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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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FARZANA SHEIKH, M.D.,  
Plaintiff,

NO. CIV. S-10-213 FCD/GGH PS

v.

MEMORANDUM AND ORDER

MEDICAL BOARD OF CALIFORNIA,  
and STATE OF CALIFORNIA,  
Defendants.

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This matter is before the court on plaintiff Farzana Skeikh's ("Skeikh" or "plaintiff") motion for relief from the court's final judgment<sup>1</sup> granting defendants Medical Board of California and the State of California's (collectively "defendants") motion to dismiss plaintiff's amended complaint.

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<sup>1</sup> The document filed by plaintiff on September 21, 2010 is entitled "Plaintiff's Motion for Leave for Motion for Reconsideration; Plaintiff's Motion for Reconsideration on Premature Dismissal of: Plaintiff's Request For Declaratory Relief on Constitutionality of California B&P Section 2335 & Plaintiff's Petition for Review of Denial of Her Application for Physician's License." (Docket # 78). The court construes Docket #78 as a motion for relief from final judgment under Federal Rule of Civil Procedure 60(b) and will hereinafter refer to it as such.

1 Defendants oppose plaintiff's motion. For the forgoing reasons,  
2 plaintiff's motion for relief from judgment is DENIED.<sup>2</sup>

3 **BACKGROUND**

4 On January 27, 2010 a petition for "Writ of Review" was  
5 filed on behalf of plaintiff, by her non-attorney husband,  
6 against defendants. (Docket #2). On February 17, 2010 plaintiff  
7 filed an amended petition for review ("amended complaint").  
8 (Docket #14). Defendants filed a motion to dismiss the amended  
9 complaint and a request for judicial notice on March 4, 2010.  
10 (Docket ## 18, 20). The original petition filed on behalf of  
11 plaintiff, which was construed as a complaint, was ultimately  
12 stricken by Magistrate Judge Gregory G. Hollows on March 18,  
13 2010.<sup>3</sup> (Docket #22). On March 28, 2010, plaintiff filed a  
14 request for reconsideration of Judge Hollows' March 18, 2010  
15 order, claiming that she had not consented to the jurisdiction of  
16 the magistrate judge and that the court erred in disallowing her  
17 husband to represent her. (Docket #27). This court denied  
18 plaintiff's request on April 28, 2010. (Docket #39).

19 The hearing on defendants' motion to dismiss was held before  
20 Judge Hollows and submitted on June 10, 2010.<sup>4</sup> Plaintiff filed a

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21 <sup>2</sup> Because oral argument will not be of material  
22 assistance, the court orders this matter submitted on the briefs.  
23 E.D. Cal. L.R. 230(g).

24 <sup>3</sup> Judge Hollow denied as moot defendants' motion to  
25 strike, filed January 29, 2010, and defendants' request for an  
26 extension of time to respond to the complaint, filed February 12,  
2010. Plaintiff's amended motion for e-filing access, filed on  
February 17, 2010, was conditionally granted.

27 <sup>4</sup> Defendants filed an amended motion to dismiss on April  
28 29, 2010. (Docket #40). Plaintiff did not file an opposition to  
defendants' motion or to defendants' request for judicial notice.  
Additionally, at the hearing on June 10, 2010, plaintiff did not

1 letter addressed to Judge Hollows on June 21, 2010, wherein she  
2 asserted that Judge Hollows had no authority to rule on  
3 defendants' motion to dismiss and plaintiff again requested that  
4 her husband be allowed to represent her. (Docket #50). On July  
5 14, 2010 Judge Hollows filed his order, recommending that  
6 defendants' request for judicial notice and amended motion to  
7 dismiss be granted, thereby dismissing plaintiff's action.  
8 (Docket #55). Plaintiff had fourteen days to file objections to  
9 Judge Hollows' findings and recommendations. (Docket #55). On  
10 July 28, 2010, plaintiff filed a document entitled "Revised  
11 Notice of Motion- Plaintiff's Motion to Dismiss Defendants'  
12 Motion for Dismissal of Plaintiff's Petition for Administrative  
13 Review." (Docket #57).

14 On August 23, 2010, after construing plaintiff's filing as  
15 objections, this court adopted Judge Hollows' findings and  
16 recommendations in full (the "final judgment"). (Docket # 58).  
17 Defendants' motion to dismiss was granted and the case was  
18 closed. (Docket ## 58, 59). Despite the case closing, plaintiff  
19 continued to file a number of documents with the court, including  
20 various purported requests for judicial notice and requests for  
21 admissions. (See Docket ## 70-77). Defendants filed a reply to  
22 plaintiff's various post-judgment submissions on September 21,  
23 2010, which is also the day plaintiff filed her motion for relief  
24 from final judgment and her notice of appeal. (Docket ## 80-83).

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27 respond to Judge Hallows' questions or make any oral arguments.  
28 (Defs.' Opp'n. ["Opp'n"], filed Sep. 30, 2010, at 3 n.4). At the  
hearing, plaintiff noted that she was not an attorney and she  
needed her husband to address the court. (Id.).

1 **STANDARD**

2 Where the court's ruling has resulted in a final judgment or  
3 order, a motion for reconsideration may be based either on Rule  
4 59(e) (motion to alter or amend judgment) or Rule 60(b) (motion  
5 for relief from judgment) of the Federal Rules of Civil  
6 Procedure. See School Dist. No. 1J, Multnomah County v. ACandS,  
7 Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). A motion for  
8 reconsideration is treated as a motion to alter or amend judgment  
9 under Federal Rule of Civil Procedure 59(e) if it is filed within  
10 twenty-eight days of entry of judgement; otherwise, it is treated  
11 as a rule 60(b) motion for relief from a judgment or order.  
12 American Ironworks & Erectors, Inc. v. North Am. Const. Corp.,  
13 248 F.3d 892 (9th Cir. 2001).

14 Absent "highly unusual circumstances," reconsideration of a  
15 final judgment under Rule 59(e) is appropriate only where (1) the  
16 court is presented with newly-discovered evidence, (2) the court  
17 committed "clear error or the initial decision was manifestly  
18 unjust," or (3) there is an intervening change in the controlling  
19 law. School Dist. No. 1J, Multnomah County, 5 F.3d at 1263;  
20 Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001).  
21 A district judge may provide relief from final judgment, under  
22 Rule 60(b), if the moving party can show: "(1) mistake,  
23 inadvertence, surprise, or excusable neglect; (2) newly  
24 discovered evidence that, with reasonable diligence, could not  
25 have been discovered in time to move for a new trial under Rule  
26 59(b); (3) fraud . . . , misrepresentation, or misconduct by an  
27 opposing party; (4) the judgment is void; (5) the judgment has  
28 been satisfied, released, or discharged; it is based on an

1 earlier judgment that has been reversed or vacated; or applying  
2 it prospectively is no longer equitable; or (6) any other reason  
3 that justifies relief." United Nat'l Ins. Co. v. Spectrum  
4 Worldwide, Inc., 555 F.3d 772, 780 (9th Cir. 2009)(citing Fed. R.  
5 Civ. Pro. 60(b)).

#### 6 ANALYSIS

7 Defendants argue plaintiff's motion, whether brought under  
8 Rule 59(e) or 60(b),<sup>5</sup> has no merit and must be denied. (Opp'n at  
9 2). Specifically, defendants contend plaintiff's motion is  
10 untimely under Rule 59(e), and that her contentions under Rule  
11 60(b) are grounded only in "her disagreement with [the court's]  
12 rulings, findings, and conclusions of law," which does not merit  
13 relief from the court's judgment.<sup>6</sup> (Opp'n at 5-6).

14 A Rule 60(b) motion is "not a vehicle to reargue a motion or  
15 present evidence which should have been raised before." U.S. v.  
16 Westlands Water Dist., 134 F. Supp.2d 1111, 1131 (E.D. Cal.  
17 2001)(quoting Birmingham v. Sony Corp. of Am., Inc., 820 F. Supp.  
18 834, 856 (D. N.J. 1992)). "A party seeking reconsideration must  
19 show more than a disagreement with the Court's decision, and  
20 recapitulation of the cases and arguments considered by the court  
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22 <sup>5</sup> Defendants note that plaintiff did not provide any  
23 procedural authority for the instant motion, and on that basis  
24 alone the court could properly deny the motion. (Opp'n at 2).  
25 Defendants nonetheless substantively respond to the motion,  
citing the relevant provisions of law governing motions for  
reconsideration after the entry of judgment. (Id.)

26 <sup>6</sup> Because plaintiff filed her motion for reconsideration  
27 29 days after the entry of judgment, and not within the 28 days  
28 required under Rule 59(e), the court will only consider  
plaintiff's motion under Rule 60(b). (See Fed. R. Civ. P. 6(b),  
59(e); Advisory Committee Notes for 2009 Amendments to Rule  
59(e)).

1 before rendering its original decision fails to carry the moving  
2 party's burden." Id. Ultimately, motions for reconsideration  
3 are committed to the discretion of the trial court. Combs v.  
4 Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers  
5 v. Watt, 722 F.2d 456, 460 (9th Cir. 1983), en banc.

6 Although the bases for plaintiff's motion are not readily  
7 apparent from her papers, the court construes plaintiff's motion  
8 as asserting two primary grounds for relief from final judgment.<sup>7</sup>  
9 First, plaintiff asserts she should be granted relief from  
10 judgment under Rule 60(b)(4) because she did not consent to the  
11 jurisdiction of a magistrate judge. However, under 28 U.S.C.  
12 § 636(b)(1)(B) a magistrate judge, such as Judge Hollows, may  
13 "conduct hearings, including evidentiary hearings, and submit to  
14 a judge of the court proposed findings of fact and  
15 recommendations for the disposition, by a judge of the court, of  
16 any motion excepted in subparagraph (A)." The Eastern District  
17 of California directs all civil actions where the plaintiff or  
18 defendant is proceeding in propria persona to a magistrate judge,  
19 for dispositive and non-dispositive motions and matters. E.D.  
20 Cal. L.R. 302(c)(21). Judge Hollows thus had authority to hear  
21 this matter and submit proposed findings of fact and  
22 recommendations to the court; therefore, this court's dismissal  
23 of plaintiff's action, based on its adoption of Judge Hollows'

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25 <sup>7</sup> Defendants oppose plaintiff's motion under all  
26 subsections of Rule 60(b); however, the court finds plaintiff  
27 only clearly alleges grounds for relief under Rule 60(b)(2) and  
28 Rule 60(b)(4), in asserting this court should consider the  
additional documentation she submitted post-judgment and it erred  
in adopting the findings of fact and recommendation of the  
magistrate judge.

1 findings of fact and recommendation, is not void under Rule  
2 60(b)(4).

3 As to plaintiff's second claimed basis for relief, plaintiff  
4 argues the documents she submitted post-judgment are "newly  
5 discovered evidence" under Rule 60(b)(2). (See Docket ## 70, 71,  
6 74, 75, 76, 77)<sup>8</sup>. However, even if the court were to take  
7 judicial notice of the documents submitted post-judgment,  
8 plaintiff has not demonstrated that these documents are "newly  
9 discovered evidence that, with reasonable diligence, could not  
10 have been discovered in time to move for a new trial under Rule  
11 59(e)." (See Fed. R. Civ. P. 60(b)(2)). To the contrary, as  
12 indicated by the dates, each document was in existence well  
13 before the time required for plaintiff to make a Rule 59(e)  
14 motion. Therefore, because plaintiff has not demonstrated that  
15 the documents are "newly discovered" as required by Rule  
16 60(b)(2), she is not entitled to relief from final judgment on  
17 this ground.

18 Because plaintiff has not demonstrated that there is "newly  
19 discovered evidence" in her action or that the final judgment was  
20 void, she is not entitled to relief under Rule 60(b)(2) or Rule  
21 60(b)(4). Therefore, plaintiff's motion for relief from final  
22 judgment must be denied.

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26 <sup>8</sup> The post-judgment submissions include a portion of a  
27 Medical Board newsletter, a memorandum of points and authorities  
28 originally filed in San Joaquin County Superior Court, and  
various communications between plaintiff and the California  
Medical Board or the Attorney General's Office.

1 **CONCLUSION**

2 For the foregoing reasons, plaintiff's Rule 60(b) motion for  
3 relief from final judgment (Docket ## 58, 59) is DENIED.<sup>9</sup>

4 IT IS SO ORDERED.

5 DATED: October 20, 2010

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>9</sup> To the extent plaintiff seeks to effectuate a motion to  
27 the court through her various post-judgment filings, referenced  
28 above (Docket ## 70-77), her motions/requests are denied as  
procedurally defective and/or substantively without merit for the  
reasons set forth herein.