

1 **DISCUSSION**

2 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
3 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
4 on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
5 evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
6 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”

7 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
8 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

9 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party to
10 show the “new or different facts or circumstances claimed to exist which did not exist or were not
11 shown upon such prior motion, or what other grounds exist for the motion.” Motions to
12 reconsider are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825
13 F.2d 437, 441 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To
14 succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to
15 reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp.
16 656, 665 (E.D.Cal. 1986), *aff'd in part and rev'd in part on other grounds*, 828 F.2d 514 (9th Cir.
17 1987).

18 Petitioner requests relief from judgment by default pursuant to Federal Rules of Civil
19 Procedure 60(b)(1),(6), and 55(c). Rule 55(c) is inapplicable because default was not entered in
20 this case. Regardless of Petitioner’s failure to filed timely objections, the Court reviewed the
21 petition and denied it on its merits. Therefore, Rule 60(b) governs.

22 Petitioner attempts to satisfy Rule 60(b)(1) and (6) by demonstrating errors beyond his
23 control. He states he received the Findings and Recommendations and sought the assistance of a
24 “jailhouse lawyer.” He states the jailhouse lawyer timely filed his objections on March 22, 2018,
25 by placing it an envelope and handing it to prison authorities for mailing. The Court never
26 received the objections because the envelope had been erroneously addressed to the Fresno
27 County Superior Court. With no objections being filed in this Court or notification of the
28 erroneous mailing, the Court denied the petition on April 12, 2018. Petitioner sought the

1 assistance of another inmate on approximately July 6, 2018, to retrieve his legal documents in
2 light of the missed deadline. (Doc. No. 31 at 30.) On that same date, the inmate secured
3 Petitioner's legal documents from the jailhouse lawyer and delivered them to Petitioner. (Doc.
4 No. 31 at 30.) Pursuant to the mailbox rule, Petitioner filed the instant motion for relief from
5 judgment a month later on August 7, 2018. (Doc. No. 31 at 31.)

6 Petitioner fails to show excusable neglect or any other reason justifying relief from
7 judgment. The fact that Petitioner mailed the objections to the wrong court may be considered
8 excusable error, however, it does not justify the substantial amount of time it took to file his
9 motion for relief. The Court's final order was issued and served on Petitioner on April 12, 2018,
10 yet it took Petitioner nearly three months to seek out his legal documents from his jailhouse
11 lawyer in order to request relief from judgment. Then, it took Petitioner yet another month to file
12 his motion for relief. Petitioner makes general claims of difficulties due to yard construction
13 which restricted access to the law library and Petitioner's legal assistant. Petitioner's general
14 claim of difficulties does not excuse the nearly four-month delay in seeking relief from the Court.

15 In any case, the Court has reviewed the objections Petitioner attached to his motion for
16 reconsideration and finds the arguments therein to be meritless. He rehashes the same arguments
17 that were considered and rejected in the order denying the petition.

18 **ORDER**

19 Accordingly, it is HEREBY ORDERED that Petitioner's motion for reconsideration (Doc.
20 31) is DENIED.

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22 IT IS SO ORDERED.

23 Dated: August 19, 2018

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