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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 AARON MONTGOMERY,
12 Petitioner,
13 v.
14 S. PERRY,
15 Respondent.
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No. 2:15-cv-1220 KJM AC P

ORDER

17 By order filed March 17, 2021, this action was dismissed, ECF No. 56, and judgment was
18 entered the same day, ECF No. 57. On April 25, 2021,¹ petitioner filed a motion to re-open the
19 case, which will be construed as a motion for relief from a judgment. ECF No. 60.

20 A motion for relief from a judgment is appropriately brought under either Rule 59(e) or
21 Rule 60(b) of the Federal Rules of Civil Procedure. *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442
22 (9th Cir. 1991) (citing *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir. 1989)). The motion “is
23 treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure Rule 59(e)
24 if it is filed [within the time provided by that Rule]. Otherwise, it is treated as a Rule 60(b)
25 motion for relief from a judgment or order.” *Am. Ironworks & Erectors, Inc. v. N. Am. Constr.*
26 *Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001) (citation omitted). Since petitioner’s motion for

27 ¹ Since petitioner is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox
28 rule. *Houston v. Lack*, 487 U.S. 266, 276 (1988) (documents are considered “filed at the time
petitioner delivered it to the prison authorities for forwarding to the court clerk.”).

1 reconsideration was filed more than twenty-eight days from the entry of judgment, the motion is
2 considered under Rule 60(b).

3 “Rule 60(b) enumerates specific circumstances in which a party may be relieved of the
4 effect of a judgment, such as mistake, newly discovered evidence, fraud, and the like. The Rule
5 concludes with a catchall category—subdivision (b)(6)—providing that a court may lift a
6 judgment for ‘any other reason that justifies relief.’” *Buck v. Davis*, 137 S. Ct. 759, 771–72
7 (2017) (citation omitted). Further, Local Rule 230(j) requires that a motion for reconsideration
8 state “what new or different facts or circumstances are claimed to exist which did not exist or
9 were not shown upon such prior motion, or what other grounds exist for the motion; and . . . why
10 the facts or circumstances were not shown at the time of the prior motion.” L.R. 230(j)(3)–(4).

11 Petitioner’s motion to re-open the case simply reiterates the arguments made in his motion
12 for reconsideration, *compare* ECF No. 58 *with* ECF No. 60, which this court has already
13 considered, ECF No. 59. The motion will therefore be denied.

14 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for reconsideration,
15 ECF No. 58, is denied.

16 DATED: June 23, 2021.

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20 CHIEF UNITED STATES DISTRICT JUDGE
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