

1 (ECF No. 25.) That motion was denied on May 4, 2015, after the undersigned explained
2 that the reason for the dismissal of this action was not because of a failure to timely
3 comply with a court order, but instead because he failed to state a cognizable claim
4 despite three opportunities. (ECF No. 26.)

5 Now before the Court is Plaintiff's July 16, 2015, Rule 60(b) motion for relief from
6 judgment. (ECF No. 27.) Plaintiff now asserts that his mental disabilities prevented him
7 from stating a claim.

8 **II. MOTION FOR RELIEF FROM FINAL JUDGMENT**

9 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from
10 an order for any reason that justifies relief. Rule 60(b)(6) "is to be 'used sparingly as an
11 equitable remedy to prevent manifest injustice and is to be utilized only where
12 extraordinary circumstances'" exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008)
13 (quoting Latshaw v. Trainer Wortham & Co., Inc., 452 F.3d 1097, 1103 (9th Cir. 2006)).
14 The moving party "must demonstrate both injury and circumstances beyond his control."
15 Latshaw, 452 F.3d at 1103. In seeking reconsideration of an order, Local Rule
16 230(j) requires a party to show "what new or different facts or circumstances are claimed
17 to exist which did not exist or were not shown upon such prior motion, or what other
18 grounds exist for the motion."

19 "A motion for reconsideration should not be granted, absent highly unusual
20 circumstances, unless the . . . court is presented with newly discovered evidence,
21 committed clear error, or if there is an intervening change in the controlling law," Marlyn
22 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),
23 and "[a] party seeking reconsideration must show more than a disagreement with the
24 Court's decision, and 'recapitulation . . .'" of that which was already considered by the
25 court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,
26 1131 (E.D. Cal. 2001) (quoting Birmingham v. Sony Corp. of Am., Inc., 820 F. Supp.
27 834, 856 (D. N.J. 1992)).

1 Plaintiff moves for relief from judgment, stating that his mental disability affected
2 his ability to state a claim but that he now has a jailhouse lawyer assisting him. Attached
3 to Plaintiff's motion is a third amended complaint, which the jailhouse lawyer helped
4 Plaintiff prepare.

5 Plaintiff's motion will be denied. First, it comes 14 months after entry of final
6 judgment in this case. Pursuant to Rule 60(c)(1), a motion for relief from judgment "must
7 be made within a reasonable time" "What constitutes a 'reasonable time' depends
8 upon the facts of each case, taking into consideration the interest in finality, the reason
9 for delay, the practical ability of the litigant to learn earlier of the grounds relied upon,
10 and the prejudice to the opposing parties." Ashford v. Steuart, 657 F.2d 1053, 1055 (9th
11 Cir. 1981). A party who filed a Rule 60(b) motion after the time for appeal has expired
12 must establish "the existence of extraordinary circumstances which prevented or
13 rendered him unable to prosecute an appeal." Plotkin v. Pac. Tel. & Tel. Co., 688 F.2d
14 1291, 1293 (9th Cir. 1982).

15 Reviewing the facts here, the Court finds that a 14-month delay in seeking relief
16 from judgment is not a "reasonable time" within the meaning of Rule 60(b)(6). Plaintiff
17 contends that he is a member of the Clark Program,² and his developmental disability
18 prevented him from properly articulating a claim. In support, Plaintiff submits a
19 November 26, 2013, progress note indicating that Plaintiff's mental health designation is
20 "DD1." Pl.'s Mot. Ex. B. "Prisoners classified as DD1 are equivalent to those with 'mild'
21 mental retardation. [Citation.] Although considered higher functioning, DD1 prisoners still
22 require a variety of adaptive supports." Clark v. California, 739 F. Supp. 2d 1168, 1188
23 (N.D. Cal. 2010). Plaintiff also submits an unsigned letter dated June 2, 2015, stating
24 that he has a mental disability affecting his ability to read and respond to "even basic
25 correspondences." Plaintiff purportedly received help from "R. Silverman, Ph.D.,
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27 ² The Armstrong and Clark cases are class actions brought against state officials for violation of the ADA, the
28 Rehabilitation Act, and the Constitution by present and future prisoners and parolees suffering from certain
disabilities. Armstrong v. Schwarzenegger, 622 F.3d 1058, 1062-63 (9th Cir. 2010); Clark v. California, 739 F. Supp.
2d 1168, 1173-74 (N.D. Cal. 2010). These actions are in the remedial stage, and there are remedial plans in place. Id.

1 Psychologist” in writing the letter, but it is not clear who Dr. Silverman is and what his or
2 her relationship is to Plaintiff, so little weight, if any, can be given to this letter’s content.
3 In any event, Plaintiff’s developmental disabilities have been known to him since at least
4 the initiation of this action. Under these circumstances, his filing of this motion on these
5 grounds 14 months after entry of judgment is unreasonable.

6 Even if reasonable, Plaintiff has not established the existence of extraordinary
7 circumstances justifying relief from judgment. Rule 60(b)(6) “is to be used sparingly as
8 an equitable remedy to prevent manifest injustice and is to be utilized only where
9 extraordinary circumstances ...” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir.
10 2008) (internal quotations marks and citation omitted). The moving party “must
11 demonstrate both injury and circumstances beyond his control ... “ Id. (internal quotation
12 marks and citation omitted). Acknowledging that Plaintiff’s mental health designation is
13 DD1, he has not shown that this designation, standing alone, is the reason for his
14 inability to articulate a claim. The November 16, 2013, progress note provides that the
15 effect of Plaintiff’s mental deficits on his academic ability is that he reads “very slow[ly]”
16 and has “problems with simple math.” Neither of these limitations would appear to affect
17 his ability to follow the directives in the Court’s screening orders. It is also unclear how
18 Plaintiff’s jailhouse lawyer will be of assistance to him now that Plaintiff has been
19 released from prison.

20 **III. CONCLUSION**

21 For these reasons, IT IS HEREBY ORDERED that Plaintiff’s motion for relief from
22 judgment (ECF No. 27) is DENIED. There shall be **no future filings** in this action;
23 attempts to file will be disregarded.

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25 IT IS SO ORDERED.

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27 Dated: January 25, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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