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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Wayne Calhoon,

Plaintiff,

v.

City of South Lake Tahoe, et al.,

Defendants.

No. 2:19-cv-02165-KJM-JDP

ORDER

Wayne Calhoon moves for reconsideration of this court’s October 8, 2020 order granting in part defendant’s motion to dismiss. *See generally* Mot., ECF No. 42; Order (MTD Order) at 1 & 15, ECF No. 38. As explained in more detail below, **the motion is denied.**

I. BACKGROUND

In its previous order, the court summarized the background of this litigation, up through plaintiff’s filing of the first amended complaint, and need not repeat it here. MTD Order at 1–3.

Plaintiff filed his first amended complaint, *see* ECF No. 13, and defendants filed a motion to dismiss all federal section 1983 claims against the individual police officer defendants. Mot. to Dismiss (MTD) at 6, ECF No. 15. Defendants argued plaintiff pled too generally by not providing “what actions on behalf of what officer violated what constitutional right.” *Id.* at 9. The court granted defendants’ request and dismissed those claims with prejudice, reasoning that plaintiff did not address or oppose defendants’ position, either in opposition or at hearing, noting

1 “[i]t is not for the court to litigate plaintiff’s case,” MTD Order at 14–15. Plaintiff then filed a
2 motion for reconsideration. Mot. for Recon. Mem. P&A, ECF No. 42-1. However, after the
3 parties filed, and the court adopted, a stipulation for plaintiff’s filing a third amended complaint,
4 *see generally* Stip. and Order, ECF No. 46, the court denied as moot the motion for
5 reconsideration, *see* Minute Order, ECF No. 48. In response, plaintiff filed an ex parte
6 application to vacate that denial, ECF No. 51, which the court granted by minute order, ECF No.
7 54, thus reviving the motion for reconsideration, which the court now resolves by this order.

8 In February 2021, pending the court’s resolution of plaintiff’s motion to reconsider and
9 “[t]o avoid another FRCP 12(b)(6) motion,” the parties stipulated to plaintiff’s amending his third
10 amended complaint to remove a claim the court had already dismissed and the City of South Lake
11 Tahoe would then “respond accordingly.” Stip. ¶¶ 8–9, ECF No. 58.

12 **II. LEGAL STANDARD**

13 A court may relieve a party from an order under Rule 60 of the Federal Rules of Civil
14 Procedure for “mistake, inadvertence, fraud, or excusable neglect” or for “any other reason that
15 justifies relief,” Fed. R. Civ. P. 60(b)(1), (b)(6). The Local Rules provide a plaintiff should point
16 to new or different facts or circumstances that did not exist or were not shown previously and
17 explain why the facts or circumstances were not shown at the time of the prior motion. *See* E.D.
18 Cal. L. R. 230(j)(3)–(4). “[A] motion for reconsideration should not be granted, absent highly
19 unusual circumstances, unless the district court is presented with newly discovered evidence,
20 committed clear error, or if there is an intervening change in the controlling law.” *389 Orange St.*
21 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

22 **III. ANALYSIS**

23 Plaintiff argues this court’s October 8, 2020 ruling reflected a mistake as contemplated by
24 the rules on reconsideration, because: 1) the court “misunderstood Plaintiff’s position” as
25 reflected in the pleadings on the motion and at hearing, or 2) plaintiff “erred in expressing . . .
26 plainly [his] meritorious position” at hearing. Mot. for Recon. Mem. P&A at 2. Plaintiff’s
27 position that his first amended complaint (FAC) adequately pleaded a short and plain statement
28 showing that he was entitled to relief, *id.* at 3, does not rest on either newly discovered evidence

1 or a change in the controlling law. Plaintiff's mere disagreement with this court's ruling does not
2 present new or different facts or circumstances for this court to review that did not previously
3 exist at the time the court issued its decision on defendants' motion to dismiss. Put simply, this
4 argument does not explain how the court committed a clear error.

5 Next, plaintiff reiterates his claims as alleged in the FAC and his opposition to defendants'
6 motion to dismiss. *Id.* at 4. Once again, these arguments do not present new evidence, a change
7 in the law, or identify a clear error by the court. Plaintiff is not providing new information, as the
8 court had access to these arguments when it issued its motion to dismiss order. Plaintiff also
9 claims "counsel has no recollection" that the court inquired as to the basis for the 42 U.S.C.
10 § 1983 claims against the officers. *Id.* at 6. To the extent plaintiff is suggesting his attorney
11 failed to understand questions posed by the court at hearing, or otherwise did not respond to
12 questions, this argument too does not provide a basis for reconsideration. "As a general rule,
13 parties are bound by the actions of their lawyers, and alleged attorney malpractice does not
14 usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1)." *Casey v. Albertson's*
15 *Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004). It is not the court's responsibility to infer arguments
16 counsel could or should have made; not doing so most certainly does not rise to the level of clear
17 error.

18 Plaintiff's arguments do not provide a basis for granting a Rule 60(b) motion. To the
19 extent some of the arguments are new, his motion for reconsideration "may not be used to raise
20 arguments or present evidence for the first time when they could reasonably have been raised
21 earlier in the litigation." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.
22 2000).

23 **IV. CONCLUSION**

24 Plaintiff's motion for reconsideration is **denied**.

25 This order resolves ECF No. 42.

26 IT IS SO ORDERED.

27 DATED: July 14, 2021.


CHIEF UNITED STATES DISTRICT JUDGE