

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DUY T. MAI,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

NO. C17-561-RAJ

DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION FOR  
RELIEF FROM JUDGMENT  
AND TO AMEND

Defendants, by and through their attorneys, Annette L. Hayes, United States Attorney for the Western District of Washington, and Sarah K. Morehead, Assistant United States Attorney for the District, hereby file this opposition to plaintiff's motion for relief from the judgment and to amend his complaint. Defendants have already addressed plaintiff's prior, post-judgment motion to amend his complaint, and they incorporate that response here by reference. Dkt. #15. Instead of rehashing those arguments, defendants will focus on plaintiff's request for relief from the judgment. The Court should deny plaintiff's motion for relief from the judgment because there is no basis to vacate the properly entered judgment.

On February 8, 2018, the Court entered an order granting defendants' motion to dismiss and entered judgment on the same day. Dkt. # 12, 13. Plaintiff did not move for reconsideration of that

1 order, and the deadline to do so has passed. On February 12, 2018, plaintiff filed a motion to amend  
2 his complaint. Dkt. #14. Plaintiff sought to add additional facts about his petition to King County  
3 Superior Court to restore his firearm rights, including incorporating the evidence he submitted in  
4 support of that petition. Dkt. #14-1 at p. 4. Defendant opposed the motion to amend, and plaintiff  
5 withdrew the motion to amend. Plaintiff then filed a motion for relief from the judgment and to add  
6 the same amendments listed in his prior post-judgment motion to amend. Dkt. #17.  
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8 Pursuant to Federal Rule of Civil Procedure 60(b), courts may provide a party with relief  
9 from the judgment based on any of the reasons listed in the rule. In his motion, plaintiff alleges that  
10 relief from the judgment is warranted under Fed. R. Civ. P. 60(b)(6), which allows the Court to grant  
11 relief for “any other reason that justifies relief.” That “catch all” provision must be used “sparingly.”  
12 *See, e.g., United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). “Rule  
13 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice” and “is to be  
14 utilized only where extraordinary circumstances prevented a party from taking timely action to  
15 prevent or correct an erroneous judgment.” *Id.* A party seeking to re-open a case under Rule  
16 60(b)(6) “must demonstrate both injury and circumstances beyond his control that prevented him  
17 from proceeding with the prosecution or defense of the action in a proper fashion.” *Cnty. Dental*  
18 *Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002).  
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22 Plaintiff’s motion for relief from the judgment does not address the Rule 60(b)(6) standard,  
23 and instead focuses on the standard to amend his complaint. As set forth in defendants’ prior filing,  
24 Dkt. #15, plaintiff is not entitled to amend his complaint because his proposed amendment is futile,  
25 and he has engaged in undue delay. In plaintiff’s current motion, he has not demonstrated or even  
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1 argued that extraordinary circumstances prevented him from alleging the proposed amended “new”  
2 facts earlier. He was aware of the facts he now seeks to add since the inception of the case.

3 In addition, plaintiff has failed to show any manifest injustice from the judgment. To the  
4 contrary, plaintiff’s proposed “new” factual evidence does not undermine the Court’s legal  
5 conclusions. Order (Dkt. #12) at p. 9-12. In part, the Court found that the challenged statute, 18  
6 U.S.C. § 922(g)(4), is a “presumptively lawful regulatory measure,” relying on Ninth Circuit  
7 precedent. *Id.* at p. 6. As such, the analysis ends there, and plaintiff’s proposed additional facts to  
8 support his as-applied challenge are irrelevant. Even if the Court were to reconsider plaintiff’s as-  
9 applied challenge, the proposed amendment to add additional facts does not justify vacating the  
10 judgment because the Court already assumed those facts to be true in ruling on the motion to  
11 dismiss. *Id.* at p. 2 (explaining that plaintiff supplied the King County Superior Court with “medical  
12 and psychological examinations and supportive declarations,” and the court granted his petition).  
13 Because the Court assumed those facts to be true, there is no reason to believe that amending the  
14 complaint to add copies of the underlying declarations and medical evidence would change the  
15 result. *Id.* at p. 1 (explaining that plaintiff’s allegations in the complaint were “assumed to be true  
16 for purposes of this motion to dismiss.”). Accordingly, plaintiff is not entitled to relief from the  
17 judgment.  
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22 For all of the foregoing reasons, plaintiff’s motion for relief from the judgment and to amend  
23 must be denied.

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1 DATED this 12<sup>th</sup> day of March, 2018.

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3 Respectfully submitted,

4 ANNETTE L. HAYES  
5 United States Attorney

6 /s/ Sarah K. Morehead  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the plaintiff(s).

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I hereby certify that I have served the foregoing document to the following non-CM/ECF participant(s)/CM/ECF participant(s), via USPS mail, postage pre-paid.

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DATED this 12<sup>th</sup> day of March, 2018

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