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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LILLIAN SIMONIS, et al.,

NO. CIV. S-08-2303 LKK/CMK

Plaintiffs,

v.

O R D E R

LARRY FITCH, et al.,

Defendants.

\_\_\_\_\_ /

The court previously entered judgment against plaintiffs for failure to comply with discovery orders. Plaintiff Lillian Simonis (hereinafter "plaintiff") requests relief from the judgment against her and summary judgment in her favor. For the reasons set forth below, these requests are denied.

**I. Background**

Plaintiff brought claims alleging unlawful seizure, kidnap, and torture against defendants Shasta County and various named officers thereof.

On July 10, 2009, the Magistrate Judge assigned to this case ordered plaintiff to respond to discovery requests and to pay \$600

1 in monetary sanctions. Dkt. No. 40. Plaintiff failed to do so.  
2 Defendants moved for dismissal as a sanction under Fed. R. Civ. P.  
3 37(b)(2)(A)(v). Plaintiff did not file an opposition to this  
4 motion and did not attend the November 5, 2009 hearing thereon.  
5 On November 11, 2009, the Magistrate Judge submitted findings and  
6 recommendations recommending dismissal of plaintiff's claims  
7 without prejudice as a sanction for plaintiff's failure to comply  
8 with the July 10, 2009 order. Dkt. No. 49. Plaintiff filed  
9 objections. After considering these objections, the court adopted  
10 the findings and recommendations on February 23, 2010. Dkt. No.  
11 52. Judgment was entered the next day. Plaintiff now seeks relief  
12 from this judgment.

13 Tangential to these proceedings, one of the named defendants,  
14 Eric Magrini, filed a suggestion of bankruptcy on November 19,  
15 2008. Dkt. No. 11. In light of the automatic stay imposed by  
16 Magrini's bankruptcy petition, the Magistrate Judge severed the  
17 claims against Magrini, copying plaintiff's complaint against him  
18 into a separate action. Order of Feb. 17, 2009, Dkt. No. 29. The  
19 separate action was denominated Simonis v. Magrini, No.  
20 2:09-cv-00446-LKK-CMK, and remains stayed. Because Magrini was not  
21 party to the subsequent discovery requests in this action,  
22 defendants' motion to dismiss and the entry of judgment in this  
23 case do not affect the case against Magrini.

## 24 **II. Standard**

25 The court may grant reconsideration of a final judgment under  
26 Federal Rule of Civil Procedure 60(b). Plaintiff invokes three

1 paragraphs under this subsection: Rule 60(b)(3), for fraud,  
2 misrepresentation, or misconduct of an opposing party; (b)(4), "the  
3 judgment is void;" and (b)(6), "any other reason that justifies  
4 relief." Here, plaintiff's motion is timely, in that it is brought  
5 within two weeks of the judgment, which is undoubtedly "a  
6 reasonable time" after the judgment was entered and within the one  
7 year period required for a motion under (b)(3). See Fed. R. Civ.  
8 P. 60(c)(1).

9 Pursuant to Eastern District of California Local Rule 230(j),  
10 when a party asks for reconsideration of a order granting or  
11 denying a motion, the party is to set forth the material facts and  
12 circumstances surrounding each motion for which reconsideration is  
13 sought, including:

14 (1) when and to what Judge or Magistrate Judge  
15 the prior motion was made,

16 (2) what ruling, decision or order was made  
17 thereon,

18 (3) what new or different facts or  
19 circumstances are claimed to exist which did  
20 not exist or were not shown upon such prior  
21 motion, or what other grounds exist for the  
22 motion, and

23 (4) why the facts or circumstances were not  
24 shown at the time of the prior motion.

25 While Local Rule 230(j) provides for what "counsel shall present"  
26 to the court upon a motion for reconsideration, the definitions  
27 contained in Local Rule 101 define "counsel" as including pro se  
28 litigants.

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1 **III. Discussion**

2 Plaintiff presents roughly four arguments for relief.  
3 First, plaintiff argues that defendants misrepresented the nature  
4 of the claims against Magrini and the effect of the bankruptcy  
5 stay. Plaintiff contends that defendants represented that these  
6 claims were against Magrini personally, whereas plaintiff argues  
7 that these claims are actually against Magrini's surety.  
8 Plaintiff apparently draws from this argument the conclusion that  
9 the Magrini's bankruptcy petition should not have affected this  
10 suit, such that the stay and severance were improper. Without  
11 addressing the substance of these contentions, the court notes  
12 that this argument has no bearing on plaintiff's failure to  
13 respond to discovery orders or plaintiff's failure to oppose the  
14 motion to dismiss. As such, this argument cannot entitle  
15 plaintiff to relief here.<sup>1</sup>

16 Second, plaintiff alleges misconduct by defendants in  
17 inducing former plaintiff Hannah Moore to withdraw from the  
18 lawsuit. Moore and defendants stipulated to Moore's dismissal  
19 of her claims in exchange for defendants' waiver of costs and  
20 fees. See Stipulation and Order entered Feb. 13, 2009, Dkt. No.  
21 25. Plaintiff previously contended that Moore's withdrawal was  
22 secured by improper intimidation. See Plaintiff's Notice filed  
23 March 11, 2009, Dkt. No. 31, and Plaintiff's Request for a Status  
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25 <sup>1</sup> Moreover, the court notes that the severance has in part  
26 worked to plaintiff's benefit: it is only because of this severance  
that the claim against Magrini remains pending.

1 Conference filed April 6, 2009, Dkt. No. 34. Again, however,  
2 plaintiff has not offered any connection between this alleged  
3 misconduct and plaintiff's failure to respond to discovery  
4 requests or plaintiff's failure to oppose the motion to dismiss.

5 Third, plaintiff contends that defendants have also refused  
6 to respond to plaintiff's discovery requests. Having reviewed  
7 the entire file, the court concludes that this is the first time  
8 plaintiff argues that defendants have refused to respond to  
9 discovery. Insofar as this issue could have been raised  
10 previously but was not, it cannot demonstrate that the orders  
11 compelling discovery and dismissing the action were improper.  
12 Once again, the alleged conduct has inadequate connection to the  
13 ground for dismissal.

14 Fourth, plaintiff contends that it is improper to dismiss  
15 a constitutional claim for procedural reasons. Plaintiff is  
16 correct that public policy favors resolution of claims on the  
17 merits. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.  
18 1995). Nonetheless, the court previously determined that  
19 dismissal was warranted here, and plaintiff raises no new  
20 argument on this issue.

21 Finally, plaintiff asserts that the prior judgment is "void"  
22 under Fed. R. Civ. P. 60(b)(4). This assertion is made without  
23 argument, but is apparently merely a reiteration of the above  
24 four grounds. Thus, plaintiff implies that the judgment is void  
25 because the court should grant plaintiff's motion for relief.  
26 Because the court rejects the preceding arguments this argument


1 also fails.

2 Accordingly plaintiff's motion for relief from judgment,  
3 Dkt. No. 54, is DENIED. Because the court declines to reconsider  
4 the prior dismissal of this case, plaintiff's concurrently filed  
5 motion for summary judgment, Dkt. No. 55, is also DENIED.  
6 Accordingly, the hearing previously set for April 19, 2010 is  
7 VACATED.

8 IT IS SO ORDERED.

9 DATED: April 14, 2010.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT