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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NINA RINGGOLD, ESQ. as named
Trustee of the Aubry Family
Trust and named Executor
under the will of Robert
Aubry on behalf of the trust
and estate and all similarly
situated entities and/or
persons; et al.;

Plaintiff,

v.

JERRY BROWN in his Individual
and Official Capacity as
Governor of the State of
California and in his
Individual and Official
Capacity as Former Attorney
General of the State of
California; et al.;

Defendant.

No. 2:12-CV-00717-JAM-JFM

**ORDER DENYING PLAINTIFFS MOTION
FOR STAY AND RECONSIDERATION;
ORDER TO SHOW CAUSE**

Presently before the Court is Plaintiffs' Ex Parte
Application (Doc. # 67) seeking 1) a stay of the Court's January
23, 2013 Order (Doc. # 65) and a series of state court cases; 2)
reconsideration of and an order vacating the Court's January 23,

1 2013 Order; and/or 3) a stay and certification of partial
2 judgment pursuant to Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292.
3 In the body of Plaintiffs' motion, they also seek a ruling on a
4 motion for sanctions, which they claim was included in opposition
5 to Defendants' motion for sanctions (Doc. # 52).

6 1. Motion for Reconsideration

7 Plaintiffs move for reconsideration of the Court's January
8 23, 2013 Order and a stay of numerous state court cases pending
9 the outcome of certiorari petitions to the United States Supreme
10 Court in this action and another action. Since Plaintiffs'
11 proposed order seeks the same relief that was denied in the
12 Court's January 23, 2013 Order, the Court will consider the
13 request for reconsideration and for stay as one motion for
14 reconsideration.

15 "[A] motion for reconsideration should not be granted,
16 absent highly unusual circumstances, unless the district court is
17 presented with newly discovered evidence, committed clear error,
18 or if there is an intervening change in the controlling law."
19 Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d
20 873, 880 (9th Cir. 2009) (quotation omitted).

21 Plaintiffs' motion fails to meet the motion for
22 reconsideration standard. The motion is a reiteration of the same
23 arguments and theories extensively briefed prior to the Court's
24 order on Plaintiffs' Application for a Temporary Restraining
25 Order and the motions decided in the Court's January 23, 2013
26 Order. Plaintiffs' reliance on recently decided Noel Canning v.
27 NLRB, Nos. 12-1115, 12-1153, 2013 WL 276024, - F.3d -, 194
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1 L.R.R.M. 3089 (D.C. Cir. Jan. 25, 2013), a case that analyzed the
2 constitutionality of recess appointments made under the federal
3 Constitution, is misplaced because that case has nothing to do
4 with the issues presented in Plaintiffs' suit. The request for
5 reconsideration is therefore DENIED.

6 2. Certification of Partial Judgment

7 Plaintiffs next seek certification to appeal the Court's
8 January 23, 2013 Order under 29 U.S.C. 1292(b). Certification
9 under 28 U.S.C. § 1292(b) is denied because Judge Real's pre-
10 filing was the primary basis for the Court's January 23, 2013
11 Order. Judge Real's order can be appealed directly, making 28
12 U.S.C. § 1292(b) certification in this case unnecessary at this
13 time.

14 Plaintiffs also seek entry of partial judgment pursuant to
15 Rule 54(b) on the Court's order entering sanctions against
16 Plaintiffs Ringgold and Ringgold-Lockhart. Plaintiffs seek
17 partial judgment because they claim it is unclear as to whether
18 sanctions were entered in their capacity as parties to this
19 action or non-parties. The Court clearly entered sanctions
20 against Plaintiffs Ringgold and Ringgold-Lockhart in their
21 capacity as parties to this lawsuit. Certification under Rule
22 54(b) is therefore unnecessary, and this matter will be subject
23 to appeal upon entry of final judgment in this action. Riverhead
24 Sav. Bank v. Nat'l Mortg. Equity Corp., 893 F.2d 1109, 1113 (9th
25 Cir. 1990).

26 3. Plaintiffs' Motion for Sanctions

27 Plaintiffs request a ruling on their motion for sanctions,
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1 which was included in the memorandum filed in opposition to
2 Defendant's motion for sanctions (Doc. # 52). Plaintiffs sought
3 sanctions on the grounds that Defendants' motion was frivolous.
4 The basis for Plaintiffs Motion for Sanctions was rejected when
5 the Court granted Defendants' motion, thereby finding that the
6 motion was not frivolous. Additionally, Plaintiffs never complied
7 with the requirements of Fed. R. Civ. P. 11(c)(2) which are 1)
8 that any Rule 11 motion be made separate from any other motion,
9 and 2) that the parties against whom sanctions are sought be
10 given 21 days to withdraw the offending pleading. Accordingly,
11 Plaintiffs' motion was not properly before the Court. Plaintiffs
12 are denied sanctions for this reason as well.

13 4. Sanctions

14 Finally, the present application was filed after Plaintiffs'
15 Counsel Nina R. Ringgold was expressly admonished to carefully
16 consider the propriety of future filings in the Court's January
17 23, 2013 Order.

18 A federal district court has the inherent power to sanction
19 attorneys appearing before it. Fink v. Gomez, 239 F.3d 989, 992
20 (9th Cir. 2001). Sanctions may be imposed "where an attorney
21 knowingly or recklessly raises a frivolous argument" for
22 an improper purpose. Id. at 993 (quoting Primus Auto. Fin.
23 Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir.1997)).

24 The present application for ex parte relief is almost
25 entirely based on theories and arguments that the Court
26 considered and rejected in its January 23, 2013 Order, issued
27 just eight days prior to this application. Accordingly, Ms.
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1 Ringgold was aware that another motion based on those theories
2 and arguments would be frivolous. She nevertheless chose to file
3 the present motion seeking to circumvent the Court's prior order
4 and multiply these proceedings without regard to unnecessary
5 burdens created for the Court and Defendants in this matter. The
6 Court therefore finds that the present motion recklessly raised
7 frivolous arguments for an improper purpose. As a result,
8 Plaintiffs' Counsel Nina R. Ringgold is hereby ordered to pay
9 \$1,000 in sanctions to the Clerk of Court within 10 days.

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11 ORDER

12 Plaintiffs' Ex Parte Application is DENIED in its entirety.
13 Plaintiffs' Counsel Nina R. Ringgold is further ordered to pay
14 sanctions in the amount of \$1,000 to the Clerk of Court within 10
15 days for filing the application.

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17 IT IS SO ORDERED.

18 Dated: February 7, 2013

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21 JOHN A. MENDEZ,
22 UNITED STATES DISTRICT JUDGE
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