

1 HOWARD MOORE, JR., SBN 55228  
 MOORE & MOORE  
 2 1563 Solano Avenue, #204  
 Berkeley, California 94707-2116  
 3 Telephone: (510) 552-7172  
 Facsimile: (510) 528-3024  
 4 Email: moorlaw@aol.com

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5 Attorneys for Plaintiff, ALBERTO ROCHA

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 7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
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11 ALBERTO ROCHA,	)	Civil Action No. C08-3049 MHP
	)	
12 Plaintiff,	)	PLAINTIFF'S NOTICE OF
	)	MOTION FOR LEAVE TO FILE
13	)	MOTION FOR RECONSIDERATION
	)	OF THE ORDER AND JUDGMENT
14 vs.	)	GRANTING DEFENDANT'S
	)	MOTION FOR SUMMARY
15 HILDA L. SOLIS, Secretary,	)	JUDGMENT
Department of Labor,	)	
	)	Date: June 14, 2010
16 Defendant.	)	Time: 2:00 p.m.
	)	Ctrm: 15 18 <sup>th</sup> Floor San Francisco

18 Plaintiff ALBERTO ROCHA hereby gives notice that he will move the Court for leave to  
 19 treat his previously filed motion to set aside judgment pursuant to the Federal Rules of Civil  
 20 Procedure (FRCP) Rules 55©, Rule 59(a) and (e), and Rule 60(b)(1) and (6) as one to Request  
 21 Leave to File a Motion for Reconsideration of the Order and Judgment, entered April 15, 2010  
 22 (Documents #165 and #166), pursuant to Civ. L. Rule 7-9, on June 14, 2010, at 2:00 p.m., before  
 23 the Honorable Marilyn Hall Patel, Senior United States District Judge, in Courtroom 15, 18<sup>th</sup>  
 24 Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, 94102.

25 The grounds for this motion are set forth below in the Declaration of Counsel.

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Declaration of Counsel

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2 1. I am an attorney at law and admitted to practice before all of the courts of California and  
3 an active member of the Bar of this Court. I am counsel of record for Plaintiff Alberto Rocha on  
4 whose behalf I make the within motion for leave to file a motion for reconsideration of the order  
5 and judgment granting Defendant’s motion for summary judgment. I have personal knowledge of  
6 all matters stated herein, and, if I were called and sworn as witness in this civil action, I would  
7 and could competently testify to all of the facts set forth herein, based upon my own personal  
8 knowledge.

9 2. I make this motion on the direction of the Court’s Courtroom Deputy who  
10 informed me via email that the Court treated the motion which I filed on behalf of Plaintiff to set  
11 aside default and default judgment, to alter or amend judgment, or for new trial, or for relief from  
12 judgment pursuant to the FRCP, Rules 55(c), Rule 59(a) and (e), and Rule 60(b)(1) and 6,  
13 respectively, as a motion for reconsideration for which Plaintiff was required to request leave or  
14 permission from the Court to file. Accordingly, I now request leave from the Court to file said  
15 motion.

16 3. I did not request leave from the Court to file the motion because I did not believe  
17 that leave was required. Civ. L. Rule 7-9, on its face, requires leave to file a motion for  
18 reconsideration prior “to the entry of judgment adjudicating all of the claims and the rights and  
19 liabilities of all parties in the case” and, therefor, Rule 7-9 applies only to interlocutory orders. In  
20 this case, both a final order and judgment which adjudicated all of the claims in the action was  
21 entered before Plaintiff’s motion to set aside the judgment was made. For that reason, I did not  
22 believe Plaintiff could make the showing required by Rule 7-9(b) to support a request for leave to  
23 file a motion for reconsideration.

24 4. Nevertheless, Plaintiff requests the Court to either treat his motion as one for  
25 reconsideration or allow it to be heard as a matter of right under FRCP, Rule 55(c), 59(a) and (e),  
26 and Rule 60(b)(1) and (6).

