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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ANDREW SHALABY,

Plaintiff,

12 v.

13 BERNZOMATIC, et al.,

14 Defendants.  
15

Case No.: 3:11-cv-00068-AJB-DHB

**ORDER DENYING PLAINTIFF'S  
MOTION TO AMEND COURT'S  
ORDER**

**(Doc. No. 167)**

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17 Andrew Shalaby (“Plaintiff”) seeks to file a “motion to amend sanction order, Doc.  
18 No. 161, re omitted Rule 11 argument” pursuant to Federal Rule of Civil Procedure 59  
19 (“Rule 59”). The Court will treat this Rule 59 motion as a motion for reconsideration. For  
20 the reasons detailed below, the motion is **DENIED**.<sup>1</sup>

21 **I. LEGAL STANDARD**

22 Motions for reconsideration should not be frequently made or freely granted. *See*  
23 *generally Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir.  
24 1981). “[T]he major grounds that justify reconsideration involve an intervening change of  
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27 <sup>1</sup> Although Plaintiff has filed a notice of appeal of the Court’s orders before he filed the instant motion,  
28 the Ninth Circuit has stated that courts retain jurisdiction to rule on a Rule 59 motion even though an  
appeal has been previously filed. *See Tripathi v. Henman*, 845 F.2d 205, 206 (9th Cir. 1988).

1 controlling law, the availability of new evidence, or the need to correct a clear error or  
2 prevent manifest injustice.” *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364,  
3 369 n.5 (9th Cir. 1989) (quoting *United States v. Desert Gold Mining Co.*, 433 F.2d 713,  
4 715 (9th Cir. 1970)). Courts construing Rule 59(e) have noted that a motion to reconsider  
5 is not a vehicle permitting the unsuccessful party to “rehash” arguments previously  
6 presented, or to present “contentions which might have been raised prior to the challenged  
7 judgment.” *Costello v. United States*, 765 F. Supp. 1003, 1009 (C.D. Cal. 1991) (citing  
8 cases). These holdings “reflect[] district courts’ concerns for preserving dwindling  
9 resources and promoting judicial efficiency.” *Id.*

## 10 **II. DISCUSSION**

### 11 **A. Motion for Reconsideration**

12 Plaintiff has not provided any adequate ground for reconsideration. As the basis for  
13 his Rule 59 motion, Plaintiff states, “[t]his Court’s January 13, 2021 order inadvertently  
14 overlooked Plaintiff’s argument that sanctions may not be sought without complying with  
15 the safe harbor requirements of Rule 11.” (Doc. No. 167 at 3.) Plaintiff’s position is yet  
16 another attempt to reargue the merits of whether sanctions are appropriate, even though  
17 that issue has already been decided by the Court. While Plaintiff believes the Court’s  
18 January 13, 2021 order failed to address Plaintiff’s argument regarding Rule 11’s safe  
19 harbor provision, the purpose of the January 13, 2021 order was *exclusively* to decide the  
20 *amount* of attorneys’ fees to be awarded to Defendant. Indeed, recognizing that Plaintiff’s  
21 Rule 11 argument had already been previously raised and rejected, the Court remarked in  
22 the January 13, 2021 order, “the majority of Plaintiff’s opposition is an attempt to reargue  
23 points already ruled upon by the Court on multiple occasions.” (Doc. No. 161 at 2.) As  
24 such, the Court did not need to address Plaintiff’s Rule 11 safe harbor argument, which  
25 went to the merits of whether sanctions were warranted; the Court only needed to address  
26 the *amount* of attorneys’ fees Defendant could recover.

27 The separate question of whether sanctions were warranted in the first instance was  
28 decided in the Court’s August 15, 2019 order granting sanctions, wherein the Court clearly

1 stated, “[c]ourts have the inherent power to sanction parties that willfully disobey a court  
2 order.” (Doc. No. 131 at 3 (citing *Broemer v. U.S.*, No. CV 01-04340 MMM (RZx), 2002  
3 WL 3644940, at \*1 (C.D. Cal. Jan. 9, 2002)). Pursuant to this inherent power—and with  
4 *no mention of Rule 11*—the Court held on August 15, 2019 that Plaintiff had defied the  
5 Court’s prefiling order, and granted monetary sanctions in favor of Defendant in the form  
6 of reasonable attorneys’ fees. (Doc. No. 131 at 3.) The Court then directed Defendant to  
7 file a motion for attorneys’ fees and costs. (*Id.*) After review of Defendant’s motion, the  
8 Court determined Defendant failed to provide any details that would allow the Court to  
9 assess whether the requested attorneys’ fees and costs were reasonable. (Doc. No. 148 at  
10 4–5.) Accordingly, the Court requested supplemental briefing detailing Defendant’s fees.  
11 (*Id.*) The Court also permitted Plaintiff to respond to the supplemental briefing. (*Id.*) Now,  
12 Plaintiff argues that the Court failed to address an argument contained in this response. But  
13 the Court squarely stated it was not entertaining arguments already rejected. (Doc. No. 161  
14 at 2.) The Court’s grant of a response was not an invitation for Plaintiff to reargue whether  
15 sanctions were appropriate under Rule 11, as that issue had already been decided.

16 In sum, Plaintiff has not established an “intervening change of controlling law, the  
17 availability of new evidence, or the need to correct a clear error or prevent manifest  
18 injustice” required for reconsideration. See *Hodel*, 882 F.2d at 369 n.5. Plaintiff’s motion  
19 is hereby **DENIED**.

#### 20 **B. Request for Reduction of Sanctions**

21 In the alternative, Plaintiff requests a reduction of sanctions in the event the Court  
22 denies the motion for reconsideration. (Doc. No. 167 at 5.) Plaintiff states that during the  
23 past year, his mother fell permanently ill and Plaintiff “now has to pay for her care and  
24 housing. At the same time, the COVID-19 pandemic has taken a toll on Shalaby financially.  
25 For this reason, Shalaby is respectfully requesting that the Court reduce the sanction  
26 amount to \$14,000 and afford me until 2/1/2022 to pay the full amount.” (*Id.*) While the  
27 Court is sympathetic to these unexpected circumstances, Plaintiff’s request is denied  
28 because he has not sufficiently established financial hardship. In particular, Plaintiff’s


1 declaration filed in support of this request is wholly unsupported by any financial records  
2 or documentary evidence showing expenses incurred as a result of Plaintiff's unanticipated  
3 hardship or inability to pay. Should Plaintiff renew this argument in opposition to  
4 Defendant's motion for appellate cost bond, Plaintiff must provide documentary proof  
5 demonstrating financial hardship. Such financial records may be lodged with the Court for  
6 in-camera review.

7 **III. CONCLUSION**

8 For all the reasons stated above, Plaintiff's motion for reconsideration is **DENIED**,  
9 and Plaintiff's request for a reduction of sanctions is **DENIED**. (Doc. No. 167.)

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11 **IT IS SO ORDERED.**

12 Dated: January 29, 2021

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14 Hon. Anthony J. Battaglia  
15 United States District Judge  
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