

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re Jordana Bauman,

12 Debtor.

Case No.: 3:16-cv-0806-CAB-(BLM)

13 **ORDER ON MOTIONS FOR RELIEF**
14 **FROM JUDGMENT OR TO**
15 **VACATE SEPTEMBER 6, 2016**
16 **ORDER**
17 **[Doc. Nos. 19, 20]**

18 On April 4, 2016, Debtor’s brother, Mel Marin, filed a motion for withdrawal of
19 reference. [Doc. No. 1.]

20 On April 25, 2016, this Court was unable to ascertain the particular motion or legal
21 issue movant sought to withdraw and issued an Order to Show Cause (“OSC”). [Doc. No.
22 5.] On May 12, 2016, Debtor responded to the OSC. [Doc. No. 6.] Debtor identified her
23 “collateral attack against dismissal or her prior Chapter 13 case” and “debtor’s contempt
24 claims against creditors who have been looting her estate and harassing her” as the specific
25 issues to withdraw. [*Id.* at 1-2.] Further, Debtor asserted that her brother has standing
26 because he has a lien on debtor’s property. [*Id.* at 4.] On May 16, 2016, Debtor filed a
27 supplemental response to the OSC identifying an additional five issues she sought
28 withdrawal of. [Doc. No. 8.]

1 While the OSC was under submission, the Bankruptcy Court dismissed the
2 underlying petition¹. In light of the dismissal, on September 6, 2016, this Court denied as
3 moot the motion for withdrawal of reference and ordered that the Clerk of the Court close
4 the case. [Doc. No. 11.] On the same day, the Clerk of Court entered judgment and closed
5 the case. [Doc. No. 12.]

6 On April 24, 2017, Mel Marin filed a Motion for Relief from Judgment or to Vacate
7 Order of 9/26/2016 Denying Withdrawal of the Reference of Contempt Motions and
8 Adversarial Actions as to Wells Fargo Defendants in Case 16-00301-CL-13 from the
9 Bankruptcy Court (Rule 60). [Doc. No. 19.] On the same day, Debtor filed a Motion for
10 Relief from Judgment or to Vacate Order of 9/6/2016 Denying Withdrawal of the
11 Reference. [Doc. No. 20.] Both motions were made pursuant to Federal Rule of Civil
12 Procedure Rule 60.

13 Rule 60 provides for extraordinary relief and may be invoked only upon a showing
14 of “exceptional circumstances.” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1044
15 (9th Cir. 1994). The Rule identifies six permissible grounds for relief from a final
16 judgment, order, or proceeding, namely: “(1) mistake, inadvertence, surprise, or excusable
17 neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been
18 discovered in time to move for a new trial under Rule 59(b); (3) fraud by the adverse party;
19 (4) the judgment is void; (5) the judgment has been satisfied; (6) and other reason justifying
20 relief.” Fed. R. Civ. P. 60(b). Further, the Rule provides that a motion brought under it
21 “must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a
22 year after the entry of judgment or order of the date of the proceeding.” Fed. R. Civ. P.
23 60(c).

24 The Court begins by noting that the practically identical motions currently before it
25 are as muddled as the original motion for withdrawal of reference. Debtor and her brother
26

27
28 ¹ *In re Jordana Baumann*, Bankr. Case No. 16-00301, Docket No. 149 (September 1, 2016).

1 do not articulate under which provision of Rule 60 the motions for reconsideration and
2 requests to vacate the September 6, 2016 Order are being sought. That being said, the
3 Court has reviewed the motions carefully and concluded that Debtor and her brother have
4 not presented any grounds for relief under any of the six permissible grounds. *See, e.g.,*
5 *Marly Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.
6 2009) (“[A] motion for reconsideration should not be granted, absent highly unusual
7 circumstances, unless the district court is presented with newly discovered evidence,
8 committed clear error, or if there is an intervening change in the controlling law.”).

9 Even under the catchall provision of clause (6), Debtor and her brother have not
10 provided any evidence that demonstrates “extraordinary circumstances” that would
11 warrant relief from the judgment. *Straw v. Bowen*, 866 F.2d 1167, 1172 (9th Cir. 1989) (a
12 party is entitled to relief under Rule 60(b)(6) if he demonstrates “extraordinary
13 circumstances” to justify relief). *See also Hamilton v. Newland*, 374 F.3d 822, 825 (9th
14 Cir. 2004) (“[a] party is entitled to relief under Rule 60(b)(6) where ‘extraordinary
15 circumstances prevented him from taking timely action to prevent or correct an erroneous
16 judgment.”). Debtor and her brother have not met their burden of showing the existence
17 of “‘extraordinary circumstances’ justifying the reopening of a final judgment.” *Gonzalez*
18 *v. Crosby*, 545 U.S. 524, 535 (2005) (citation omitted).

19 Moreover, to the extent that Debtor and her brother may be relying on Rule 60(b)(6),
20 the Court considers the current motions untimely because they were not filed within a
21 reasonable time after the entry of judgment. *Hamilton*, 374 F.3d at 825 (motions based on
22 the first three clauses must be brought within one year of the entry of judgment, while
23 motions relying upon the fourth, fifth or sixth clause must be brought “within a reasonable
24 time.”). The bankruptcy was dismissed in September 2016 and this Court issued its Order
25 in the same month. Filing Rule 60 motions eight months later is not within a reasonable
26 time. Even if Debtor and her brother’s delay in moving for reconsideration “may be
27 attributable to inattention or inexperience [] neither deficiency constitutes an ‘extraordinary
28 circumstance’ that justifies Rule 60(b) relief.” *Id.*

1 For the foregoing reasons, the Motions for Relief from Judgment Under Rule 60
2 [Doc. Nos. 19, 20] are **DENIED** and the September 6, 2016 Order remains in effect.

3 It is **SO ORDERED**.

4 Dated: May 2, 2017



Hon. Cathy Ann Bencivengo
United States District Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28