UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TINA M. HARRIS,

Plaintiff,

vs.

MANPOWER INC.,

Defendant.

CASE NO. 09-CV-2368 BEN (JMA)

ORDER DENYING MOTION FOR RECONSIDERATION

[Docket No. 49]

Before the Court is Plaintiff's Motion for Reconsideration of the Court's Order Granting Defendant's Motion for Summary Judgment. (Docket No. 49.) For the reasons set forth below, the Motion is **DENIED**.

BACKGROUND

This action is a class action that arises from the alleged nonpayment of vacation benefits at the time of an employee's termination, in violation of California Labor Code section 227.3 and related provisions. On October 7, 2010, the Court entered an order ("Order") granting summary judgment in favor of Defendant. (Docket No. 47.) Specifically, the Order held that Defendant's vacation policy clearly and ambiguously provided that benefits do not accrue until an employee completes 1,500 hours of work, at which point the employee is immediately vested with 40 hours of vacation pay benefits. *Id.*, p. 4-5. The Court found this provision established a clear and express waiting period before any benefits began to vest. *Id.* As it was undisputed that Plaintiff did not satisfy the 1,500-hour waiting period, the Court found that Plaintiff's claims failed as a matter of law. *Id.*

On October 15, 2010, Plaintiff filed a Motion for Reconsideration pursuant to Federal Rules of Civil Procedure 59(e) and 60(b), which is currently pending before the Court. (Docket No. 49.) Defendant filed an opposition, and Plaintiff filed a reply. (Docket Nos. 50, 51.)

For the reasons set forth below, the Motion is **DENIED**.

DISCUSSION

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citing *All Hawaii Tours, Corp. v. Polynesian Cultural Ctr.*, 116 F.R.D. 645, 648 (D. Haw. 1987), *rev'd on other grounds*, 855 F.2d 860 (9th Cir. 1988)); *see also Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). The second and third elements of clear error and intervening change in controlling law are at issue here. Specifically, Plaintiff contends the Court erred in finding Defendant's vacation policy to be clear and unambiguous, and further erred by following *Owen v. Macy's Inc.*, 175 Cal. App. 4th 462 (2009). Plaintiff also contends reconsideration is appropriate in light of "new controlling law" in the Southern District of California. (Mot., p. 2.)

I. CLEAR ERROR

Plaintiff first contends the Court erred by citing a declaration of Barbara Honesty, Defendant's Director of Strategic Benefit Services and Human Resources Information Systems, in finding that Defendant's vacation policy is clear and unambiguous. (P. & A., p. 5.) According to Plaintiff, Ms. Honesty's declaration inaccurately summarized Defendant's vacation policy. *Id.*

Although the Order cites Ms. Honesty's declaration, the citation is to the declaration's exhibit that includes a copy of the vacation policy at issue in this case and to the paragraph in Ms. Honesty's declaration that authenticates such copy. (Order, 4:28-5:2.) The Court did not rely on any purported characterization of the policy by Ms. Honesty herself. Any similarity in verbiage between the declaration and the Court's Order is attributable to the decision in *Owen v. Macy's Inc.*, 175 Cal. App. 4th 462 (2009), upon which the Order expressly relies, and not to Ms. Honesty's declaration, as Plaintiff contends. The Court further notes that the vacation policy attached to Ms. Honesty's declaration is substantially similar to the policy attached to Plaintiff's Complaint; therefore, any

suggestion by Plaintiff that the policy is incorrect lacks merit. (Compl., ¶¶ 8-9, Ex. 1.)

Plaintiff further claims the Court erred by relying on *Owen*, rather than *Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774 (1982). (P. & A., p. 6.) For the reasons set forth in the Order, the Court found *Suastez* inapposite and, instead relied on *Owen*. (Order, p. 5.) A motion for reconsideration is not a proper vehicle to reargue this point. *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001); *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) ("The motion was properly denied here because... it presented no arguments that had not already been raised in opposition to summary judgment."). Plaintiff's other claim that the unpublished decision in *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL 2839417 (S.D. Cal. July 19, 2010) (Gonzalez, C.J.) controls the outcome in this case is addressed below.

II. INTERVENING CHANGE IN CONTROLLING LAW

Plaintiff contends that reconsideration is appropriate in light of "new controlling law" in the Southern District of California. Specifically, Plaintiff contends *Lopez* controls the outcome in this case and that the Order is inconsistent with *Lopez*.

The Court first notes that the decision in *Lopez* was entered more than a month before Plaintiff filed her opposition to the summary judgment motion. Therefore, *Lopez* is not an "intervening change" in law for purposes of reconsideration. Even if it were an intervening change in law, the Court notes that the decision is unpublished and by another district judge; therefore, it is not "controlling law" for purposes of reconsideration. Additionally, Plaintiff never cited *Lopez* in her opposition to the summary judgment motion. *Novato Fire Prot. Dist. v. United States*, 181 F.3d 1135, 1142 n. 6 (9th Cir. 1999) (the district court did not abuse its discretion when it declined to reopen the case to consider an argument made for the first time in a motion for reconsideration); *ACandS, Inc.*, 5 F.3d at 1263 (finding no abuse of discretion when district court refused to reconsider its summary judgment ruling in light of evidence not introduced in original motion or opposition). Therefore, *Lopez* is not grounds for reconsidering the Order in this case. Nonetheless, the Court has reviewed *Lopez* and finds that *Lopez* does not alter the analysis set forth in the Order.

III. MANIFEST INJUSTICE

Plaintiff contends that, absent the relief requested in the Motion, Plaintiff will be forced to

expend substantial time and money on appeal and there may be a delay in ruling on her claims. According to Plaintiff, these circumstances constitute a manifest injustice that warrants reconsideration of the Order. These circumstances, however, exist in every situation where, as here, a party does not win; they do not constitute the "manifest injustice" that warrants reconsideration. *See Straw v. Bowen*, 866 F.2d 1167, 1172 (9th Cir. 1989) (reconsideration requires a demonstration of "extraordinary circumstances" to justify relief from judgment).

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Reconsideration (Docket No. 49) is **DENIED**.

IT IS SO ORDERED.

Dated: 11/30, 2010

Hon. Roger T. Benitez
United States District Court Judge