



1 passed and Plaintiff failed to file either. Thus, on July 22, 2016, the Magistrate Judge issued  
2 findings and recommendations for the action to be dismissed because of Plaintiff's failure to obey  
3 the Court's order and to prosecute this action which was served on Plaintiff that same day and  
4 contained notice that any objections were due within thirty days. (Doc. 5.) Plaintiff did not file  
5 any objections. An order adopting the findings and recommendation, which dismissed the action,  
6 issued on September 16, 2016, and judgment was entered that same day. (Docs. 6, 7.)

7 Rule 60(b) of the Federal Rules of Civil Procedure provides that "[o]n motion and upon  
8 such terms as are just, the court may relieve a party . . . from a final judgment, order, or  
9 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;  
10 (2) newly discovered evidence that, with reasonable diligence could not have been discovered in  
11 time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by  
12 an opposing party; . . . or (6) any other reason justifying relief from the operation of judgment."  
13 Motions under Rule 60(b) "must be made within a reasonable time -- and for reasons (1), (2), and  
14 (3) no more than a year after the entry of the judgment or order or the date of the proceeding."

15 Relief under Rule 60 "is to be used sparingly as an equitable remedy to prevent manifest  
16 injustice and is to be utilized only where extraordinary circumstances . . ." exist. *Harvest v.*  
17 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted)  
18 (addressing reconsideration under Rules 60(b)(1)-(5)). The moving party "must demonstrate both  
19 injury and circumstances beyond his control . . ." *Id.* (internal quotation marks and citation  
20 omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show "what new or  
21 different facts or circumstances are claimed to exist which did not exist or were not shown"  
22 previously, "what other grounds exist for the motion," and "why the facts or circumstances were  
23 not shown" at the time the substance of the order which is objected to was considered.

24 "A motion for reconsideration should not be granted, absent highly unusual  
25 circumstances, unless the district court is presented with newly discovered evidence, committed  
26 clear error, or if there is an intervening change in the controlling law," and it "may *not* be used to  
27 raise arguments or present evidence for the first time when they could reasonably have been  
28 raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571

1 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in  
2 original).

3 After failing to respond to any of the orders issued by the Court, Plaintiff apparently seeks  
4 to reopen the case. However, Plaintiff fails to provide any explanation for his delay and failure to  
5 submit either an application to proceed *in forma pauperis*, pay the filing fee, or to show he was  
6 prevented from doing so by circumstances beyond his control. *Harvest*, 531 F.3d at 749. Further,  
7 the First Informational Order issued within days of Plaintiff's filing this action. (Doc. 2.) It  
8 notified Plaintiff that all court deadlines are strictly enforced and that he must request extensions  
9 of time *before* any established deadlines lapse -- which Plaintiff unapologetically did not do.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this  
11 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
12 Court finds the September 6, 2016 order which dismissed this action as well as the findings and  
13 recommendation that issued on July 22, 2016, which the September 6, 2016 order adopted, to be  
14 supported by the record and proper analysis.

15 Accordingly, to the extent that Plaintiff's filing on December 9, 2016 (Doc. 8) seeks  
16 reconsideration of the dismissal of this action, it is **HEREBY DENIED** and any objections based  
17 thereon are **OVERRULED**.

18  
19 **IT IS SO ORDERED.**

20 Dated: **March 28, 2017**

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