

1 & Erectors, Inc. v. North American Const. Corp., 248 F.3d 892, 998-99 (9th Cir. 2001). Because
2 petitioner filed his motion within 28 days after the entry of judgment, his motion is treated as one
3 under Rule 59(e).¹ See Lee-Thomas v. Prince George’s County Public Schools, 666 F.3d 244,
4 247 n.4 (4th Cir. 2012).

5 A Rule 59(e) motion to alter or amend the judgment is an ““extraordinary remedy which
6 should be used sparingly.”” Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011)
7 (quoting McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curium)).

8 In general, there are four grounds upon which a Rule 59(e) motion may be granted:

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10 (1) if such motion is necessary to correct manifest errors of law or
11 fact upon which the judgment rests; (2) if such motion is necessary
12 to present newly discovered or previously unavailable evidence; (3)
13 if such motion is necessary to prevent manifest injustice; or (4) if the
14 amendment is justified by an intervening change in controlling law.

15 Id. (citing McDowell, 197 F.3d at 1255 n.1). Further, Local Rule 230(j) requires that a motion
16 for reconsideration state “what new or different facts or circumstances are claimed to exist which
17 did not exist or were not shown upon such prior motion, or what other grounds exist for the
18 motion,” and “why the facts or circumstances were not shown at the time of the prior motion.”
19 E.D. Cal., Local Rule 230(j)(3)-(4).

20 **II. Analysis**

21 Plaintiff’s one-page motions consists of two arguments: (1) the court has not shown that
22 he received the findings and recommendations and (2) he disagrees with the order dismissing the
23 first amended complaint with leave to amend. However, plaintiff has not identified a manifest
24 error of fact or law, newly discovered evidence, or a change in controlling law.

25 Plaintiff states that “there[’]s no substantial/substantiating evidence that the 3-18-19 order
26 landed in my hands. In a timely manner that I had in fact a fair opportunity to file objections to
27 findings and recommendations (“F&R”) within the time zone to file one in.” It appears plaintiff

28 ¹ Judgment was entered on June 12, 2019. (ECF No. 33.) Plaintiff’s motion is dated June 20,
2019. (ECF No. 18.) Prisoner filings are deemed “filed” on the date they are provided to prison
officials for mailing. Houston v. Lack, 487 U.S. 266, 270 (1988). Plaintiff’s motion was
constructively filed eight days after entry of judgment. Accordingly, his motion falls within the
time provisions of Rule 59(e).

1 claims that he failed to file objections because he did not receive the court's findings and
2 recommendations. The docket indicates that the findings and recommendations were sent to
3 plaintiff on April 9, 2019 and returned as undeliverable. However, the docket also reflects that
4 the findings and recommendations were re-sent and served on plaintiff sometime after April 11,
5 2019. Additionally, plaintiff's motion does not address his failure to file an amended complaint
6 or respond to the court's order to show cause. Plaintiff received multiple warnings that the failure
7 to file an amended complaint would result in a recommendation that the action be dismissed.

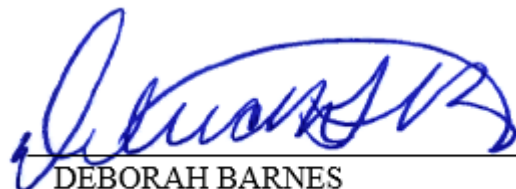
8 The court finds that plaintiff has failed to raise any issue of fact or law that is sufficient to
9 warrant an alteration of the judgment entered June 12, 2019.

10 **III. Conclusion**

11 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion to alter the
12 judgment (ECF No. 18) be construed as a Rule 59(e) motion and be denied.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court and served on all parties. Such a document should be captioned "Objections to
17 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be
18 filed and served within fourteen days after service of the objections. Plaintiff is advised that
19 failure to file objections within the specified time may waive the right to appeal the District
20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: December 13, 2019

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25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE
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