

1 Defendants will not suffer any prejudice if the case is reopened.

2 A voluntary dismissal is a judgment, order, or proceeding from which Rule 60(b) relief can
3 be granted. In re Hunter, 66 F.3d 1002, 1004-05 (9th Cir. 1995). Under Rule 60(b), a court may
4 relieve a party from a final judgment or order if the moving party can show: (1) mistake,
5 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud,
6 misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment
7 has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Fed. R. Civ.
8 P. 60(b).

9 First, Plaintiff argues that this case should be reopened because he has newly discovered
10 evidence. Under Rule 60(b)(2), a party may obtain relief from judgment where there is “newly
11 discovered evidence that, with reasonable diligence, could not have been discovered in time to
12 move for a new trial under Rule 59(b)[.]” Fed. R. Civ. P. 60(b)(2). “Relief from judgment on the
13 basis of newly discovered evidence is warranted if (1) the moving party can show the evidence
14 relied on in fact constitutes ‘newly discovered evidence’ within the meaning of Rule 60(b); (2) the
15 moving party exercised due diligence to discover this evidence; and (3) the newly discovered
16 evidence must be of ‘such magnitude that production of it earlier would have been likely to change
17 the disposition of the case.’” Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1093 (9th
18 Cir. 2003) (citation omitted).

19 In this case, while Plaintiff asserted that he has newly discovered evidence that, with
20 reasonable diligence, could not have been discovered in time for trial under Rule 59(b), Plaintiff
21 has failed to identify what the newly discovered evidence is and that he exercised reasonable
22 diligence. Further, Plaintiff has not demonstrated that his newly discovered evidence is of “such
23 magnitude that production of it earlier would have been likely to change the disposition of the
24 case.” Feature Realty, Inc., 331 F.3d at 1093. Therefore, Plaintiff’s request for relief from the
25 voluntary dismissal pursuant to Rule 60(b)(2) is denied.

26 Second, Plaintiff argues that this case should be reopened because he is “yet suffering from
27 his injury and has been referred” to a doctor for specified medical services, which the Court
28 interprets as a request for relief pursuant to Rule 60(b)(6), the “so-called catch-all provision” of

1 Rule 60(b). Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008). “A party moving for relief under
2 Rule 60(b)(6) ‘must demonstrate both injury and circumstances beyond his control that prevented
3 him from proceeding with the action in a proper fashion.’” Id. (citation omitted). Rule 60(b)(6)
4 “is to be ‘used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized
5 only where extraordinary circumstances prevented a party from taking timely action to prevent or
6 correct an erroneous judgment.’” Id. (citation omitted).

7 In this case, Plaintiff has not provided the Court with any evidence demonstrating that the
8 voluntary dismissal of this case was due to any circumstances beyond his control. Therefore,
9 Plaintiff’s request for relief from the voluntary dismissal pursuant to Rule 60(b)(6) is denied.

10 Accordingly, Plaintiff’s motion to reopen case under Rule 60(b), (ECF No. 93), is HEREBY
11 DENIED.

12 IT IS SO ORDERED.

13 Dated: July 31, 2019

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16 UNITED STATES MAGISTRATE JUDGE

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