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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,
Plaintiff,
v.
VIJAY BODUKMAN, et al.,
Defendants.

No. 2:19-cv-00146-TLN-DMC

ORDER

Plaintiff, a prisoner proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court are Plaintiff’s motions for reconsideration of the Court’s September 15, 2020, final judgment and for appointment of counsel. (ECF Nos. 29, 30.)

The Court may grant reconsideration under Federal Rules of Civil Procedure 59(e) and 60. Generally, a motion for reconsideration of a final judgment is appropriately brought under Federal Rule of Civil Procedure 59(e). *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (discussing reconsideration of summary judgment); *see also Schroeder v. McDonald*, 55 F.3d 454, 458-59 (9th Cir. 1995). The motion must be filed no later than twenty-eight (28) days after entry of the judgment.¹ *See Fed. R. Civ. P. 59(e)*. Under Rule

¹ Pursuant to *Houston v. Lack*, 487 U.S. 266 (1988), for *pro se* prisoner litigants seeking reconsideration, the Court calculates the 28-day period from the date the motion was delivered to prison authorities for mailing to the court. Otherwise, the 28-day period is calculated based on the date the motion for reconsideration is actually filed.

1 59(e), three grounds may justify reconsideration: (1) an intervening change in controlling law;
2 (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest
3 injustice.² See *Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D.
4 Cal. 1986), *rev'd in part on other grounds*, 828 F.2d 514 (9th Cir. 1987), *cert. denied*, 486
5 U.S. 1015 (1988); see also *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.
6 1999); accord *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

7 Under Rule 60(a), the Court may grant reconsideration of final judgments and any order
8 based on clerical mistakes. Relief under this rule can be granted on the Court's own motion and
9 at any time. See Fed. R. Civ. P. 60(a). However, once an appeal has been filed and docketed,
10 leave of the appellate court is required to correct clerical mistakes while the appeal is pending.
11 See *id.*

12 Under Rule 60(b), the Court may grant reconsideration of a final judgment and any order
13 based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
14 evidence which, with reasonable diligence, could not have been discovered within ten days of
15 entry of judgment; and (3) fraud, misrepresentation, or misconduct of an opposing party. See
16 Fed. R. Civ. P. 60(b)(1)–(3). A motion for reconsideration on any of these grounds must be
17 brought within one year of entry of judgment or the order being challenged. See Fed. R. Civ. P.
18 60(c)(1). Under Rule 60(b), the Court may also grant reconsideration if: (1) the judgment is
19 void; (2) the judgement has been satisfied, released, or discharged, an earlier judgment has been
20 reversed or vacated, or applying the judgment prospectively is no longer equitable; and (3) any
21 other reason that justifies relief. See Fed. R. Civ. P. 60(b)(4)-(6). A motion for reconsideration
22 on any of these grounds must be brought “within a reasonable time.” Fed. R. Civ. P. 60(c)(1).

23 Having reviewed both of Plaintiff's motions, the Court finds no basis for reconsideration
24 of the September 15, 2020, final judgment.

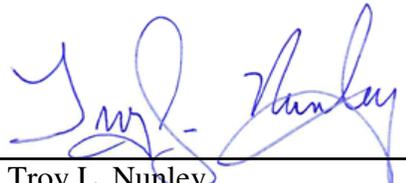
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26 _____
27 ² If reconsideration is sought based on new evidence which could not have been discovered
28 through due diligence in time to move for reconsideration under Rule 59(e), relief may be
available under Federal Rule of Civil Procedure 60(b)(2). A motion under Rule 60(b)(2) may not
be brought more than one year after entry of judgment.

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Accordingly, it is hereby ORDERED that Plaintiff's motions are DENIED. (ECF Nos. 29, 30.)

DATED: April 26, 2021



Troy L. Nunley
United States District Judge