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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,  
Plaintiff,  
v.  
KALIL, et al.,  
Defendant.

No. 2:17-cv-01429-TLN-AC

**ORDER**

Plaintiff Christopher Lipsey, Jr. (“Plaintiff”), a state prisoner proceeding pro se, initiated this civil rights action against Defendants Kalil and K. Spencer (collectively “Defendants”) pursuant to 42 U.S.C. § 1983. (ECF No. 1.) This matter is before the Court pursuant to Plaintiff’s “Objections to Magistrate Findings” (ECF No. 19), which this Court construes as a motion for reconsideration of the Order denying his motion to transfer this action to the Sacramento County Superior Court (ECF No. 19). (See also ECF No. 21 (Order construing Plaintiff’s “Objections” to the magistrate judge’s nondispositive order as a motion for reconsideration).) For the reasons set forth below, Plaintiff’s motion is DENIED.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff initiated this action on July 6, 2017, in the Fresno Division of the United States District Court for the Eastern District of California, alleging that Defendants denied Plaintiff’s First Amendment right of access to the courts by repeatedly denying him access to the prison’s

1 law library. (ECF No. 1 at 1, 6.) On July 11, 2017, the Fresno Division transferred the case to  
2 the Sacramento Division of the Eastern District on its own motion. (ECF No. 3.) On October 13,  
3 2017, Plaintiff filed a First Amended Complaint. (ECF No. 6.) On March 13, 2019, however, the  
4 magistrate judge struck the First Amended Complaint because it asserted different claims against  
5 different defendants that did not appear to be related to the claims asserted in the Complaint, and  
6 moreover, Plaintiff failed to sign the Amended Complaint in violation of Federal Rule of Civil  
7 Procedure 11(a). (ECF No. 13 at 3.) The magistrate judge also dismissed Plaintiff's Complaint  
8 (ECF No. 1), with leave to amend. (ECF No. 13 at 5.) On April 2, 2019, Plaintiff filed a new  
9 First Amended Complaint.<sup>1</sup> (ECF No. 16).

10 On August 19, 2019, Plaintiff filed a request to transfer this action "to the state superior  
11 court with jurisdiction over cases that occur at Folsom State Prison." (ECF No. 17). Construing  
12 Plaintiff's filing as a motion for remand or transfer, the magistrate judge denied Plaintiff's motion  
13 on August 23, 2019, on the basis that the action was originally brought in this Court and the Court  
14 therefore lacked authority to remand or transfer the action. (ECF No. 18.) On September 9,  
15 2019, Plaintiff filed the instant motion, which the Court construes as a motion for reconsideration  
16 pursuant to Federal Rule of Civil Procedure ("Rule") 60(b). (ECF No. 19.) The Court addresses  
17 and DENIES Plaintiff's motion for the reasons stated herein.

## 18 II. STANDARD OF LAW

19 "A motion for reconsideration should not be granted, absent highly unusual  
20 circumstances, unless the district court is presented with newly discovered evidence, committed  
21 clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals,*  
22 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).

23 Under Rule 60(b), the Court may relieve Plaintiff from a final judgment, order, or  
24 proceeding "for any of the following reasons: (1) mistake, inadvertence, surprise, or excusable  
25 neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been  
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27 <sup>1</sup> Plaintiff's most recent First Amended Complaint (ECF No. 16) has not yet been screened  
28 pursuant to 28 U.S.C. § 1915A, but the Court's analysis with respect to the instant motion  
remains the same.

1 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called  
2 intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is  
3 void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier  
4 judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or  
5 (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b).

6 A motion based on Rule 60(b) must be made “within a reasonable time.” Fed. R. Civ. P.  
7 60(c)(1). With respect to subsections (1), (2), and (3), the motion must be filed “no more than a  
8 year after the entry of judgment or order or the date of the proceeding.” *Id.* Rule 60(b)(6) goes  
9 further, empowering the court to reopen a judgment even after one year has passed. *Pioneer Inv.*  
10 *Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993). However, subsections (1)  
11 through (3) are mutually exclusive of subsection (6), and thus a party who failed to take timely  
12 action due to “excusable neglect” may not seek relief more than a year after the judgment by  
13 resorting to subsection (6). *Id.* (citing *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S.  
14 847, 863, and n. 11 (1988)).

15 Additionally, Local Rule 230(j) requires a party filing a motion for reconsideration to  
16 show the “new or different facts or circumstances [] claimed to exist which did not exist or were  
17 not shown upon such prior motion, or what other grounds exist for the motion; and [explain] why  
18 the facts or circumstances were not shown at the time of the prior motion.” E.D. Cal. Local Rule  
19 230(j)(3)–(4); see also *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 880 (“A motion for  
20 reconsideration may not be used to raise arguments or present evidence for the first time when  
21 they could reasonably have been raised earlier in the litigation.”).

### 22 III. ANALYSIS

23 Although Plaintiff does not identify the legal basis for his motion, he appears to seek relief  
24 pursuant to Rule 60(b)(1). Specifically, Plaintiff argues the magistrate judge erred with respect to  
25 the Court’s power to transfer the action to a state superior court. (ECF No. 19 at 2.) He asserts  
26 that, pursuant to 28 U.S.C. § 1367(d) and *Jinks v. Richland County*, 538 U.S. 456 (2003), the  
27 Court may remand the action to state court. (*Id.*) The Court is unpersuaded by Plaintiff’s  
28 arguments.

1 First, while Rule 60(b)(1) allows the Court to correct a mistake of law, the motion for  
2 reconsideration should not raise new arguments that should have been raised in the original  
3 motion. E.D. Cal. Local Rule 230(j)(3)–(4); *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 880. Here,  
4 Plaintiff has failed to assert any new facts or circumstances that would justify granting a motion  
5 for reconsideration. Therefore, he fails to satisfy the requirements set forth by Rule 60(b)(1) and  
6 Local Rule 230(j). For this reason alone, Plaintiff’s motion must be DENIED.

7 Furthermore, Plaintiff’s arguments are without merit. Specifically, Plaintiff’s reliance on  
8 28 U.S.C. § 1367 and *Jinks v. Richland County* is misplaced. 28 U.S.C. § 1367 pertains to the  
9 Court’s ability to assert supplemental jurisdiction over other claims in actions of which the Court  
10 has original jurisdiction. 28 U.S.C. § 1367(a); see also 28 U.S.C. 1331 (federal question  
11 jurisdiction). Here, Plaintiff only purports to assert federal question claims and no other claims;<sup>2</sup>  
12 therefore, 28 U.S.C. § 1367 is inapplicable to this action. Plaintiff’s reliance on *Jinks v. Richland*  
13 *County* is similarly flawed. In *Jinks*, the Supreme Court held that §1367(d) tolls the statute of  
14 limitations on state-law causes of action brought against municipalities, and it does not violate  
15 principles of “state sovereignty.” *Jinks*, 538 U.S. at 466. Yet Plaintiff has not asserted any state-  
16 law claims or claims against a municipality; therefore, *Jinks* does not support Plaintiff’s  
17 argument. Therefore, the magistrate judge properly denied Plaintiff’s Motion to  
18 Remand/Transfer.

19 Finally, Plaintiff contends it would be “in the interest of justice” to remand the claim to  
20 state court, in order to facilitate a “speedy trial” and to remove the matter from the Court’s  
21 docket. (ECF No. 19 at 2.) Plaintiff also argues that he would be unable to refile the action in  
22 state court since the statute of limitations has run on the claim. (*Id.*) Therefore, he cannot  
23 voluntarily dismiss the action in the district court and refile it in the appropriate state court. (*Id.*)

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26 <sup>2</sup> The Court notes that Plaintiff’s Complaint — which Plaintiff chose to file in federal court  
27 when he initiated this action — only asserted a claim pursuant to 28 U.S.C. § 1983 and no other  
28 claims. (ECF No. 1.) Plaintiff’s First Amended Complaint (ECF No. 16), though it has not yet  
been screened, appears to similarly assert only federal question claims pursuant to 28 U.S.C. §  
1983.

1 However, Plaintiff fails to identify any legal authority in support of this argument or the relief he  
2 seeks. For this reason as well, the motion must be DENIED.

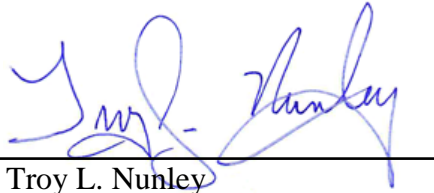
3 **IV. CONCLUSION**

4 Plaintiff has failed to articulate new facts or circumstances to satisfy the requirements set  
5 forth under Local Rule 230(j) or justify granting a motion for reconsideration under Rule 60.  
6 Further, Plaintiff's arguments lack any legal basis. For the reasons discussed herein, Plaintiff's  
7 Motion for Reconsideration (ECF No. 19) is DENIED.

8 **IT IS SO ORDERED.**

9 Dated: February 3, 2020

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Troy L. Nunley  
United States District Judge