

1 Federal Rule of Civil Procedure 60(b) (“Rule 60”) states as follows:

2 On motion and just terms, the court may relieve a party or its legal
3 representative from a final judgment, order, or proceeding for the
4 following reasons:

5 (1) mistake, inadvertence, surprise, or excusable neglect;

6 (2) newly discovered evidence that, with reasonable diligence,
7 could not have been discovered in time to move for a new trial
8 under Rule 59(b);

9 (3) fraud (whether previously called intrinsic or extrinsic),
10 misrepresentation, or misconduct by an opposing party;

11 (4) the judgment is void;

12 (5) the judgment has been satisfied, released, or discharged; it is
13 based on an earlier judgment that has been reversed or vacated; or
14 applying it prospectively is no longer equitable; or

15 (6) any other reason that justifies relief.

16 Defendants argue that a motion for reconsideration is warranted under Rule 60(b)(6), “any
17 other reason that justifies relief.” Plaintiff contends that Defendants have not presented any new
18 evidence in their motion that was not previously available to them when they filed their motion
19 for continuance. (ECF No. 37 at 3.) However, new evidence is not required for a motion for
20 reconsideration brought pursuant to Rule 60(b)(6). Therefore, Plaintiff’s argument is unavailing.
21 Under Rule 60(b)(6), Defendants must show that “extraordinary circumstances” exist to justify
22 relief from judgment. *Straw v. Bowen*, 866 F.2d 1167, 1172 (9th Cir. 1989). Defendants have
23 failed to show that extraordinary circumstances exist to justify relief from this Court’s previous
24 order. Defendants reiterate their previous argument that the Court cannot rule on a substantive
25 matter before determining the jurisdictional issue. However, reiteration of past arguments which
26 were unavailing in the first instance is not the kind of extraordinary circumstances that would
27 warrant granting relief from the Court’s previous denial of a continuance.

28 While the Court is not required to justify its order, the Court will do so here. The Court
chose not to continue the motion for summary judgment in an attempt to streamline its court
calendar and to allow the motion for summary judgement to be immediately determined if the
motion to dismiss is denied. The Court does not want to delay this case any longer than is

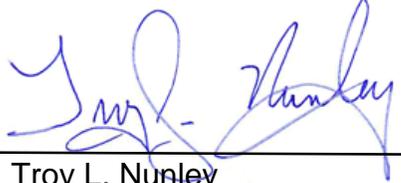
1 necessary to determine the motion to dismiss. Accordingly, the Court denies Defendants' motion
2 for relief from the Court's denial of a continuance.

3 In the alternative, Defendants assert that factual discovery is necessary to respond to
4 Plaintiff's motion for summary judgment with regards to how much the re-sale of goods
5 comprises Plaintiff's overall business sales. (ECF No. 35 at 4.) Defendants argue that the
6 Court's previous order creates a conundrum on how Defendants can adequately respond to
7 Plaintiff's motion for summary judgment and yet not conduct any factual discovery to dispute
8 Plaintiff's facts. (ECF No. 35 at 5.) Defendants ask the Court to limit the issue to non-factual
9 matters such as the interpretation of the statute because discovery is stayed. (ECF No. 35 at 4.)
10 The Court notes that Defendants requested stay of discovery in their previous motion and to an
11 extent, the conundrum Defendants find themselves in is a problem of their own making.
12 However, the Court agrees that factual discovery is necessary to adequately respond to the motion
13 for summary judgment. Plaintiff argues that it provided extensive evidence to Defendants
14 regarding Plaintiff's sales in an effort to resolve this case at an earlier stage of litigation. (ECF
15 No. 37 at 3.) However, the Court need not make a final determination on whether to afford
16 discovery because Defendants filed an opposition to the motion for summary judgment on May
17 31, 2017. Accordingly, the above matters are MOOT.

18 The Court is aware of its obligation to first determine jurisdiction before ruling on any
19 substantive motions. The Court's efforts to prevent prolonging the case does not mean the Court
20 will ignore this important fact. The parties need not remind the Court of this fact through
21 continued filings. Defendants' Motion for Relief or Clarity from this Court's previous order
22 (ECF No. 35) is hereby DENIED as MOOT.

23 IT IS SO ORDERED.

24 Dated: June 1, 2017

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28 Troy L. Nunley
United States District Judge