

1 claims were time-barred and recommended dismissal. (ECF No. 36.) Plaintiff requested — and
2 was granted — three extensions of time to file objections to the Findings and Recommendations,
3 but he never submitted any objections. (See ECF Nos. 37–42.) On March 30, 2018, this Court
4 adopted the Findings and Recommendations in full, granting Defendants’ Motion for Summary
5 Judgment and closing the case. (ECF Nos. 43–44.)

6 On August 29, 2018, approximately five months after Defendants’ Motion for Summary
7 Judgement was granted and the case was closed, Plaintiff filed a Motion for Reconsideration.
8 (ECF No. 45.) On October 23, 2018, the Court found Plaintiff’s motion was untimely and
9 Plaintiff had failed to demonstrate any highly unusual circumstances justifying reversal, and
10 therefore denied the motion pursuant to Federal Rule of Civil Procedure (“Rule”) 59(e).¹ (ECF
11 No. 46.)

12 On December 10, 2018, Plaintiff requested an extension of time to file a petition to the
13 Ninth Circuit. (ECF No. 47.) The magistrate judge denied Plaintiff’s request because the request
14 was untimely under the Federal Rules of Appellate Procedure. (ECF No. 48 (citing Fed. R. App.
15 P. 4(a)(1)(A)).)

16 On January 14, 2019, Plaintiff filed his second Motion for Reconsideration, this time
17 citing “newly discovered evidence.” (ECF No. 49.) However, the Court found Plaintiff’s
18 exhibits and arguments failed to establish any new evidence or information that would change the
19 outcome of the case. (ECF No. 51 at 2.) Moreover, the Court found Plaintiff’s motion was
20 untimely. (Id.) Accordingly, the Court denied Plaintiff’s motion.² (ECF No. 51.)

21 On June 19, 2019, Plaintiff filed his third Motion for Reconsideration, titled “Motion for
22 Relief from Final Judgement [] Pursuant to Federal Rule of Civil Procedure 60(B).” (ECF No.
23 52.) Defendants opposed that motion on the basis that it was untimely, it failed to satisfy any
24 grounds for relief under Rule 60(b), and that Plaintiff failed to demonstrate any diligence in

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26 ¹ Rule 59(e) states “[a] motion to alter or amend a judgment must be filed no later than 28
days after the entry of the judgment.”

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28 ² Plaintiff concurrently filed a Motion to Appoint Counsel with his second Motion for
Reconsideration. (ECF No. 50.) This motion was also denied. (ECF No. 51 at 2–3.)

1 pursuing this action. (ECF No. 53.) In response, Plaintiff filed a 51-page “Amended” motion on
2 August 19, 2019. (ECF No. 55.) The Court addresses and DENIES Plaintiff’s amended motion
3 for the reasons stated herein.

4 **II. STANDARD OF LAW**

5 Under Rule 60(b), the Court may relieve Plaintiff from final judgment for any of the
6 following reasons:

- 7 (1) mistake, inadvertence, surprise, or excusable neglect;
- 8 (2) newly discovered evidence that, with reasonable diligence, could
9 not have been discovered in time to move for a new trial under Rule
10 59(b);
- 11 (3) fraud (whether previously called intrinsic or extrinsic),
12 misrepresentation, or misconduct by an opposing party;
- 13 (4) the judgment is void;
- 14 (5) the judgment has been satisfied, released, or discharged; it is
15 based on an earlier judgment that has been reversed or vacated; or
16 applying it prospectively is no longer equitable; or
- 17 (6) any other reason that justifies relief.

18 Fed. R. Civ. P. 60(b).

19 A motion based on Rule 60(b) must be made “within a reasonable time.” Fed. R. Civ. P.
20 60(c)(1). With respect to subsections (1), (2), and (3), the motion must be filed “no more than a
21 year after the entry of judgment or order or the date of the proceeding.” *Id.* Rule 60(b)(6) goes
22 further, empowering the court to reopen a judgment even after one year has passed. *Pioneer Inv.*
23 *Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993). However, subsections (1)
24 through (3) are mutually exclusive of subsection (6), and thus a party who failed to take timely
25 action due to “excusable neglect” may not seek relief more than a year after the judgment by
26 resorting to subsection (6). *Id.* (citing *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S.
27 847, 863, and n. 11 (1988)).

28 Furthermore, relief pursuant to Rule 60(b)(6) is to be granted “sparingly as an equitable
remedy to prevent manifest injustice.” *Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010). To
justify such relief, a litigant must demonstrate “‘extraordinary circumstances’ suggesting that the

1 party is faultless in the delay.” *Pioneer Inv. Servs. Co.*, 507 U.S. at 393; see also *Keeling v. Sheet*
2 *Metal Workers Int’l Ass’n, Local Union 162*, 937 F.2d 408, 410 (9th Cir. 1991) (citing *United*
3 *States v. Sparks*, 685 F.2d 1128, 1129 (9th Cir.1982)).

4 III. ANALYSIS

5 Plaintiff moves for relief under Rule 60(b)(1), (3), and (6).³ (ECF No. 55 at 4.) He asserts
6 that Defendants and their agents intentionally prevented him from timely moving for
7 reconsideration by causing a lockdown and Modified Program⁴ to occur at the prison that
8 interfered with Plaintiff’s access to the law library and other resources, thus interfering with his
9 ability to litigate this case. (*Id.*) In support of this assertion, Plaintiff attaches his prior Motion
10 for Reconsideration and supporting exhibits (ECF No. 49), which include copies of a prison
11 grievance relating to the Modified Program Plaintiff complains of in his current Motion for
12 Reconsideration. (ECF No. 55 at 5–10, 19–25; see also ECF No. 49 at 9–14 (prison grievance
13 regarding Modified Program occurring from February 15–23, 2018).) Plaintiff’s arguments,
14 however, lack merit.

15 First, the Court notes that Plaintiff’s motions under Rule 60(b)(1) and (3) are time-barred.
16 Judgment was entered on March 30, 2018 (ECF No. 44); therefore, Plaintiff was required to file
17 his motion under Rule 60(b)(1), (2), or (3) by April 1, 2019. Fed. R. Civ. P. 60(c)(1). However,
18 Plaintiff did not file the instant “amended motion” until August 19, 2019, almost five months too
19 late.⁵ (ECF No. 55.) Consequently, Plaintiff’s motions seeking relief under Rule 60(b)(1) and (3)
20 are time-barred and therefore DENIED.

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22 ³ The Court notes Plaintiff is precluded from relief under subsection (6) because he asserted
23 claims under subsections (1) through (3). See *Pioneer Inv. Servs. Co.*, 507 U.S. at 393.
24 Nevertheless, Plaintiff’s motion fails under any subsection of which he avails himself, for the
reasons discussed herein.

25 ⁴ Per the Department of Corrections and Rehabilitation, “Modified Program means the
26 suspension or restriction of less than all inmate program activities and/or movement.” (ECF No.
27 55 at 19.)

28 ⁵ The Court notes that Plaintiff’s original motion, filed on June 19, 2019 (ECF No. 52), is
also time-barred under Rule 60(c)(1).

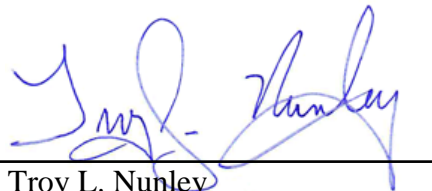
1 Second, Plaintiff’s motion under Rule 60(b)(6) fails because Plaintiff has identified no
2 “extraordinary circumstances” that would justify setting aside final judgement. Pioneer Inv.
3 Servs. Co., 507 U.S. at 393; Keeling, 937 F.2d at 410; Lal, 610 F.3d at 524. To the contrary, the
4 Modified Program of which Plaintiff complains occurred from February 15–23, 2018, and was
5 accounted for in the magistrate judge’s order permitting Plaintiff to submit objections to the
6 Findings and Recommendations by March 16, 2018. (ECF No. 42.) Plaintiff’s failure to submit
7 objections to the November 7, 2017, Findings and Recommendations after receiving three
8 extensions of time to do so, as well as his failure to file any motion for reconsideration until
9 nearly five months after the deadline to do so had passed, demonstrates Plaintiff’s failure to
10 exercise the diligence required to warrant Rule 60(b) relief. Finally, the Court notes Plaintiff
11 raises no new or additional arguments in the present motion, as Plaintiff’s argument about the
12 February 2018 Modified Program is identical to the argument asserted in his second Motion for
13 Reconsideration. (ECF No. 49; see also ECF No. 51.) Accordingly, Plaintiff’s motion under
14 Rule 60(b)(6) must be DENIED.

15 **IV. CONCLUSION**

16 Plaintiff’s motion is untimely, and the Rule 60 standard is not met here. Moreover, the
17 Court has carefully reviewed the entire file, including Plaintiff’s request (ECF Nos. 52, 55), and
18 still finds the Findings and Recommendations (ECF No. 36) to be supported by the record and by
19 proper analysis. Plaintiff’s reassertion of prior arguments and “evidence” previously submitted
20 before this Court is unpersuasive. Accordingly, Plaintiff’s (amended) third Motion for
21 Reconsideration (ECF No. 55) is DENIED.

22 IT IS SO ORDERED.

23 Dated: November 1, 2019

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27 Troy L. Nunley
28 United States District Judge