

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

TADEUSZ WYRZYKOWSKI,  
Plaintiff,  
v.  
COUNTY OF MARIN, et al.,  
Defendants.

Case No. 3:14-cv-03825-LB

**ORDER REGARDING THE  
PLAINTIFF'S OBJECTION FILED ON  
OCTOBER 5, 2015**

[Re: ECF No. 84]

On October 5, 2015, the plaintiff Tadeusz Wyrzykowski, who is proceeding pro se, filed a document entitled "Objection to Proceed Before Recused Ms. Laurel Beeler. Demand to Consider the Deceit in Ms. Beeler's 'Order' 9-25-2015. 'Order' 9-25-15 Void under the Law." (Objection, ECF No. 84; *see also* Memorandum in Support of Objection, ECF No. 85.<sup>1</sup>) Mr. Wyrzykowski is referring to the undersigned's September 25, 2015 order in which the undersigned (1) denied his motion asking the court to order the defendants' counsel to show cause why she should not be sanctioned or held in contempt of court, (2) denied his motion asking the court to reconsider its September 1, 2015 order denying his August 6, 2015 motion for sanctions, (3) denied his motion for the undersigned's recusal as the presiding judge of this action, and (4) dismissed his action with prejudice because he failed to timely prosecute it. (9/25/2015 Order, ECF No. 83.) In his

<sup>1</sup> Record citations are to documents in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the tops of the documents.

1 objection, Mr. Wyrzykowski argues that the undersigned’s denial of his motion for recusal was in  
2 error and, because the undersigned should have recused herself, the September 25, 2015 order is  
3 void. (*See generally* Objection, ECF No. 84.)

4 Mr. Wyrzykowski does not cite to any legal authority that allows him to file an objection to  
5 the court’s September 25, 2015 order. (*See generally* Objection, ECF No. 84; Memorandum in  
6 Support of Objection, ECF No. 85.) Nevertheless, the court liberally construes his objection as a  
7 motion for reconsideration.

8 As the court explained earlier in this action:

9 A district court can “reconsider” non-final, interlocutory orders and judgments  
10 pursuant to Federal Rule of Civil Procedure 54(b) and the court’s “inherent power  
11 rooted firmly in the common law” to “rescind an interlocutory order over which it  
12 has jurisdiction.” *City of Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882,  
13 887 (9th Cir. 2001); *see* Fed. R. Civ. P. 54(b) (“[A]ny order or other decision,  
14 however designated, that adjudicates fewer than all the claims or the rights and  
15 liabilities of fewer than all the parties does not end the action as to any of the claims  
16 or parties and may be revised at any time before the entry of a judgment  
17 adjudicating all the claims and all the parties’ rights and liabilities.”) Under the  
18 Northern District of California’s Civil Local Rule 7-9(a), which cross-references  
19 Rule 54(b), a party must seek permission from the court prior to filing a motion for  
20 reconsideration. N.D. Cal. Civ. L.R. 7-9(a). In seeking permission from the court,  
21 the moving party must specifically show:

- 22 (1) That at the time of the motion for leave, a material difference in fact or  
23 law exists from that which was presented to the Court before entry of the  
24 interlocutory order for which reconsideration is sought. The party also must  
25 show that in the exercise of reasonable diligence the party applying for  
26 reconsideration did not know such fact or law at the time of the interlocutory  
27 order; or
- 28 (2) The emergence of new material facts or a change of law occurring after  
the time of such order; or
- (3) A manifest failure by the Court to consider material facts or dispositive  
legal arguments which were presented to the Court before such interlocutory  
order. N.D. Cal. Civ. L.R. 7-9(b).

Even if the court grants a party leave to file a motion for reconsideration,  
reconsideration is only appropriate in the “highly unusual circumstances” when (1)  
the court is presented with newly discovered evidence, (2) the underlying decision  
was in clear error or manifestly unjust, or (3) there is an intervening change in  
controlling law. *See School Dis. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5  
F.3d 1255, 1263 (9th Cir. 1993). “No motion for leave to file a motion for  
reconsideration may repeat any oral or written argument made by the applying party  
in support of or in opposition to the interlocutory order which the party now seeks  
to have reconsidered.” N.D. Cal. Civ. L.R. 7-9(c). “Unless otherwise ordered by the  
assigned Judge, no response need be filed and no hearing will be held concerning a  
motion for leave to file a motion to reconsider.” N.D. Cal. Civ. L.R. 7-9(d).

1 (Order Denying Request to Amend Complaint, ECF No. 70 at 3-4 (emphasis added); *see also*  
2 9/25/2015 Order, ECF No. 83 at 2-3.)

3 Similarly, a motion to reconsider a final, appealable order is appropriately brought under either  
4 Federal Rule of Civil Procedure 59(e) or 60(b). *See Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442  
5 (9th Cir. 1991). Reconsideration is an “extraordinary remedy, to be used sparingly in the interests  
6 of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
7 877, 890 (9th Cir. 2000); *see also Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).  
8 Motions for reconsideration should not be frequently made or freely granted. *Twentieth Century–*  
9 *Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1980).

10 Rule 59(e) allows a party to seek an order altering or amending a judgment. “Rule 59(e)  
11 amendments are appropriate if the district court ‘(1) is presented with newly discovered evidence,  
12 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an  
13 intervening change in controlling law.’” *Dixon v. Wallowa Cnty.*, 336 F.3d 1013, 1022 (9th Cir.  
14 2003) (quoting *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.  
15 1993)).

16 And under Rule 60(b),

17 the court may relieve a party. . . from a final judgment, order, or proceeding for the  
18 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)  
19 newly discovered evidence that, with reasonable diligence, could not have been  
20 discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . ,  
21 misrepresentation, or misconduct by an opposing party; (4) the judgment is void;  
22 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier  
23 judgment that has been reversed or vacated; or applying it prospectively is no  
24 longer equitable; or (6) any other reason that justifies relief.

25 Fed. R. Civ. P. 60(b).

26 Generally speaking, though, a motion for reconsideration “may not be used to relitigate old  
27 matters, or to raise arguments or present evidence that could have been raised prior to the entry of  
28 judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (referring to Rule 59(e));  
*see also Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1259–61 (9th Cir. 2004) (referring to Rule  
60(b)); *Kona Enters.*, 229 F.3d at 890 (interpreting Rule 59(e)). The sole exception is when the  
court has committed “clear” or “manifest” error. Mere disagreement with a court’s order, however,

1 does not provide a basis for reconsideration. *See McDowell v. Calderon*, 197 F.3d 1253, 1256 (9th  
2 Cir. 1999).

3 Mr. Wyrzykowski's objection does not satisfy the criteria under any of these standards. There  
4 has been no intervening change in the law, and Mr. Wyrzykowski presents no new facts or newly  
5 discovered evidence. The court previously rejected Mr. Wyrzykowski's argument that his  
6 opposing counsel committed fraud, misrepresented anything, or engaged in misconduct when the  
7 court refused to sanction her. (9/25/2015 Order, ECF No. 1-2.) Mr. Wyrzykowski's objection  
8 instead rests upon his belief that the court applied the law regarding recusal wrong and thus its  
9 decision constitutes clear or manifest error. The court disagrees, and the court is not persuaded  
10 otherwise by the arguments he makes in his objection. Accordingly, the court denies Mr.  
11 Wyrzykowski's motion for reconsideration. This matter remains closed.

12 Mr. Wyrzykowski has filed a notice of appeal (*see* Notice of Appeal, ECF No. 86); he must  
13 now raise any objections to the undersigned's September 25, 2015 order on appeal.

14 **IT IS SO ORDERED.**

15 Dated: October 28, 2015

16   
17 \_\_\_\_\_  
18 LAUREL BEELER  
19 United States Magistrate Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28