

1 prejudice. [Doc. #12] Plaintiff now moves under Fed. R. Civ. P. 60(b) to vacate this
2 voluntary dismissal. Defendant has not entered an appearance in this case and has not
3 responded to the instant motion.

4 **DISCUSSION**

5 Under Rule 60(b), a court may relieve a party from a “final judgment, order, or
6 proceeding.” As a threshold matter, Plaintiff has made no attempt to show that a
7 voluntary dismissal under Rule 41(a)(1)(A)(i) fits within one of these categories. A
8 voluntary dismissal under this rule is effective without any court action and thus
9 seemingly does not constitute a “final judgment, order, or proceeding.” See *Ajiwoju v.*
10 *Cottrell*, 245 Fed. Appx. 563, 565 (8th Cir. 2007); *Tundell v. Merck & Co.*, No. 06cv375,
11 2008 U.S. Dist. LEXIS 44978, at *5-6 (N.D. Fla. June 9, 2008). On the other hand,
12 despite “thin authority” on this issue, courts in the Ninth Circuit have held that “Rule 60(b)
13 relief may sometimes be appropriate in cases of voluntary dismissal.” *Int’l Allied Printing*
14 *Trades Ass’n v. Am. Lithographers, Inc.*, 233 F.R.D. 554, 556 (N.D. Cal. 2006); see also
15 *Noland v. Flohr Metal Fabricators*, 104 F.R.D. 83, 85 (D. Alaska 1984) (holding that
16 despite the lack of court intervention, a voluntary dismissal under Rule 41(a)(1) can be
17 considered a “proceeding” for purposes of Rule 60(b)); *Budanio v. Saipan Marine Tours,*
18 *Inc.*, 22 Fed. Appx. 708, 710 (9th Cir. 2001). Because the Court ultimately concludes that
19 even if it had jurisdiction to consider Plaintiff’s motion to vacate, Plaintiff would not be
20 entitled to relief under Rule 60(b), it need not reach this jurisdictional issue.

21 Plaintiff brings her Rule 60(b) motion under two subsections— (3), which provides
22 for relief from judgment from fraud or misconduct by an opposing party, and (6), the
23 “catch-all” provision that provides for relief for “any other reason.” Under Rule 60(b)(3),
24 the moving party must prove by clear and convincing evidence that the judgment was
25 obtained through fraud, misrepresentation, or other misconduct and that the misconduct
26 was not discoverable through due diligence prior to the voluntary dismissal. *Casey v.*
27 *Albertson’s Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004). Rule 60(b)(6), in turn, “has been
28 used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized

1 only where extraordinary circumstances prevented a party from taking timely action to
2 prevent or correct an erroneous judgment.” *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th
3 Cir. 2007) (internal quotations and citation omitted).

4 Plaintiff fails to meet either standard. Plaintiff does not assert that the settlement
5 agreement was reached as a result of fraudulent misrepresentations by opposing
6 counsel. Instead, Plaintiff rests her motion on “Defendant’s misconduct by not following
7 the agreement.” (Mem. at 4) The Court lacks subject matter jurisdiction to enforce the
8 settlement agreement, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82
9 (1994), and Plaintiff puts forward no authority as to why alleged non-performance of
10 terms in a settlement agreement can constitute grounds to vacate a voluntary dismissal
11 under Rule 60(b). Absent such authority, the Court holds that Plaintiff’s bare assertion
12 that Defendant breached the settlement agreement is insufficient to justify relief under
13 Rule 60(b).

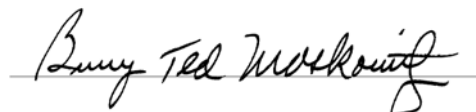
14 Moreover, Plaintiff asserts that “due to the Defendant’s unwillingness to resolve
15 this issue, Plaintiff’s only remedy is to set aside the voluntary dismissal.” (Mem. at 4)
16 (emphasis added) To the contrary, there is no apparent bar to Plaintiff suing anew for
17 breach of the settlement agreement. Just as was the case in *Kokkonen*, the facts of
18 Plaintiff’s principal claim and breach of settlement claim are unrelated. Thus, it would
19 serve no equitable purpose to allow Plaintiff to use reinstatement of the principal suit as a
20 cudgel to punish alleged non-compliance of the settlement agreement.

21 **CONCLUSION**

22 Therefore, the Court **DENIES** Plaintiff’s motion to vacate the voluntary dismissal
23 and reinstate the case.

24 **IT IS SO ORDERED.**

25 DATED: December 30, 2010

26 

27 Honorable Barry Ted Moskowitz
28 United States District Judge