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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT P. SMITH, III,

CASE NO. 1:09-cv-02088-OWW-SKO PC

Plaintiff,

APPEAL NO. 11-15439

v.

ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION WITH
PREJUDICE, AND DIRECTING CLERK OF
COURT TO SERVE COURTESY COPY OF
ORDER ON THE NINTH CIRCUIT

CALIFORNIA DEPARTMENT
OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

(Doc. 21)

Plaintiff Robert P. Smith, III is a state prisoner who was proceeding pro se in this civil action. On September 29, 2010, the Court granted Plaintiff’s motion to remand this action to Kings County Superior Court and denied his motion for sanctions. On October 18, 2010, Plaintiff filed a motion seeking reconsideration of the denial of his motion for sanctions. Defendants did not file a response.

Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted). The moving party “must demonstrate both injury and circumstances beyond his control” Id. (internal quotation marks and citation omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion,” and “why the facts or circumstances were not shown at the time of the prior motion.”

1 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
2 unless the district court is presented with newly discovered evidence, committed clear error, or if
3 there is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or
4 present evidence for the first time when they could reasonably have been raised earlier in the
5 litigation.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.
6 2009) (internal quotations marks and citations omitted) (emphasis in original).

7 The Magistrate Judge considered Plaintiff’s request for sanction under Federal Rule of Civil
8 Procedure 11 and recommended it be denied. In adopting the Findings and Recommendations in
9 full, the Court also considered Plaintiff’s objections and addressed Plaintiff’s request for costs under
10 28 U.S.C. § 1447(c) raised therein. Plaintiff seeks reconsideration of the denial of his motion for
11 sanctions and costs under Rule 11 and under section 1447(c).

12 Section 1447(c) provides that an order remanding a case may require payment of just costs
13 and actual expenses resulting from the removal. Fee shifting is not automatic, and when an
14 objectively reasonable basis for removal exists, fees sought under section 1447(c) should be denied.
15 Martin v. Franklin Capital Corp., 546 U.S. 132, 140-41, 126 S.Ct. 704 (2005); Gardner v. UICI, 508
16 F.3d 559, 562-63 (9th Cir. 2007). The Court found a reasonable basis for removal existed, ending
17 the inquiry. Further, the Magistrate Judge found that Defendants’ filing did not warrant the
18 imposition of sanctions under Rule 11 because it was not filed for an improper purpose and it was
19 not frivolous.

20 Plaintiff disagrees with the Court’s ruling and seeks to further argue his entitlement to
21 sanctions and costs. The Court already considered these issues in its order of September 29, 2010.
22 Accordingly, Plaintiff’s motion for reconsideration, filed October 18, 2010, is HEREBY DENIED,

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1 with prejudice, and the Clerk of the Court SHALL serve a courtesy copy of this order on the Ninth
2 Circuit.¹

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4 IT IS SO ORDERED.

5 **Dated:** April 12, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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¹ Plaintiff filed a notice of appeal on February 22, 2011, and the appeal is being held in abeyance pending a ruling on Plaintiff's motion for reconsideration. (Docs. 22, 25.)