

1 **II. Discussion**

2 Plaintiff moves for relief from the judgment in this action dismissing this case, stating that
3 while he was litigating this action, he was in Centinela State Prison. Now, Plaintiff is housed at the
4 Los Angeles County Jail, and contends that he lost his files and case number, and has not responded to
5 his case for the past eight months because of a lack of law library access.

6 The litigation coordinator at Centinela State Prison declares that Plaintiff was released from
7 state custody on September 23, 2016. (ECF No. 54-1 ¶ 3.) Plaintiff did not provide any change of
8 address to the Court upon his release. Los Angeles County Sheriff Department booking records show
9 that Plaintiff was arrested by the Los Angeles Police Department on October 23, 2016, and booked
10 into custody at the Los Angeles County Jail on October 24, 2016. (ECF No. 54-2 at p. 2 ¶ 4, p. 4.) This
11 case was then dismissed over four months later, on March 7, 2017. Plaintiff then filed the instant
12 motion over three months after his case was dismissed, on June 21, 2017.

13 Defendant opposes the motion, arguing that Plaintiff has not demonstrated any excusable
14 neglect which would justify any relief from judgment. Defendant argues that Plaintiff's neglect of this
15 case has caused a delay in the proceedings, as nothing has been done on the case for eight months,
16 other than the Court's resources being used to issue numerous orders attempting to have Plaintiff
17 resume prosecution of his claim, and eventually to dismiss the case. Defendant has also been
18 prevented from engaging in any discovery while Plaintiff's whereabouts were unknown to Defendant
19 and the Court.

20 Defendant further argues that Plaintiff allowed many months to pass before updating the Court
21 on his whereabouts, which was not due to circumstances beyond his control, but rather appears to be
22 due to willful neglect. Therefore, Plaintiff's motion should be denied.

23 **A. Legal Standards**

24 Rule 60(b) allows the court to relieve a party from an order for "(1) mistake, inadvertence,
25 surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could
26 not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether
27 previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the
28 judgment is void; or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b). Rule 60(b)(6) "is

1 to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only
2 where extraordinary circumstances. . .” exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
3 (internal quotations marks and citation omitted). The moving party “must demonstrate both injury and
4 circumstances beyond his control” *Id.* (internal quotation marks and citation omitted).

5 **B. Analysis**

6 As Plaintiff asserts that he was unable to litigate his case due to issues involving not having his
7 case number, files, and a lack of sufficient law library access, the Court finds that he seeks relief from
8 the judgment dismissing his case due to excusable neglect, pursuant to Rule 60(b)(1).

9 When making an “excusable neglect” determination under Federal Rule of Civil Procedure
10 60(b)(1), the court must consider “all relevant circumstances,” *Pioneer Inv. Servs. Co. v. Brunswick*
11 *Assoc. Ltd. P’ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L.Ed.2d 74 (1993), including “at least
12 four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its
13 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in
14 good faith,” *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000) (citing *Pioneer*,
15 507 U.S. at 395, 113 S. Ct. 1489).

16 Upon considering the relevant factors in this case, the Court finds that they weigh against
17 finding any excusable neglect by Plaintiff here. A discovery and scheduling order was issued by the
18 Court on October 4, 2016. It now having been over ten months since that date, and no discovery
19 having been conducted due to the Court and Defendant having no knowledge of Plaintiff’s
20 whereabouts, Defendants face prejudice from the inactivity in this suit, such as stale or possibly lost
21 evidence, and witnesses with faded memories. The delay here was of a substantial length, and
22 Plaintiff’s reason for the delay does not show a lack of fault.

23 As Defendant asserts, although Plaintiff blames his lack of contact with the Court and the
24 parties on the loss of his files and lack of law library access while at the Los Angeles County Jail, he
25 was nevertheless able to file the instant motion without the file or case number, and he gives no reason
26 for waiting many months before attempting to do so or to otherwise contact the Court. Furthermore,
27 Plaintiff was out of custody for about a month, and made no efforts to update his address or contact the
28 Court during that time either. Instead, the Court expended its limited resources in issuing orders

1 attempting to prompt Plaintiff to resume litigating this matter, to no avail. Thus, the Court does not
2 find any excusable neglect here, and instead determines that Plaintiff's motion should be denied.

3 **III. Conclusion and Order**

4 For the reasons explained, it is HEREBY ORDERED that Plaintiff's motion for relief from
5 judgment, filed on June 21, 2017 (ECF No. 52) is denied.

6
7 IT IS SO ORDERED.

8 Dated: September 6, 2017

/s/ Lawrence J. O'Neill
9 UNITED STATES CHIEF DISTRICT JUDGE