUSE PURSUANT TO FEDERAL RULE
v.	)	OF CIVIL PROCEDURE 60(b)
	)	
EDMUND G. BROWN, et al.,	)	(ECF No. 39)
	)	
Defendants.	)	
	)	
	)	

Plaintiff Michael Anthony Miller (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff also asserts a federal RICO claim pursuant to 18 U.S.C. § 1961.

On February 6, 2014, the Magistrate Judge issued Findings and Recommendations recommending that Plaintiff’s case be dismissed for failing to state a claim. (ECF No. 32.) On February 28, 2014, the Court issued an order adopting those Findings and Recommendations, issued a judgment dismissing this case, and closed the case. (ECF Nos. 34, 35.) Shortly thereafter, on March 17, 2014, Plaintiff filed a notice of appeal of this Court’s judgment and order dismissing his case to the United States Court of Appeal for the Ninth Circuit. (ECF No. 36.) His appeal was processed by the Circuit Court, and on May 13, 2014, the Circuit Court dismissed Plaintiff’s appeal on the basis that it was so insubstantial as to not warrant further review. (ECF No. 38.)

1 Currently before the Court is Plaintiff motion seeking to reopen his case pursuant to Federal  
2 Rule of Civil Procedure 60(b). (ECF No. 39.)

### 3 DISCUSSION

4 On August 14, 2015, over a year and five months since this case was closed, Plaintiff filed his  
5 Rule 60(b) motion, arguing that the Court committed an error in dismissing his case based on the  
6 Court's findings that (1) the facts he alleged were not sufficient to maintain the causes of action he  
7 brought; (2) it did not have jurisdiction over his claims; (3) certain defendants were entitled to  
8 immunity; and (4) his case was barred by established law.<sup>1</sup> (Id. at 2.) Plaintiff further argues that the  
9 Court was required to hold an evidentiary hearing prior to dismissing his case. (Id.)

10 Under Federal Rule of Civil Procedure 60(c), a district court has no power to grant relief from  
11 a judgment or order on grounds of mistake, inadvertence, surprise or excusable neglect after one year  
12 has expired from the date of the judgment or order. Fed. R. Civ. P. 60(c)(1); see also Delay v.  
13 Gordon, 475 F.3d 1039, 1044 (9th Cir. 2007). Consequently, the time has long expired for Plaintiff to  
14 bring his motion challenging the Court's final judgment based on the legal errors he argues the Court  
15 committed. As a result, his motion is time-barred.

16 Plaintiff argues that his motion is brought to challenge a void judgment under Rule 60(b)(4),  
17 and that therefore it may be brought at any time. (ECF No. 39, p. 3.) Although challenges to a  
18 judgment on the grounds that it is void are not subject to the one-year limitation in Rule 60(c)(1),  
19 Plaintiff has not asserted any grounds showing this Court's February 28, 2014 judgment is void. "[A]  
20 void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after  
21 the judgment becomes final." United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270, 130 S.  
22 Ct. 1367, 1377 (2010) (citations omitted). "The list of such infirmities is exceedingly short; otherwise,  
23 Rule 60(b)(4)'s exception to finality would swallow the rule. 'A judgment is not void,' for example,

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24  
25 <sup>1</sup> As discussed further below, the Court did not rely on all of the grounds Plaintiff alleges in dismissing his case. In  
26 addition to Rule 8(a) and Rule 18 pleading deficiencies, the reasons for dismissing Plaintiff's claims were as follows: (1)  
27 his false imprisonment claim was dismissed for failure to demonstrate that his conviction and sentence have been  
28 invalidated; (2) his conspiracy claim and Eighth Amendment claims were dismissed for failure to allege sufficient,  
plausible facts in support; (3) his RICO claim was dismissed for failure to allege all of the necessary elements to support a  
cognizable claim; (4) his retaliation claim was dismissed because it sought to invalidate his conviction or sentence, which  
cannot be pursued in a section 1983 action; and (5) his claim under the Prison Rape Elimination Act was dismissed  
because that Act does not give rise to any private cause of action. (ECF Nos. 32, 34.)

1 ‘simply because it is or may have been erroneous.’” Id. (quoting Hoult v. Hoult, 57 F.3d 1, 6 (1st Cir.  
2 1995)). “Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either  
3 on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice  
4 or the opportunity to be heard.” Id. at 271 (citations omitted).

5 Plaintiff’s challenges to this Court’s judgment do not fall into one of those narrow categories.  
6 He briefly argues the Court committed a jurisdictional error, (ECF No. 39, p. 2), but does not argue the  
7 judgment is void due to a total lack of jurisdiction. “Federal courts considering Rule 60(b)(4) motions  
8 that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for  
9 the exceptional case in which the court that rendered judgment lacked even an ‘arguable basis’ for  
10 jurisdiction.” United Student Aid Funds, Inc., 559 U.S. at 271 (quoting Nemaizer v. Baker, 793 F.2d  
11 58, 65 (2d Cir. 1986)). Plaintiff has not shown that his case fits that narrow exception.

12 Plaintiff also briefly argues the Court committed a violation of his due process rights by  
13 denying him an evidentiary hearing prior to dismissing his case. (ECF No. 39, p. 6.) However,  
14 Plaintiff cites no authority showing he is entitled as a matter of due process to an evidentiary hearing  
15 prior to the dismissal of his action for failure to state a claim. Evidentiary hearings are generally held  
16 to resolve disputed issues of material fact, but in determining whether Plaintiff stated a claim, the  
17 Court took all of Plaintiff’s well-pleaded, non-conclusory allegations as true. (ECF No. 32, p. 2.) As  
18 a result, there were no disputed facts for the Court to resolve in determining whether Plaintiff’s  
19 complaint could proceed, and no need for an evidentiary hearing. See Garcia v. U.S. Bancorp, 579  
20 Fed. App’x 581, 582 (9th Cir. 2014) (district court did not abuse its discretion by not holding an  
21 evidentiary hearing where there were no disputed issues of fact material to its decision).

22 Even if Plaintiff’s motion were not time-barred under Rule 60(c), he states no grounds for  
23 relief. He first argues that the Court erred in finding the defendants in his case were entitled to  
24 immunity because they are elected, appointed or employed officials of the government (ECF No. 39,  
25 p. 3-4.) Contrary to Plaintiff’s allegations, the Court did not dismiss any of his claims on any such  
26 grounds. He also argues that laches and default judgment should not apply in his case. (Id. at 4.) The  
27 Court did not rely on the doctrine of laches in dismissing his case, nor did it issue any default  
28 judgment against him.

1 Plaintiff next argues that the Court erred in assuming he was imprisoned “legally and lawful  
2 [sic]” and in relying on Heck v. Humphrey, 512 U.S. 477 (1994), in dismissing his false imprisonment  
3 claim. (ECF No. 39, p. 5.) But the Court did not assume Plaintiff’s imprisonment was lawful. Rather,  
4 it held that, under Heck, to pursue a Section 1983 claim for false imprisonment, a plaintiff must  
5 demonstrate that his conviction and sentence have been invalidated, which Plaintiff failed to do here.  
6 (ECF No. 39, p. 6-7) Plaintiff raises no basis for undermining that finding, nor does he raise any  
7 effective challenge to the application of the rule from Heck to his case. Finally, Plaintiff argues he  
8 was entitled to an evidentiary hearing to evaluate the merits of his case, and that the Court did not do  
9 so here because the defendants had “titles as government elected, appointed or employed officials.”  
10 (ECF No. 39, p. 6). As explained above, Plaintiff has not demonstrated that he was entitled to any  
11 evidentiary hearing prior to dismissal of his action. Instead, his case was properly dismissed at the  
12 pleading stage for failure to state a claim for the reasons explained in the February 6, 2014 Findings  
13 and Recommendations adopted by this Court, which did not included any of the defendants’ status as  
14 government officials or employees. (ECF No. 33.)

15 **CONCLUSION**

16 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff’s motion to reopen case  
17 for cause pursuant to Federal Rule of Civil Procedure 60(b) is DENIED.  
18 IT IS SO ORDERED.

19 Dated: August 18, 2015

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE