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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ALLEN EDWARDS,

12 Plaintiff,

13 vs.

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15 P. SHAKIBA, et al.,

16 Defendants.
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Case No. 18cv179-MMA (LL)

**ORDER DENYING PLAINTIFF'S
MOTION TO REOPEN CASE**

[Doc. No. 28]

18 Plaintiff Allen Edwards, a California inmate proceeding *pro se*, instituted this civil
19 rights action against officials at R. J. Donovan Correctional Facility for violation of his
20 Eighth and Fourteenth Amendment rights. Defendants moved to dismiss Plaintiff's
21 claims pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 14. The
22 Court denied Defendants' motion as to Plaintiff's Eighth Amendment claim but granted
23 Defendants' motion as to Plaintiff's Fourteenth Amendment claim. *See* Doc. No. 18.
24 The Court granted Plaintiff leave to file an amended complaint in order to sufficiently
25 allege his Fourteenth Amendment claim. In doing so, the Court admonished Plaintiff that
26 an amended complaint, if any, "must be complete in itself without reference to the
27 original complaint," and "[a]ny claims not re-alleged in the amended complaint will be
28 considered waived." *Id.* at 7 (citing S.D. Cal. CivLR 15.1; *King v. Atiyeh*, 814 F.2d 565,

1 567 (9th Cir. 1987)).

2 Plaintiff filed an amended complaint, alleging only a Fourteenth Amendment claim
3 against Defendants; Plaintiff did not re-allege his Eighth Amendment claim. *See* Doc.
4 No. 19. Defendants moved to dismiss this action in its entirety, arguing that Plaintiff
5 waived his Eighth Amendment claim and failed to state a plausible Fourteenth
6 Amendment claim. *See* Doc. No. 22. Plaintiff did not oppose the motion and the Court
7 granted Defendants’ motion and dismissed this action without prejudice. *See* Doc. No.
8 24. The Clerk of Court entered judgment accordingly on December 21, 2018. *See* Doc.
9 No. 25.

10 Plaintiff now moves to reopen the case, stating only that he has cured the
11 deficiencies in his previous pleadings. *See* Doc. No. 28. Plaintiff has attached a
12 proposed second amended complaint to his motion. *See id.* For the reasons set forth
13 below, the Court **DENIES** Plaintiff’s motion.

14 **DISCUSSION**

15 Where a plaintiff appears *pro se* in a civil rights case, the Court must construe the
16 pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim-Panahi v. Los*
17 *Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). Accordingly, the Court
18 construes Plaintiff’s motion as a request for relief from the previously entered judgment.

19 Federal Rule of Civil Procedure 60(b) grants district courts discretion to relieve a
20 party from a judgment upon a showing of: (1) mistake, inadvertence, surprise or
21 excusable neglect; (2) newly discovered evidence which by due diligence could not have
22 been discovered before the court’s decision; (3) fraud by the adverse party; (4) the
23 judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying
24 relief. “A motion under Rule 60(b) must be made within a reasonable time—and for
25 reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or
26 the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

27 Plaintiff has not shown he is entitled to relief from judgment in this case. Plaintiff
28 provides no explanation for why he failed to respond to Defendants’ motion to dismiss,

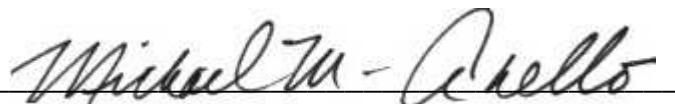
1 seek reconsideration of the Court’s dismissal order, or otherwise litigate this action.
2 Meanwhile, it has been more than a year and a half since entry of judgment.
3 Accordingly, even if Plaintiff attempted to demonstrate mistake or excusable neglect –
4 which he does not do – his motion would be untimely. The Court notes further that it
5 dismissed this action without prejudice. As such, although Plaintiff is not entitled to
6 relief from the judgment in this case, he may file a new lawsuit in order to pursue his
7 claims.

8 **CONCLUSION**

9 Based on the foregoing, the Court **DENIES** Defendants’ motion.

10 **IT IS SO ORDERED.**

11 DATE: July 17, 2020

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13 HON. MICHAEL M. ANELLO
14 United States District Judge
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