

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 GREGORY MORRIS, CASE NO. CV F 09-0026 LJO GSA
12 Plaintiffs, **ORDER ON PLAINTIFF'S MOTI**
13 vs. **AMEND THE JUDGMENT**

14 STATE BAR OF CALIFORNIA, et al.,
15 Defendants.

17 On October 25, 2010, Plaintiff filed a request to amend the judgment against the City of Fresno
18 and Don MacAlpine, pursuant to Fed.R.Civ.P. 59(e). (Doc. 171.) Previously, on October 8, 2010, this
19 Court had granted a motion for summary judgment in favor of defendants City of Fresno and Don
20 MacAlpine and against plaintiff Gregory Morris. Thereafter, the Court entered judgment in accordance
21 with its order. In this current motion, plaintiff contends that the Court erred in affirming the summary
22 judgment motion. The Court erred because the Court granted the summary judgment based on the belief
23 no opposition had been filed when plaintiff, in fact, had filed an opposition to the motion, as the Court
24 ordered. (Doc. 171, Motion p. 4-5.) Plaintiff argues that the Court did not consider his opposition which
25 he filed as Document 164. Defendants City of Fresno and Don MacAlpine filed an opposition on
26 October 27, 2010. Pursuant to Local Rule 230(g), this matter is submitted on the pleadings without oral
27 argument and the hearing set for November 10, 2010 is VACATED. Having considered the moving and

1 opposition papers, as well as the Court's file, the Court issues the following order.¹

2 **Rule 59(e)**

3 A motion to alter or amend a judgment "may not be used to relitigate old matters, or to raise
4 arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon*
5 *Shipping Co. v. Baker*, - U.S. -, 128 S.Ct. 2605, 2617, fn. 5 (2008). If the motion is filed within 10 days
6 after the district court's entry of judgment, it is treated as a motion to alter or amend the judgment under
7 Rule 59(e). *American Ironworks & Erectors Inc. v. North American Const. Corp.*, 248 F.3d 892,
8 898–899 (9th Cir. 2001). The motion will lie where: (1) there is newly discovered evidence; (2) the
9 district court committed clear error or its initial decision was manifestly unjust; or (3) there is an
10 intervening change in the controlling law. *Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir. 2008). The
11 court's commission of some manifest error of law or fact justifies the grant of a Rule 59(e) motion.
12 *Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003).

13 Here, plaintiff moves to amend the judgment based upon the Court's error in granting judgment
14 on behalf of the City and MacAlpine and against plaintiff and for not permitting renewal of objections
15 regarding warrantless searches.

16 **No Error in Denial of Relief from Summary Judgment**

17 In a series of motions following this Court's grant of summary judgment in favor of the City and
18 MacAlpine, plaintiff asked for relief: (1) relief from the Requests for Admissions which were deemed
19 admitted, (2) relief from the grant of summary judgment, (3) objections to the Magistrate Judge's list
20 of pending/surviving causes of action, and (4) leave to amend the complaint.

21 The Court granted plaintiff's requested relief from the deemed admitted Requests for
22 Admissions. (Doc. 161, Order on Plaintiff's Motions.) The Court denied the requested relief from the
23 grant of the summary judgment without prejudice. In considering plaintiff's request to be relieved from
24 the Summary Judgment Order, the Court stated:

25 "Here, plaintiff requests relief from the summary judgment order,
26 but the motion is more directed at his motion to amend the complaint.

27 ¹ In their opposition, defendants argue that the motion is improperly before this Court for failure to comply with
28 several Federal Rules of Civil Procedure and Local Rules. The Court acknowledges that defendant's procedural argument
have merit. Nonetheless, the Court elects to dispose of plaintiff's motion on the substance of the motion.

1 Plaintiff has failed to file a proposed opposition to the summary
2 judgment motion when he filed his motion for relief. The Court cannot
3 determine whether there is any need to provide relief without a proposed
4 opposition. Accordingly, the motion for relief from the summary
5 judgment order will be denied without prejudice.” (Doc. 161, Order Sept.
6 13, 2010.)

7 The Court granted plaintiff the opportunity to submit an opposition to the summary judgment, such that
8 the Court could consider whether plaintiff should be relieved of the Summary Judgment Order:

9 The motion for relief from the judgment is DENIED, without prejudice.
10 Plaintiff may refile his motion to set aside the summary judgment with
11 his proposed opposition to the summary judgment motion, no later than
12 14 days from the date of service of this order. Failure to file timely the
13 motion with the proposed opposition will result in denial of the motion
14 for relief with prejudice.” (Doc. 161, Order p. 5.)

15 In response to this Court’s request, plaintiff filed a “Motion for Extension.” The motion for
16 extension was accompanied by exhibits contained in Doc. 164. During the course of analyzing the
17 “Motion for Extension,” the Court reviewed all documents filed in support of that motion, including a
18 document entitled “Opposition to Motion for Motion for Summary Judgment,” which plaintiff now
19 argues was not considered by the Court. (Doc. 164, Opposition; Doc. 171 , Motion (“Unfortunately, the
20 Court did not realize that plaintiff had indeed filed a proposed Opposition to the motion for Summary
21 Judgment.” (Spelling errors omitted.)))

22 Following the Court’s review of this particular document, as well as the remainder of the
23 documents filed in the “Motion for Extension,” the Court found that “[t]his ‘Motion for Extension’ does
24 not respond, and does not address, the relief plaintiff originally sought and for which the Court granted
25 leave to file an opposition.” (Doc. 167, Order Denying Relief from Summary Judgment.) For instance,
26 the “opposition” argued that there was a conspiracy to conduct warrantless searches and that persons not
27 parties were responsible for plaintiff’s injuries. (Doc. 164, Opposition (“Crawford and others were
28 alleged to have snuck the city fire investigative team into plaintiff’s home when it was too late for them
to enter, weeks after the fire had been extinguished.”)) The opposition argued that MacAlpine was not
entitled to qualified immunity for illegal, warrantless searches. The opposition continued the argument
that illegal searches were the bases of the claims against the City and MacAlpine, when these were not
the grounds for the City’s motion for summary judgment. The entire basis of plaintiff’s opposition was
the warrantless searches which the Magistrate Judge had ruled were not part of this case (for failure to

1 provide notice to the defendants), and which were not part of the summary judgment motion. Plaintiff's
2 opposition neither addressed the causes of action which were the subject of the City's and MacAlpine's
3 summary judgment nor countered the arguments made by the City and MacAlpine in the summary
4 judgment. This Court, thus, found that "the documents that have been filed do not address the Summary
5 Judgment Order." Accordingly, as the Court considered the "opposition" filed by plaintiff, the Court
6 finds no error in granting the summary judgment.

7 **No Error in Denial of Motion to Amend**

8 In plaintiff's Motion to Amend the Judgment, plaintiff argues that the initial complaint contained
9 allegations of warrantless searches such that he should have been able to proceed on those allegations.
10 He argues he filed objections to the Magistrate's Judge's finding that the complaint failed to contain such
11 allegations and he was not given the opportunity to renew his objections. (Doc. 171, Motion p. 4 ("The
12 District Judge Hon. Judge O'Neill in evaluating the situation, decided that the Order would be denied,
13 for now, but that plaintiff could renew his objections if the magistrate denied the motion to amend the
14 complaint" (spelling errors corrected).))

15 Here, this Court, rather than the Magistrate Judge, independently considered plaintiff's motion
16 to amend the complaint to add allegations of warrantless searches and additional parties. In considering
17 whether to grant leave to amend, the Court also considered plaintiff's position that the original complaint
18 contained allegations of warrantless searches. This Court found that the original complaint failed to
19 allege warrantless searches as a potential claim:

20 "While plaintiff argued to the Magistrate Judge that the original
21 complaint contained such allegations, the Court finds that the complaint
22 did not set out claims for warrantless searches. The allegations in the
23 complaint were convoluted, verbose, and conclusory as they related to
24 events surrounding the arson, plaintiff's arrest, and prosecution. The
25 complaint labeled claims (such as false arrest and malicious prosecution)
26 and did not set forth warrantless searches as any basis for any claim. If
plaintiff intended to assert warrantless search, the Court finds the
complaint failed to give adequate notice to defendants, pursuant to
Federal pleading standards, that plaintiff sought liability for warrantless
searches, such that defendants are excused for not being aware of a
potential warrantless search claim." (Doc. 166, Order on Motion to
Amend, p. 7 and n.4.)

27 Thus, this Court, and not the Magistrate Judge, ruled on the merits of the arguments regarding whether
28 warrantless searches were plead. Based upon this Court's independent consideration of plaintiff's

1 argument, the Court found that the complaint failed to comply with Federal pleading standards and did
2 not set forth claims for warrantless searches. For all the reasons stated in the denial of leave to amend,
3 this Court finds there is not manifest error.

4 **CONCLUSION**

5 For the foregoing reasons, plaintiff's Motion to Amend the Judgment is DENIED.

6 IT IS SO ORDERED.

7 **Dated: November 1, 2010**

8 /s/ Lawrence J. O'Neill
9 UNITED STATES DISTRICT JUDGE

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