

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

RAUL MARTINEZ,

Plaintiff,

VS.

MICHAEL J SCOTT, PC, *et al*,

Defendants.

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CIVIL ACTION NO. H-10-1619

**OPINION AND ORDER**

Plaintiff's motion for new trial and withdrawal of opinion and order (Doc. 35) is pending before the Court. Plaintiff Raul Martinez moves to vacate the Court's opinion and order (Doc. 33) on the grounds that the Defendants misrepresented the "Offer of Judgment" on which Defendants premised their motions to dismiss. Specifically, Plaintiff contends that the Defendants misrepresented to the Court the provision in the offer of judgment relating to attorney's fees.

Under Federal Rule of Civil Procedure 59(e), a judgment may be altered or amended if (1) an intervening change in controlling law occurred; (2) the movant uncovered new evidence that was reasonably unknown prior to the entry of the judgment or order in question; or (3) a need to correct a manifest error in law exists. Fed. R. Civ. P. 59(e); *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989).

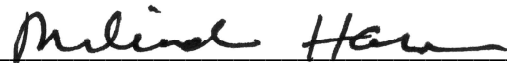
Here, Plaintiff appears to allege that the Court's prior order constituted a manifest error of law because it relied on Defendants' misrepresentation of the "Offer of Judgment" that was the subject of the motions to dismiss. Just as he did in his response to Defendants' motions to dismiss, Plaintiff contrasts the word "incurred" in Defendant Scott's Motion to Dismiss (Doc. 22

at 2) with the phrase “fees actually paid” in the offer of judgment (Doc. 22 at 30) and argues that there is “a vast difference between” them. Doc. 35. The Court disagrees. Plaintiff additionally objects to terms of the settlement agreement that require “proof of payment” of attorney’s fees. Plaintiff’s motion turns on nothing more a semantic quibble and his disagreement with the simple requirement that he provide some proof, rather than mere allegations, of the amount attorney’s fees at issue. The Court considered and rejected these arguments when it previously dismissed Plaintiff’s case.

Because Plaintiff’s motion fails to demonstrate a manifest error of law in the Court’s prior opinion and order, the Court hereby

**ORDERS** that Plaintiff’s motion is **DENIED**.

SIGNED at Houston, Texas, this 15th day of February, 2012.



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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE