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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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| MICHELLE MCGEE, Plaintiff, v. MIDLAND CREDIT MANAGEMENT, INC., Defendant. |
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Case No.: 14cv1317-MMA (MDD)

**ORDER DENYING PLAINTIFF’S
MOTION FOR
RECONSIDERATION**

[Doc. No. 26]

Before the Court is Plaintiff Michelle McGee’s (“Plaintiff” or “Plaintiff McGee”) motion for reconsideration of the Court’s February 21, 2019 Order dismissing her case with prejudice. Doc. No. 26. Defendant Midland Credit Management, Inc. (“Defendant”) opposes the motion. Doc. No. 28. The Court found the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, the Court **DENIES** Plaintiff’s motion.

RELEVANT BACKGROUND

On August 10, 2018, a group of counsel for Plaintiffs and Defendants in the multi-district litigation (“MDL”) jointly moved for the Court’s approval of a discovery questionnaire and a related protective order providing for limited discovery. *In Re: Midland Credit Management, Inc. Telephone Consumer Protection Litigation*, MDL No. 2286, MDL Doc. No. 603. On August 15, 2018, the Court ordered any Plaintiff to object

1 to the proposed questionnaire and related procedures. MDL Doc. No. 604. On
2 September 5, 2018, and having received no objections, the Court ordered all Plaintiffs in
3 the MDL to complete and serve a discovery questionnaire within 45 days. MDL Doc.
4 No. 608. The Court permitted Defendants to seek dismissal of any cases in which
5 Plaintiffs failed to serve a completed questionnaire. *Id.*

6 On November 13, 2018, Defendants moved for an order to show cause why cases
7 in which Plaintiffs failed to timely serve a completed questionnaire should not be
8 dismissed. MDL Doc. No. 615. Plaintiff McGee's case was listed in Defendants'
9 motion. *Id.* The Court granted the motion and ordered that Plaintiffs who did not
10 complete the questionnaire, including Plaintiff McGee, show cause why their cases
11 should not be dismissed on or before November 30, 2018. MDL Doc. No. 617. Several
12 Plaintiffs responded. *See* MDL Docket. However, Plaintiff McGee did not show cause
13 why her case should not be dismissed. *See id.* On January 14, 2019, the Court refused to
14 recommend dismissal in cases where Plaintiffs served their discovery questionnaires late,
15 but indicated it would recommend dismissal of any cases where Plaintiffs failed to
16 respond. MDL Doc. No. 657. Some Plaintiffs responded to the January 14 Order, and
17 the Court granted them relief. MDL Doc. Nos. 662, 671. Plaintiff McGee did not
18 respond to the January 14 Order. *See* MDL Docket.

19 On February 6, 2019, Judge Dembin recommended dismissal of cases in which
20 Plaintiffs had not responded to the Court's order to show cause. MDL Doc. No. 672.
21 Plaintiff McGee did not object to Judge Dembin's recommendation, and the Court
22 subsequently adopted the recommendation and dismissed Plaintiff McGee's case with
23 prejudice. *See* Doc. No. 24. Four months later, Plaintiff McGee filed the instant motion
24 for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). Doc. No. 26.

25 LEGAL STANDARD

26 Pursuant to Federal Rule of Civil Procedure 60(b), district courts have the power to
27 reconsider a previous ruling or entry of judgment. Reconsideration under Rule 60(b) may
28 be granted in the case of: (1) mistake, inadvertence, surprise or excusable neglect; (2)

1 newly discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the judgment
2 has been satisfied; or (6) for any other reason justifying relief. *See* Fed. R. Civ. P. 60(b).

3 DISCUSSION

4 Plaintiff moves for reconsideration under Rule 60(b)(1) and 60(b)(6) on the
5 grounds that “counsel inadvertently missed the deadline for submitting responses to a
6 [d]iscovery [q]uestionnaire” because there “were numerous [filings] and frequently
7 [there] were notices of additional cases being added to the MDL.” Doc. No. 26 at 1-2.
8 But for “the volume of the filings and notices in addition to other notices related to the
9 busy litigation practice of Plaintiff’s counsel,” the e-mail notifications would have been
10 opened “on a timely basis.” *Id.* at 2. Defendant opposes reconsideration and argues that
11 Plaintiff did not merely miss the discovery questionnaire deadline, but “ignored at least
12 five court orders.” Doc. No. 28 at 1.

13 **A. Excusable Neglect**

14 First, Plaintiff argues her counsel’s failure to timely produce the discovery
15 questionnaire constitutes excusable neglect because of the numerous filings in this MDL.
16 Doc. No. 26 at 1-2. The Supreme Court set forth the following four-factor test to
17 determine whether circumstances constitute excusable neglect: (1) “the danger of
18 prejudice” to the non-moving party; (2) “the length of the delay and its potential impact
19 on judicial proceedings[;]” (3) “the reason for the delay, including whether it was
20 within the reasonable control of the movant[;]” and (4) “whether the movant acted in
21 good faith.” *Iopa v. Saltchuck-Young Bros., Ltd.*, 916 F.3d 1298, 1301 (9th Cir. 2019)
22 (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395
23 (1993)).

24 Regarding the first and second considerations, Plaintiff McGee has continually
25 refused to move her case forward and has unreasonably stalled the case. Plaintiff has had
26 the ability to participate in discovery in this case since August 15, 2018. *See* MDL Doc.
27 No. 608. Plaintiff produced the discovery questionnaire more than eight months late.
28 *See* Doc. No. 26 at 2 (stating that Plaintiff submitted the discovery questionnaire

1 “[c]oncurrent with the filing of this Motion”); *see also* MDL Doc. No. 608 (ordering the
2 discovery questionnaire to be submitted within 45 days of September 5, 2018). She also
3 failed to respond to five Court orders indicating that a failure to respond to any order to
4 show cause would result in dismissal of the case over a period of three months. MDL
5 Doc. Nos. 617, 657, 662, 671, 672. Having received no filings from Plaintiff in response
6 to any of the orders—including the order to show cause and to Judge Dembin’s report
7 and recommendation—the Court dismissed her case. Doc. Nos. 24-25. Plaintiff then
8 waited four months to file a motion for reconsideration. *See* Doc. Nos. 24-26. As a
9 result, Plaintiff was not actively involved in this case for almost a year. *See* MDL
10 Docket.

11 Plaintiff argues this does not prejudice the parties in this MDL because the next
12 phase of discovery has not yet begun. Doc. No. 26 at 2. However, Plaintiff ignores that
13 Defendant must produce “Plaintiff-Specific Information” in response to the discovery
14 questionnaire. MDL Doc. No. 608 at 4. The parties to the MDL have already submitted
15 status reports regarding the next phase of discovery. MDL Doc. Nos. 695-97. As a
16 result, permitting Plaintiff’s case to re-open would require the Court to hold off on
17 scheduling the next phase of discovery, which may require further status reports. *See*
18 MDL Doc. Nos. 689, 695-97. This would prejudice all parties in the MDL by
19 unnecessarily delaying discovery.

20 Considering the third factor, Plaintiff’s reason for the length of the delay is failure
21 to timely open notices of electronic filings. Doc. No. 26. The Court finds that not
22 opening notices of electronic filings, despite the “numerous” notifications Plaintiff’s
23 counsel received, is not excusable neglect, particularly in light of the fact that Plaintiff’s
24 counsel apparently did not open emails for several months. Opening email notifications
25 regarding a client’s case is certainly ““within the reasonable control of the movant.””
26 *Iopa*, 916 F.3d at 1301 (quoting *Pioneer Inv. Servs. Co.*, 507 U.S. at 395). With respect
27 to the final factor, the Court finds no evidence of bad faith.

28 Although the Court finds no evidence of bad faith, the prejudice to the non-moving

1 parties in the MDL and the length and reason of the delay do not constitute excusable
2 neglect. Accordingly, reconsideration is not warranted pursuant to Rule 60(b)(1).

3 **B. Other Reason Justifying Relief**

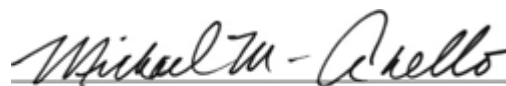
4 Plaintiff also contends that her “inability to present her viable case due to the
5 actions of her counsel and no fault of her own” justifies relief under Rule 60(b)(6). Doc.
6 No. 26 at 2. Rule 60(b)(6) allows the Court to relieve a party from an order for any
7 reason that justifies relief. Fed. R. Civ. P. 60(b)(6). The rule “is to be ‘used sparingly as
8 an equitable remedy to prevent manifest injustice and is to be utilized only where
9 extraordinary circumstances prevented a party from taking timely action to prevent or
10 correct an erroneous judgment.’” *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
11 (quoting *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).
12 The moving party ““must demonstrate both injury and circumstances beyond [her]
13 control.”” *Latshaw*, 452 F.3d at 1103 (quoting *Cnty. Dental Servs. v. Tani*, 282 F.3d
14 1164, 1168 (9th Cir. 2002)). Here, Plaintiff has not shown “that circumstances beyond
15 [her] control prevented timely action to protect [her] interests.” *United States v. Alpine*
16 *Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). Plaintiff’s counsel failed to
17 open notifications of electronic filings or to check the docket in this case, resulting in a
18 missed discovery deadline and five missed opportunities to prevent the case from being
19 dismissed. This is not an extraordinary circumstance warranting relief. Accordingly, the
20 Court finds that relief under Rule 60(b)(6) is not justified.

21 **CONCLUSION**

22 For the reasons set forth above, the Court **DENIES** Plaintiff’s Motion for
23 Reconsideration.

24 **IT IS SO ORDERED.**

25 Dated: August 20, 2019



26 Hon. Michael M. Anello
27 United States District Judge
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