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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CU NGUYEN, <p style="text-align: right;">Plaintiff,</p> v. KILOLO KIJAKAZI, Acting Commissioner of Social Security Administration, <p style="text-align: right;">Defendant.</p>	
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Case No.: 18-cv-00590-H-KSC

**ORDER DENYING PLAINTIFF’S
MOTION FOR
RECONSIDERATION**

[Doc. No. 49.]

On October 13, 2021, Plaintiff Cu Nguyen filed a motion for partial reconsideration of the Court’s August 27, 2021 order. (Doc. No. 49.) On November 1, 2021, Defendant Kilolo Kijakazi, Acting Commissioner of the Social Security Administration, filed a response in opposition to Plaintiff’s motion for reconsideration. (Doc. No. 50.) On November 5, 2021, Plaintiff filed a reply. (Doc. No. 51.)

A hearing on Plaintiff’s motion for reconsideration is currently scheduled for Monday, November 15, 2021 at 10:30 a.m. The Court, pursuant to its discretion under Civil Local Rule 7.1(d)(1), determines the matter is appropriate for resolution without oral argument, submits the motion on the parties’ papers, and vacates the hearing. For the reasons below, the Court denies Plaintiff’s motion for reconsideration.

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Background

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2 On August 29, 2013, Plaintiff applied for disability insurance benefits and
3 supplemental security income, claiming a disability onset date of May 15, 2011. (Doc. No.
4 10-2 at 48, 10-5 at 1–21.) The Social Security Administration (“SSA”) initially denied
5 Plaintiff’s application on December 30, 2013 and denied reconsideration on April 24, 2014.
6 (Doc. No. 10-4 at 2–6, 9–13.) Plaintiff requested a hearing before an Administrative Law
7 Judge (“ALJ”) on June 24, 2014. (Id. at 17–18.) The ALJ held a hearing on Plaintiff’s
8 application on August 30, 2016. (Doc. No. 10-2 at 54–96.) At the conclusion of the
9 hearing, the ALJ determined that Plaintiff was not disabled from May 15, 2011, the alleged
10 onset date, through September 22, 2016, the date of the ALJ’s decision. (Id. at 47–48.) On
11 January 29, 2018, the Social Security Appeals Council then denied Plaintiff’s request for
12 review, rendering the ALJ’s decision final. (Id. at 2–7.)

13 On July 29, 2019, the Court denied Plaintiff’s motion for summary judgment,
14 granted the government’s motion for summary judgment, and affirmed the ALJ’s order.
15 (Doc. No. 29.) Plaintiff appealed. (Doc. No. 30.)

16 On April 1, 2021, the Ninth Circuit reversed and remanded “to the district court
17 with instructions to remand to the ALJ on an open record for further proceedings.” (Doc.
18 No. 35 at 5.) The Ninth Circuit held that the ALJ’s resolution of the conflicting medical
19 evidence was not based on a “legitimate” reason that was supported by substantial
20 evidence. (Id. at 3.) The Ninth Circuit further held that because the ALJ “relied on his
21 flawed evaluation of the medical evidence” in rejecting other testimony, the ALJ did not
22 properly discount that testimony. (Id. at 5.) On May 25, 2021, the Ninth Circuit issued its
23 mandate. (Doc. No. 35.)

24 On remand, Plaintiff filed a motion for attorney’s fees pursuant to the Equal Access
25 to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Doc. No. 37.) On August 27, 2021, the Court
26 granted Plaintiff’s motion for attorney’s fees, and the Court awarded Plaintiff \$40,428 in
27 attorney’s fees and \$1,065 in costs and expenses under the EAJA. (Doc. No. 48 at 8.) By
28 the present motion, Plaintiff moves for partial reconsideration of the Court’s August 27,

1 2021 order granting his motion for attorney’s fees. (Doc. No. 49-1.)

2 **Discussion**

3 **I. Legal Standards for a Motion for Reconsideration**

4 A district court has inherent jurisdiction to modify, alter, or revoke a prior order.
5 United States v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000). “Reconsideration [of a prior
6 order] is appropriate if the district court (1) is presented with newly discovered evidence,
7 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
8 intervening change in controlling law.” School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255,
9 1263 (9th Cir. 1993); see C.D. Cal. Civ. L.R. 7-18.

10 Reconsideration should be used conservatively, because it is an “extraordinary
11 remedy, to be used sparingly in the interests of finality and conservation of judicial
12 resources.” Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003); see also Marlyn
13 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)
14 (“[A] motion for reconsideration should not be granted, absent highly unusual
15 circumstances”). A motion for reconsideration may not be used to relitigate old
16 matters, or to raise arguments or present evidence for the first time that reasonably could
17 have been raised earlier in the litigation. Exxon Shipping Co. v. Baker, 554 U.S. 471, 486
18 n.5 (2008); see Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.
19 2000) (“A [motion for reconsideration] may not be used to raise arguments or present
20 evidence for the first time when they could reasonably have been raised earlier in the
21 litigation.”). “A party seeking reconsideration must show more than a disagreement with
22 the Court’s decision.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131
23 (E.D. Cal. 2001); accord Huhmann v. FedEx Corp., No. 13-CV-00787-BAS NLS, 2015
24 WL 6128494, at *2 (S.D. Cal. Oct. 16, 2015).

25 **II. Analysis**

26 Plaintiff moves for partial reconsideration of the Court’s August 27, 2021 order
27 granting his motion for attorney’s fees. (Doc. No. 49-1 at 1.) Specifically, Plaintiff moves
28 for reconsideration of the Court’s denial of Plaintiff’s requested \$50 per hour “special

1 factor” fee enhancement. (Id. at 1, 3-8.)

2 “Enhanced hourly rates based on the special factor of the limited availability of
3 qualified attorneys for the proceedings involved may be awarded under EAJA where the
4 attorneys possess ‘distinctive knowledge’ and ‘specialized skill’ that was ‘needful to the
5 litigation in question’ and ‘not available elsewhere at the statutory rate.’” Nadarajah v.
6 Holder, 569 F.3d 906, 912 (9th Cir. 2009). “Examples of the former would be an
7 identifiable practice specialty such as patent law, or knowledge of foreign law or
8 language.” Pierce v. Underwood, 487 U.S. 552, 572 (1988).

9 In the August 27, 2021 order, the Court provided the following reasoning for
10 denying Plaintiff’s request for a \$50 per hour “special factor” enhancement:

11 Plaintiff’s counsel contends that her combination of social security
12 litigation expertise and knowledge of the Vietnamese language is found
13 almost exclusively in her firm. (Doc. No. 37-1 at 12.) Plaintiff also asserts
14 that there was no attorney in San Diego besides his counsel who was willing
15 to represent him without requesting an advanced payment of legal fees. (Id.
16 at 14.) Plaintiff contends an enhancement is proper because there were no
17 other attorneys that would represent him without an advance payment of legal
18 fees. But that is not the standard for obtaining a special factor enhancement.
19 Plaintiff must show that there were no other attorneys with the knowledge and
20 skills at issue at the statutory rate. See Nadarajah, 569 F.3d at 912. The
21 standard says nothing about the advanced payment of legal fees. As such, the
22 Court declines to award Plaintiff a \$50 “special factor” enhancement.

23 (Doc. No. 48 at 5-6.)

24 In his motion for reconsideration, Plaintiff argues that the Court should reconsider
25 this portion of the Court’s August 27, 2021 order because Plaintiff’s new declaration
26 demonstrates that he is able to meet the Nadarajah standard. (Doc. No. 49-1 at 3-8.) But
27 Plaintiff’s submission of this “new” declaration is improper. A motion for reconsideration
28 may not be used present to evidence for the first time that reasonably could have been
raised earlier in the litigation. Exxon Shipping, 554 U.S. at 486 n.5; Kona Enterprises, 229
F.3d at 890.

Plaintiff fails to adequately explain why he could not submit the information
contained in his newly filed declaration when he filed his prior declaration that

1 accompanied his original motion for attorney’s fees. Plaintiff states that at the time he
2 submitted his prior declaration that was attached to his motion for attorney’s fees, he was
3 unclear about the Nadarajah standard and did not formulate his reasoning accordingly.
4 (Doc. No. 49-1 at 3.) But ignorance of the law is not a proper basis for reconsideration of
5 a prior decision or judgment. See Engleson v. Burling N. R. Co., 972 F.2d 1038, 1043 (9th
6 Cir. 1992) (“Neither ignorance nor carelessness on the part of the litigant or his attorney
7 provide grounds for relief under Rule 60(b)(1).” (quotation marks omitted)); see, e.g.,
8 Williams v. Lujan, No. 16-CV-04290-HSG, 2018 WL 3861655, at *3 (N.D. Cal. Aug. 14,
9 2018) (rejecting plaintiff’s claim of ignorance of the law as a basis for a motion for
10 reconsideration). As such, Plaintiff’s newly submitted declaration is not a proper basis for
11 reconsideration of the Court’s prior order. See Exxon Shipping, 554 U.S. at 486 n.5; Kona
12 Enterprises, 229 F.3d at 890.

13 Plaintiff also moves for reconsideration of the Court’s denial of his request that the
14 payment of attorney’s fees and costs be made directly to his counsel pursuant to an
15 assignment agreement between them. (Doc. No. 49-1 at 8-12; Doc. No. 51 at 3-4.) In the
16 August 27, 2021 order, the Court denied Plaintiff’s request because Plaintiff had failed to
17 establish that he met the requirements of the Anti-Assignment Act. (Doc. No. 48 at 7-8.)

18 In his motion for reconsideration, Plaintiff presents new evidence and new
19 arguments in an attempt to establish that he has now met the requirements of the Anti-
20 Assignment Act. (Doc. No. 49-1 at 8-9.) A motion for reconsideration may not be used to
21 present evidence and argument for the first time that reasonably could have been raised
22 earlier in the litigation. Exxon Shipping, 554 U.S. at 486 n.5; Kona Enterprises, 229 F.3d
23 at 890. Nevertheless, even assuming that the Court may consider this “new” evidence and
24 argument, Plaintiff has still failed to establish that he has met all the requirements of the
25 Anti-Assignment Act. One of the requirements for satisfaction of the Anti-Assignment
26 Act is that “a warrant for payment of the claim has been issued.” 31 U.S.C. § 3727(b).
27 Plaintiff has not shown that a warrant for payment of the claim has been issued. Cf. United
28 States v. Kim, 806 F.3d 1161, 1169–70 (9th Cir. 2015) (“Indeed, the Government concedes

1 that it is all but impossible for any assignment to comply with the strictures of the Anti-
2 Assignment Act, because the Treasury no longer uses warrants. . . . Thus, in modern
3 practice, the obsolete language of the Anti-Assignment Act means that the Government
4 has the power to pick and choose which assignments it will accept and which it will not.”).
5 As such, Plaintiff has failed to demonstrate that he has satisfied the Anti-Assignment Act,
6 and the Court again denies Plaintiff’s request that the payment of attorney’s fees and costs
7 be made directly to his counsel.

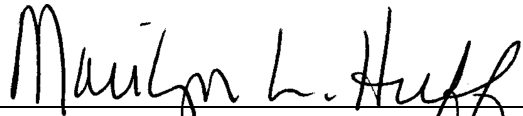
8 In sum, Plaintiff has failed to provide a proper basis for reconsideration of the
9 Court’s August 27, 2021 order granting Plaintiff’s motion for attorney’s fees. As a result,
10 the Court denies Plaintiff’s motion for reconsideration.

11 **Conclusion**

12 For the reasons above, the Court denies Plaintiff’s motion for partial reconsideration
13 of the Court’s August 27, 2021 order granting Plaintiff’s motion for attorney’s fees.

14 **IT IS SO ORDERED.**

15 DATED: November 8, 2021

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18 MARILYN L. HUFF, District Judge
19 UNITED STATES DISTRICT COURT
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