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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HOLTSINGER,
Plaintiff,

No. 2:03-cv-00732-MCE-CMK

v.

MEMORANDUM AND ORDER

TANYA VOROS,
Defendant.

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In bringing the present Motion to Alter or Amend the Judgment, Plaintiff asks this Court to increase the award in his favor to at least \$5,000 in compensatory damages pursuant to Federal Rule of Civil Procedure 59(e). Additionally, by separate Motion, Plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d)(2), and Local Rule 293.

For the reasons set forth below, Plaintiff's Motion to Alter or Amend the Judgment will be denied. Plaintiff's Motion for Attorney's Fees will be granted.¹

¹ Because oral argument was not of material assistance, the Court deemed this matter suitable for decision without oral argument. E.D. Cal. Local Rule 230 (g).

1 **BACKGROUND**

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3 Plaintiff, a state prisoner, brought this civil rights
4 action pursuant to 42 U.S.C. § 1983. Plaintiff alleges he was
5 denied medical treatment by Defendant Voros following an assault
6 by at least four other inmates. As a result of that assault,
7 Plaintiff claims he sustained injuries and was exposed to the
8 blood of another inmate.

9 Following Defendant Voros' failure to appear for her
10 deposition, fact establishing sanctions were issued finding
11 liability on her part for deliberate indifference towards
12 Plaintiff's serious medical needs. The only issue remaining for
13 trial were the damages, if any, owed to Plaintiff. Plaintiff
14 sought both compensatory and punitive damages for Eighth
15 Amendment violations pursuant to 42 U.S.C. § 1983, as well as
16 reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

17 The matter came on for court trial on March 15, 2010,
18 against Defendant Tanya Voros, only inasmuch as Plaintiff had
19 previously dismissed his claims against all other named
20 Defendants. No appearance was made on behalf of Defendant Tanya
21 Voros.

22 Following the trial, this Court entered judgment in favor of
23 Plaintiff and against Defendant Voros. Compensatory damages were
24 awarded for Plaintiff in the amount of \$500.00. The Court
25 declined to award any punitive damages.

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1 **STANDARD**

2 **A. Motion to Alter or Amend Judgment**

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4 A court should be loathe to revisit its own decisions unless
5 extraordinary circumstances show that its prior decision was
6 clearly erroneous or would work a manifest injustice.

7 Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816,
8 (1988). This principle is generally embodied in the law of the
9 case doctrine. That doctrine counsels against reopening
10 questions once resolved in ongoing litigation. Pyramid Lake
11 Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 (9th Cir.
12 1989). Nonetheless, in certain limited circumstances, a court
13 has discretion to reconsider its prior decisions.

14 A timely filed motion for reconsideration under a local rule
15 is construed as a motion to alter or amend a judgment under
16 Rule 59(e). Schroeder v. McDonald, 55 F.3d 454, 459 (9th Cir.
17 1995). A motion for reconsideration is treated as a Rule 59(e)
18 motion if filed within twenty-eight days of the judgment being
19 entered. Fed. R. Civ. P. 59(e). Since this motion is seeking
20 reconsideration of a final judgement and was timely filed, the
21 Court will treat it as a Rule 59(e) motion.

22 Absent "highly unusual circumstances," reconsideration
23 pursuant to Rule 59(e) is appropriate only where 1) the court is
24 presented with newly discovered evidence; 2) the court committed
25 clear error or the initial decision was manifestly unjust; or
26 3) there is an intervening change in controlling law. School
27 Dist. No. 1J, Multnomah County v. Acands, Inc., 5 F.3d 1255, 1263
28 (9th Cir. 1993) (citations and quotations omitted).

1 Mere dissatisfaction with the court's order, or belief that the
2 court is wrong in its decision, are not grounds for relief under
3 Rule 59(e).

4
5 **B. Motion for Attorney's Fees**

6
7 42 U.S.C. § 1988(b) authorizes the court, in its discretion
8 to award a "reasonable" attorney fee" to the prevailing party in
9 a case brought under 42 U.S.C. § 1983. Federal Rule of Civil
10 Procedure 54(d)(2) provides that such claims shall be made by
11 motion.

12
13 **ANALYSIS**

14 **A. Motion to Alter or Amend Judgment**

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16 Motions for relief from judgment pursuant to Rule 59(e) are
17 addressed to the sound discretion of the district court. Turner
18 v. Burlington Northern Santa Fe R.R., 338 F.3d 1058, 1063 (9th
19 Cir. 2003). Plaintiff requests that this Court alter or amend
20 its judgment because he alleges this Court "committed clear error
21 in completely omitting any findings based on the medical
22 testimony." (Pl.'s Mot. to Am. 2:16-18.) The evidence the
23 Plaintiff seeks the court to include is not, however, newly
24 discovered evidence. Nor does the Plaintiff assert any
25 intervening change in controlling law.

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1 Instead, according to the Plaintiff, the Court committed clear
2 error by failing to mention, in its Findings of Fact and
3 Conclusions of Law, that the transcript of a doctor's deposition
4 submitted by Plaintiff included a diagnosis of left knee sprain.

5 Contrary to Plaintiff's assertion, the mere fact that
6 Dr. Hendrick's deposition testimony was not cited does not point
7 to clear error. Moreover, even had Dr. Hendrick's diagnosis and
8 opinions been set forth within the Court's findings, its
9 compensatory award in the amount of \$500,00 would not have
10 changed.

11 Plaintiff's Motion to Alter or Amend Judgment will be
12 denied.

13
14 **B. Motion for Attorney's Fees.**

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16 Plaintiff, as the prevailing party in this litigation, has
17 filed a Motion for Attorney's fees seeking \$750.00 provided the
18 Court declined to alter or amend its prior judgment in this
19 matter. Defendant has not opposed either that Motion or the
20 Motion to Alter or Amend Judgment discussed above.

21 As indicated above, this is a case brought under 42 U.S.C.
22 § 1983 alleging unlawful prison conditions. Section 1988
23 authorizes an award of "reasonable" attorney fees to a prevailing
24 plaintiff, and while Plaintiff unquestionably possesses that
25 status given the judgment in his favor, under 42 U.S.C.
26 § 1997e(d)(2), a defendant cannot be required to pay in
27 attorney's fees more than 150 percent of the judgment rendered
28 against it. Because the \$750.00 in attorney's fees sought by


1 Plaintiff is in accordance with that 150 percent guideline, his
2 request is proper and will be granted.

3
4 **CONCLUSION**

5
6 For all the foregoing reasons, Plaintiff's Motion to Alter
7 or Amend the Judgment (Docket No. 345) is DENIED. Plaintiff's
8 Motion for Attorney's Fees (Docket No. 346) is GRANTED.
9 Plaintiff is awarded the sum of \$750.00 in attorney's fees.

10 IT IS SO ORDERED.

11 Dated: June 2, 2010

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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