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3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 JOANNE WARWICK,

No. C 08-3904 CW

7 Plaintiff,

ORDER DENYING

PLAINTIFF'S

8 v.

RULE 60 MOTION FOR

RELIEF FROM THE

9 UNIVERSITY OF THE PACIFIC;

ORDER DENYING

10 CALIFORNIA DEPARTMENT OF

PLAINTIFF'S MOTION

11 CORRECTIONS AND REHABILITATION

TO OPPOSE COSTS

(CDCR); PATRICIA MILLER; MATTHEW

(DOCKET NO. 247)

12 CATE; MARVIN SPEED; TED RICH;

13 MICHAEL BRADY; CLAUDIA BELSHAW;

14 JILL BROWN; JOHN D. STOKES; GARY

15 SWARTHOUT; DOES TWO THROUGH

16 TWENTY-FIVE, inclusive,

17 Defendants.
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22 Plaintiff Joanne Warwick moves for relief from the Court's
23 order denying her motion to oppose costs, pursuant to Federal
24 Rules of Civil Procedure 1 and 60(b)(1), (2) and (3), and the
25 Court's inherent equitable power.¹ Docket No. 247. Plaintiff
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¹ Federal Rule of Civil Procedure 1 states that the Federal Rules of Civil Procedure "govern the procedure in all civil actions and proceedings in the United States district courts," except for certain exceptions not relevant in this motion. Rule 1 further states that the Federal Rules of Civil Procedure "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." Because Plaintiff does not point to authority or provide substantive argument based on Rule 1 and the Court's inherent authority, this Order addresses the standard for relief under Rule 60(b).

1 also requests that the Court issue an order requiring Defendants
2 to show cause as to why, given Defendants' purported litigation
3 misconduct, she should still be required to pay costs.

4 Defendants oppose the motion. Having considered all of the
5 parties' submissions, the Court denies the motion.

6 BACKGROUND

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8 This lawsuit arises from Warwick's termination as a contract
9 attorney for the California Parole Advocacy Program (CalPAP).
10 CalPAP trains, appoints and assigns contract attorneys to parolees
11 facing parole revocation proceedings. CalPAP is operated by
12 Defendant University of Pacific (UOP) through a contract with the
13 State of California. CalPAP removed Warwick from the CalPAP panel
14 of attorneys because her gate clearance at San Quentin prison was
15 revoked. In response to her termination, Warwick filed suit
16 against Defendants UOP, the California Department of Corrections
17 and Rehabilitation (CDCR) and various individuals, claiming
18 violations under Title 42 U.S.C. § 1983 and California business
19 tort law. Throughout the litigation, Warwick has asserted that
20 her gate clearance was revoked and she was terminated as a CalPAP
21 contract attorney in retaliation for her various complaints
22 regarding the management of CalPAP.
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25 On July 6, 2010, this Court granted Defendants' motions for
26 summary judgment on all claims. On July 8, 2010, the Court
27 entered judgment in favor of Defendants. On July 30, 2010,
28 Warwick filed objections to the Bill of Costs submitted by CDCR

1 and UOP. On August 4, 2010, Defendants moved to strike Warwick's
2 objections, arguing that they failed to comply with Civil Local
3 Rule 54-2(b), requiring parties to meet and confer in an effort to
4 resolve the disagreement. The objecting party must make a good
5 faith effort to arrange such a conference. In addition, on August
6 4, 2010, Warwick's counsel filed a notice of substitution of
7 counsel and a proposed order to withdraw as counsel.
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9 On August 11, 2010, the Clerk of the Court taxed costs in the
10 amount of \$11,589.65 for the CDCR and \$7,435.19 for the UOP,
11 reducing, by a relatively small amount, Defendants' costs request.
12 On that same day, the Court granted Warwick's counsel's request to
13 withdraw. A week later, Warwick filed, on her own behalf, a four-
14 page motion to oppose costs, accompanied by over two hundred pages
15 of exhibits. Warwick argued that she should be excused from
16 paying costs because Defendants were at fault for the protracted
17 litigation. Warwick indicated that she had been searching for
18 housing that week and requested an opportunity to supplement her
19 briefing. The Court denied the motion to oppose costs,
20 determining that Warwick had not demonstrated (1) that limited
21 financial resources impeded her ability to pay costs over time,
22 (2) that future litigants would be chilled from pursuing such
23 civil rights litigation, or (3) that her lawsuit otherwise
24 presented an issue of sufficient novelty, weight and merit that
25 the presumption in favor of awarding costs was rebutted. The
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1 Court did not otherwise address her request to file further
2 briefing.

3 Subsequently, Warwick sought relief from judgment, pursuant
4 to Rule 60(b). On November 11, 2011, the Court denied Warwick
5 relief from judgment. On December 19, 2011, more than a year
6 after the Court issued its order denying her motion to oppose
7 costs, Warwick moved for relief from that order.

8 LEGAL STANDARD

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10 Federal Rule of Civil Procedure 60(b) provides that, "upon
11 such terms as are just," a court may relieve a party from an order
12 or final judgment for the following reasons: (1) mistake,
13 inadvertence, surprise, or excusable neglect; (2) newly discovered
14 evidence which by due diligence could not have been discovered in
15 time to move for a new trial under Rule 59(b); (3) fraud (whether
16 heretofore denominated intrinsic or extrinsic), misrepresentation,
17 or other misconduct of an adverse party; (4) the judgment is void;
18 (5) the judgment has been satisfied, released or discharged;
19 (6) any other reason justifying relief from operation of the
20 judgment. Fed. R. Civ. P. 60(b).
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22 Under Rule 60(b)(3), the movant must (1) prove by clear and
23 convincing evidence that the verdict was obtained through fraud,
24 misrepresentation, or other misconduct; and (2) establish that the
25 conduct complained of prevented the losing party from fully and
26 fairly presenting his or her case or defense. Casey v.
27 Albertson's Inc., 362 F.3d 1254, 1260 (9th Cir. 2004); Jones v.
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1 Aero/Chem Corp., 921 F.2d 875, 878-79 (9th Cir. 1990).

2 Rule 60(b)(3) "require[s] that fraud . . . not be discoverable by
3 due diligence before or during the proceedings. Casey, 362 F.3d
4 at 1260.

5 DISCUSSION

6 As an initial matter, Warwick's motion is untimely.

7 Rule 60(c) of the Federal Rules of Civil Procedure states,
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9 A motion under Rule 60(b) must be made within a
10 reasonable time--and for reasons (1), (2), and (3) no
11 more than a year after the entry of the judgment or
12 order or the date of the proceeding.

13 Fed. R. Civ. P. 60(c)(1).

14 On December 17, 2010 the Court denied Plaintiff's motion to
15 oppose costs, and more than one year later, on December 19, 2011,
16 she moved for relief from the Court's order. Accordingly
17 Warwick's motion is denied as untimely. United States v. Carey,
18 2010 WL 2180364, *1 (E.D. Cal.) (holding that under Rule 60(c)(1)
19 the defendants' motion for relief from judgment pursuant to Rules
20 60(b)(2) and (3) was untimely because it was filed more than one
21 year after entry of judgment).

22 Warwick's motion also lacks merit. She argues that her
23 request should be granted based on her excusable neglect. In
24 Briones v. Riviera Hotel & Casino, 116 F.3d 379 (9th Cir. 1997),
25 the case upon which Warwick relies, the plaintiff missed the
26 deadline to oppose the defendant's motion to dismiss and shortly
27 thereafter the district court dismissed the action and entered
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1 judgment against him. The plaintiff then filed a motion to set
2 aside the judgment, arguing that his failure to meet the deadline
3 constituted excusable neglect. The Ninth Circuit held that the
4 equitable test for excusable neglect established in Pioneer Inv.
5 Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380,
6 381-82 (1993), applies to Rule 60(b). Under that test, courts are
7 to consider, taking account of all relevant circumstances, the
8 danger of prejudice to the opposing party, the length of the
9 movant's delay and its potential impact on the judicial
10 proceedings, the reason for the delay, including whether it was
11 within reasonable control of the movant, and whether the movant
12 acted in good faith. Id. The four enumerated factors, while not
13 an exclusive list, provide the framework for deciding whether
14 missing a deadline constitutes "excusable" neglect. Id.

15
16 Warwick does not argue that she missed the deadline to file
17 her original motion to excuse costs, as occurred in Briones.
18 Rather, she argues that she was excusably negligent in preparing
19 her unsuccessful motion to oppose costs because at the time she
20 was overwhelmed by a confluence of factors including her loss of
21 her lawsuit on summary judgment, her loss of counsel and her
22 search for housing, the latter two of which occurred in the week
23 prior to her filing of her motion to be excused from costs.
24 Warwick's motion included copious amounts of immaterial documents
25 and omitted specific information about her income. As noted
26 earlier, in denying Warwick's motion to oppose costs, the Court
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1 stated that her submissions did not adequately support her
2 contentions that she lacked the ability to pay costs over time,
3 that future litigants would be chilled from pursuing civil rights
4 litigation if relief from costs were not granted, or that the case
5 was of sufficient novelty and merit that relief was warranted. In
6 her current motion, Warwick repeats her prior arguments that her
7 case was meritorious and novel. Furthermore, she does not argue
8 that at the time she moved to oppose costs, she was unable to
9 provide sufficient information about her financial status. For
10 these reasons, Warwick has not demonstrated that excusable neglect
11 justifies relief from the Court's prior denial of her request to
12 be excused from costs.
13

14 Warwick also argues that she is entitled to relief from the
15 Court's prior order based on newly discovered evidence, under Rule
16 60(b)(2). In connection with the present motion, Warwick
17 submitted the following items as evidence: a March 29, 2006 letter
18 from Ernest Galvan, counsel for class plaintiffs in Valdivia v.
19 Brown,² No. 94-cv-0671 (E.D. Cal.); a December 1, 2011 article by
20 Eric Jacobson; a September 29, 2011 letter from CDCR notifying an
21 attorney of a temporary exclusion order against him or her; and a
22 December 8, 2011 letter from a psychotherapist treating Warwick.
23 The first three items of evidence appear directed at Warwick's
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27 ² This class action concerns the constitutionality of
28 California's parole revocation process, including the right of
parolees to appointed counsel.

1 contention that her lawsuit raised important issues regarding the
2 due process rights of parolees. Warwick had the letter from
3 Galvan at the time she originally moved to oppose costs. The
4 letter does not constitute newly discovered evidence.

5 Nor do the December 1, 2011 article, the September 29, 2011
6 letter or Warwick's therapist's letter from December 8, 2011,
7 constitute newly discovered evidence. These documents did not
8 exist at the time that the Court denied Warwick's motion to excuse
9 costs. See Fantasyland Video, Inc. v. Cnty. of San Diego, 505
10 F.3d 996, 1005 (9th Cir. 2007) (holding that a declaration did not
11 constitute newly discovered evidence under Rule 60(b)(2) because
12 it discussed evidence that was not inexistence at the time of
13 judgment).

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15 Nor do these documents support Warwick's contention that her
16 case was of exceptional importance or merit. Although the
17 December 1, 2011 article discusses the broader implications of the
18 Supreme Court's ruling in Garcetti v. Ceballos, 547 U.S. 410
19 (2006), this Court found it unnecessary to rule on the application
20 of that precedent to her case because she failed to produce
21 evidence that the revocation of her gate clearance was in
22 retaliation for her speech. Because Warwick lacked such evidence,
23 her case did not afford an opportunity to address whether the
24 principle announced in Garcetti applies CalPAP contract attorneys.
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26 The article does not mention her case. The September 29, 2011
27 letter fails to establish that Warwick's case was of exceptional
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1 importance or merit; it does not evidence that the attorney's
2 temporary exclusion raised any meritorious or novel legal issue
3 and does not demonstrate any connection to Warwick's case.

4 Likewise, Warwick's therapist's letter does not bear on the
5 applicable standard for excusing costs.

6 In sum, Warwick has not submitted newly discovered evidence
7 that changes the Court's prior determination that her case was not
8 of sufficient merit or novelty that she should be excused from
9 paying costs. Cf. Ass'n of Mexican-American Educators v. Cal.,
10 231 F.3d 572, 593 (9th Cir. 2000) (affirming denial of \$215,443.67
11 in costs to prevailing defendants where the plaintiffs pursued a
12 class action challenging teachers' examination); National Org. For
13 Women v. Bank of Cal., 680 F.2d 1291, 1294 (9th Cir. 1982)
14 (affirming denial of costs to defendants where plaintiffs had
15 limited resources and lawsuit alleged wide-scale racial
16 discrimination). In addition, in the present motion Warwick does
17 not argue that the Court previously failed to consider her
18 financial circumstances.

19 Finally, Warwick argues that the Court's denial of her
20 request to be excused from costs resulted from Defendants' fraud
21 and the Court should issue an order to show cause as to why she
22 should be required to pay despite Defendants' alleged misconduct.
23 Her assertions are unwarranted because they are grounded in her
24 oft-repeated accusations that Defendants engaged in litigation
25 misconduct related to certain discovery requests. Warwick was
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1 unsuccessful in litigating her discovery disputes and the Court
2 has not found that Defendants engaged in misconduct. Thus, her
3 request for relief pursuant to Rule 60(b)(3) is denied.

4 CONCLUSION

5 Warwick's motion for relief is DENIED.

6 IT IS SO ORDERED.

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9 Dated: 7/31/2012



CLAUDIA WILKEN
United States District Judge