

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DUY T. MAI,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CASE NO. C17-0561 RAJ

ORDER

This matter comes before the Court on Plaintiff's Motion for Relief from Judgment and Leave to Amend Complaint. Dkt. # 17. Defendants oppose the Motion. Dkt. # 18. For the reasons that follow, the Court **DENIES** Plaintiff's Motion. Dkt. # 17.

I. BACKGROUND

Plaintiff Dui Mai brought this action against Defendants United States of America; the Department of Justice ("DOJ"); the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"); the Federal Bureau of Investigation ("FBI"); Jefferson B. Sessions III, as Attorney General; Andrew McCabe, as Acting Director of the FBI; and Thomas E. Brandon, as Acting Director of the ATF, for alleged violations of his Second and Fifth Amendment rights. Dkt. # 1 ¶¶ 1.1-1.8, 4.1, 4.2. On June 19, 2017, Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure

12(b)(6). The Court granted Defendants’ Motion and judgment was entered in favor of Defendants. Dkt. ## 12, 13. Plaintiff filed a Motion to Amend his Complaint, and subsequently withdrew it. Dkt. ## 14, 16. Plaintiff then filed this Motion for Relief from the Court’s judgment against him and for leave to amend his Complaint. Dkt. # 17.

5 II. LEGAL STANDARD

6 Federal Rule of Civil Procedure 60(b) allows a party to seek relief from an order
7 under a “limited set of circumstances, including fraud, mistake, and newly discovered
8 evidence.” *Harvest v. Castro*, 531 F.3d 737, 744 (9th Cir. 2008); Fed. R. Civ. P. 60(b).
9 Rule 60(b)(6) allows a court to relieve a party from a final judgment or order for “any
10 other reason justifying relief from the operation of the judgment.” Fed. R. Civ. P. 60(b).
11 “Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest
12 injustice. The rule is to be utilized only where extraordinary circumstances prevented a
13 party from taking timely action to prevent or correct an erroneous judgment.” *United*
14 *States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). Relief may
15 be granted “to accomplish justice” but only under “extraordinary circumstances. *Id.*
16 Plaintiff requests that the Court relieve him from the judgment against him in order to
17 allow him to file an amended complaint pursuant to Rule 60(b)(6).

18 Amendment to pleadings is governed by Federal Rule of Civil Procedure 15(a).
19 Rule 15(a) “provides that a party’s right to amend as a matter of course terminates 21
20 days after service of a responsive pleading or 21 days after service of a motion under
21 Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). “In all other
22 cases, a party may amend its pleading only with the opposing party’s written consent or
23 the court’s leave. The court should freely give leave when justice so requires.” Fed. R.
24 Civ. P. 15(a)(2). “In exercising this discretion, a court must be guided by the underlying
25 purpose of Rule 15 to facilitate a decision on the merits, rather than on the pleadings or
26 technicalities.” *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991); *United*
27 *States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Further, the policy of favoring

1 amendments to pleadings should be applied with “extreme liberality.” *DCD Programs,*
 2 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

3 Against this extremely liberal standard, the Court may deny leave to amend after
 4 considering “the presence of any of four factors: bad faith, undue delay, prejudice to the
 5 opposing party, and/or futility.” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d
 6 708, 712 (9th Cir. 2001). But “[n]ot all of the factors merit equal weight ... it is the
 7 consideration of prejudice to the opposing party that carries the greatest weight.”
 8 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “Absent
 9 prejudice, or a strong showing of any of the remaining [] factors, there exists a
 10 presumption under Rule 15(a) in favor of granting leave to amend.” *Id.* The party
 11 opposing amendment bears the heavy burden of overcoming this presumption. *DCD*
 12 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

13 **III. DISCUSSION**

14 The Court entered an Order granting Defendants’ motion to dismiss on February
 15 8, 2018. Dkt. # 12. Plaintiff filed a motion to amend his complaint several days later, on
 16 February 12, 2018. Dkt. # 14. Defendants opposed the motion to amend and Plaintiff
 17 subsequently withdrew the motion. Plaintiff then filed this Motion on March 1, 2018.
 18 Motions for reconsideration must be filed within fourteen (14) days of the order on which
 19 the motion is based. LCR 7(h)(2). The deadline for filing a motion for reconsideration of
 20 the Court’s previous Order was February 22, 2018. This Motion was not filed until
 21 March 1, 2018, and is therefore untimely.

22 Plaintiff makes no argument addressing the standard for relief from judgment as
 23 set out in Rule 60(b)(6), instead focusing his argument on the standard for a motion to
 24 amend a complaint. Plaintiff does not argue that extraordinary circumstances prevented
 25 him from timely filing a motion for reconsideration and provides no explanation for his
 26 failure to do so. While Plaintiff argues that he was injured when the Court dismissed his
 27 claims, he makes no argument that this “injury” prevented him from taking action to seek

1 reconsideration. Plaintiff also makes no argument that relief from judgment is necessary
2 to prevent “manifest injustice.” As Plaintiff fails to meet the standard for relief under
3 Rule 60(b), his Motion is **DENIED**.

4 Even if Plaintiff’s Motion for Relief was granted, amendment of his Complaint
5 would be futile. The Ninth Circuit uses a two-step inquiry for addressing Second
6 Amendment challenges to regulations. *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 960
7 (9th Cir. 2014). This two-step inquiry, “(1) asks whether the challenged law burdens
8 conduct protected by the Second Amendment” based on a historical understanding of the
9 scope of the Second Amendment, “and (2) if so, directs courts to apply an appropriate
10 level of scrutiny.” *Id.* (citing *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir.
11 2013)). The Court’s Order dismissing Plaintiff’s claims states that the challenged statute,
12 “18 U.S.C. § 922(g)(4), which is a prohibition on the possession of firearms by the
13 mentally ill, is a ‘presumptively lawful regulatory measure.’” Dkt. # 12 at 6. The Order
14 then states that even if Plaintiff could show that the challenged law burdens conduct
15 protected by the Second Amendment, his claim fails under the second prong of the
16 inquiry; analysis under immediate scrutiny. Dkt. # 12 at 10.

17 Plaintiff seeks to add factual allegations and exhibits to his Complaint to support
18 his as-applied constitutional challenge to the statute. Specifically, Plaintiff seeks to add
19 copies of declarations and medical evidence, his petition to the King County Superior
20 Court for restoration of his firearm rights, and the King County Superior Court’s order
21 granting his petition. However, pursuant to the standard for motions to dismiss, this does
22 not constitute new factual evidence, but rather, evidence supporting facts that the Court
23 already assumed to be true in ruling on Defendants’ motion to dismiss. The Court
24 considered the standards for restoration of firearm rights under Washington law, the fact
25 that Plaintiff submitted medical and psychological examinations and declarations in
26 support of his petition to the King County Superior Court, and the fact that Plaintiff’s
27 petition was granted after review of that evidence, in coming to a decision. The proposed

1 amendments would not add factual allegations that would have any impact on the Court's
2 analysis. Therefore, amendment of Plaintiff's Complaint would be futile.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Relief from
5 Judgment and for Leave to Amend Complaint. Dkt. # 17.

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7 Dated this 21st day of December, 2018.

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11 The Honorable Richard A. Jones
12 United States District Judge
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