

E-filed 10/21/08

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NOT FOR CITATION
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AIFANG SHI,

Case No. 08-80131-RMW (HRL)

Plaintiff,

**ORDER ON PLAINTIFF’S MOTION
FOR RECONSIDERATION OF ORDER
DENYING MOTION TO QUASH**

v.

CENTRAL ARIZONA COLLEGE, et. al,

Defendants.

Aifang Shi, a *pro se* plaintiff, sued Central Arizona College and four other individuals for improper dismissal from the College’s nursing program under Title VI of the 1964 Civil Rights Act. She claimed damages for lost wages and emotional distress. After defendant’s counsel subpoenaed Cypress Semiconductor Corporation (“Cypress”) for documents in plaintiff’s personnel file, plaintiff moved to quash. The motion was denied.

Plaintiff Shi next filed a motion for reconsideration of the order denying her motion to quash. Shi did not request or receive leave to file such a motion. Civ. L.R. 7-9(a). “No party may notice a motion for reconsideration without first obtaining leave of the court to file the motion.” Civ. L.R. 7-9(a). Plaintiff’s motion for reconsideration is, therefore, procedurally improper.

Despite that procedural error, and to give the plaintiff the benefit of liberal construction for *pro se* filings, the court construes her motion as a request for leave to file a motion for reconsideration. *See Haines v. Kerner*, 404 U.S. 529, 520-21 (1972) (stating that *pro se* pleadings should be “liberally construed.”) The moving party in a motion for leave to file a motion for reconsideration must show that: (1) a material difference in fact or law exists from

United States District Court
For the Northern District of California

1 that which was presented to the court, and the party did not know of such fact or law before
2 entry of the order; (2) new material facts or a change of law occurred after the entry of the
3 order; or (3) the court failed to consider material facts or legal arguments presented before entry
4 of the order. *See* Civ. L.R. 7-9(b).

5 Shi alleges that the court failed to consider three legal arguments originally presented in
6 her motion to quash: (1) whether compliance with the subpoena violated the Internal Revenue
7 Service Code (“IRS Code”); (2) whether “character evidence is admissible to prove conduct;”
8 and (3) whether “bais [sp] is allowed under the law.”

9 Plaintiff first argues that IRS Code sections 6103, 7214 and 7431 prohibited
10 enforcement of the subpoena. Shi claims that in complying with the subpoena, Cypress would
11 necessarily disclose her tax information. The subpoena requested Cypress to produce records
12 “that would be housed in an employee’s personnel and supervisor’s file.” Plaintiff failed to
13 explain, either in her original moving papers, or in her current motion, why her tax return (the
14 only information IRS Code section 6103 protects) would be housed in her personnel or
15 supervisor’s file. Tax returns are not usually filed with, or kept by, employers. Plaintiff’s
16 argument is purely speculative, and is not grounds for the court to grant a motion for
17 reconsideration.

18 The second legal argument that plaintiff claims the court did not consider is based on
19 Federal Rule of Evidence 404, which deems evidence of a person’s character inadmissible to
20 prove conduct. Plaintiff appears to assert that because character evidence from her Cypress
21 personnel file would not be admissible in the underlying case, the court should quash the
22 subpoena. Although plaintiff correctly reads Rule 404, discovery is not governed by the rules of
23 evidence, but rather, by the more liberal standard of Federal Rule of Civil Procedure 26. Rule
24 26 permits discovery of any nonprivileged matter relevant to any party’s claim or defense that
25 appears *reasonably calculated* to lead to admissible evidence. Admissibility is not the standard
26 used to determine discovery. Plaintiff’s erroneous interpretation of the law is also not a basis for
27 the court to grant her leave to file a motion for reconsideration.

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1 The final legal argument plaintiff asserts that the court did not consider is that “bais [sp]
2 is not allowed under the law.” Shi claims defendants’ counsel disparages her *pro se* status, and
3 seeks “irrelevant information to harass and intimidate” her. Shi is apparently upset that the
4 defendants have sought to discover her employment history while refusing to answer
5 interrogatories about their own employment histories. While the court is sympathetic to
6 plaintiff’s complaints, they are not grounds to quash a subpoena. Plaintiff’s concerns are more
7 appropriately addressed to the presiding judge of the underlying action in the Arizona District
8 Court.

9 The court ruled on Shi’s remaining arguments in its order on the motion to quash, and
10 will not revisit its rulings. *See* Civ. L.R. 7-9(c). Because plaintiff has not presented any material
11 facts or legal issues which would warrant the filing of a motion for reconsideration, the motion
12 is DENIED. *See* Civ. L.R. 7-9(b).

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IT IS SO ORDERED.

Dated: 10/21/08



HOWARD F. LLOYD
UNITED STATES MAGISTRATE JUDGE

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Notice will be sent to:

Aifang Shi, 4230 Laurel Street, Fremont, CA 94538

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.

Dated: 10/21/08

/s/ MPK

Chambers of Magistrate Judge Howard R. Lloyd