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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVIS MORENO CONSTRUCTION,  
INC.,

Plaintiff,

v.

FRONTIER STEEL BUILDINGS  
CORP.,

Defendant.

1:08-cv-00854-OWW-SMS

MEMORANDUM DECISION AND ORDER  
DENYING DEFENDANT'S MOTION FOR  
RECONSIDERATION (Doc. 143)

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I. INTRODUCTION.

Plaintiff Davis Moreno Construction, Inc., ("Plaintiff") proceeds with an action for damages against Defendant Frontier Steel Buildings Corp. ("Defendant").

On November 18, 2010, the court entered an order granting Plaintiff's motion for partial summary judgment. (Doc. 120).

More than thirty days later, on December 20, 2010, Defendant filed a Request for 16-Day Extension of Time to File Notice of Appeal. (Doc. 128). The court denied Defendant's motion on January 6, 2011. (Doc. 136). Defendant filed an untimely notice of appeal on January 5, 2011. (Doc. 132).

Defendant filed a motion for reconsideration of the court's order denying the request for extension of time on January 13,

1 2011. (Doc. 143).

2 **II. LEGAL STANDARD.**

3 A motion for reconsideration is appropriate where the district  
4 court (1) is presented with newly discovered evidence, (2)  
5 committed clear error or the initial decision was manifestly  
6 unjust, or (3) if there was an intervening change in controlling  
7 law. *See School Dist. No. 1J v. AC&S, Inc.*, 5 F.3d 1255, 1263 (9th  
8 Cir. 1993); *Osband v. Woodford*, 290 F.3d 1036, 1038 (9th Cir. 1999)  
9 (en banc). A reconsideration motion should not merely present  
10 arguments previously raised, or which could have been raised, in a  
11 previous motion. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th  
12 Cir. 1985).

13 **III. DISCUSSION.**

14 Defendant seeks reconsideration of the court's order denying  
15 Defendant's request for an extension of time. Defendant contends  
16 it is entitled to appeal the court's grant of summary judgment  
17 under the collateral order doctrine. Defendant has not established  
18 that reconsideration is warranted.

19 Federal Rule of Appellate Procedure 4(a)(5) governs sets forth  
20 the standard applicable to motions for extensions of time to file  
21 an appeal. Rule 4(a)(5)(A) provides:

22 The district court may extend the time to file a notice  
23 of appeal if:

24 (i) a party so moves no later than 30 days after  
the time prescribed by this Rule 4(a) expires; and

25 (ii) regardless of whether its motion is filed  
26 before or during the 30 days after the time  
prescribed by this Rule 4(a) expires, **that party**  
27 **shows excusable neglect or good cause.**

28 Fed. R. App. P. 4(a)(5)(A) (emphasis added). Local Rule 144 also

1 sets forth guidelines for motions requesting extensions of time.

2 Local Rule 144 provides:

3 Counsel shall seek to obtain a necessary extension from  
4 the Court or from other counsel or parties in an action  
5 as soon as the need for an extension becomes apparent.  
6 **Requests for Court-approved extensions brought on the  
7 required filing date for the pleading or other document  
8 are looked upon with disfavor.**

9 E.D. Cal. R. 144 (emphasis added).

10 Defendant's request for an extension of time to file a notice  
11 of appeal was filed on the date the notice of appeal was due and is  
12 thus looked upon with disfavor pursuant to Local Rule 144. *Id.*  
13 Further, Defendant's motion reveals that Defendant failed to timely  
14 seek an extension from the court, as the purported need for an  
15 extension of time became known to Defendant's counsel on or about  
16 December 9, 2010, eleven days before Defendant filed its request.  
17 Defendant appears to have completely disregarded Local Rule 144.  
18 Defendant's motion also fails to comply with Federal Rule of  
19 Appellate Procedure 4.

20 Defendant advances two reasons for its request for an  
21 extension of time: (1) Defendant and Plaintiff were engaged in  
22 settlement negotiations during the past three weeks but no  
23 settlement was agreed upon; and (2) Defendant's counsel underwent  
24 surgery on December 16, 2010, and this surgery was not anticipated  
25 or scheduled until after December 9, 2010. (Doc. 128). In the  
26 context of this case, settlement negotiations do not provide good  
27 cause for Defendant's delay, especially in light of the fact that  
28 Plaintiff was armed with the summary judgment order in its favor  
and had limited incentive to settle. With respect to counsel's  
unexpected surgery, Defendant's counsel fails to articulate why

1 surgery on December 16-four days before the notice of appeal was  
2 due- impaired his ability to file a timely notice of appeal.

3 The order granting Plaintiff's motion for summary judgment was  
4 entered on November 18, almost a full month before the date of  
5 counsel's surgery. Further, the Memorandum Decision on the  
6 parties' cross-motions for summary judgment put Defendant on notice  
7 of the court's ruling as early as November 2, 2010. (Doc. 118).

8 Defendant's request for extension of time to file a notice of  
9 appeal did not comply with Local Rule 144 and was not supported by  
10 a showing of good cause or excusable neglect as required by Federal  
11 Rule of Appellate Procedure 4. Defendant's motion for  
12 reconsideration does not provide any new facts or law that warrant  
13 reconsideration of the court's order denying Defendant's request  
14 for extension of time. A reconsideration motion should not only  
15 present arguments previously raised, or which could have been  
16 raised in a previous motion. *Backlund*, 778 F.2d at 1388.

17 Defendant's lack of diligence does not warrant reconsideration  
18 of the court's prior order. Defendant's notice of appeal was  
19 untimely, as was Defendant's request for extension of time.  
20 Defendant's request for reconsideration is DENIED.

21  
22 IT IS SO ORDERED.

23 **Dated: February 1, 2011**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**