

1 standard for a motion to alter or amend judgment under Rule 59(e)
2 when evaluating motions to reconsider an interlocutory order.¹

3 A motion to reconsider must set forth the following: (1) some valid
4 reason why the court should revisit its prior order; and (2) facts or
5 law of a “strongly convincing nature” in support of reversing the
6 prior decision. *Frasure v. U.S.*, 256 F.Supp.2d 1180, 1183
(D.Nev.2003).

7 *United States Aviation Underwriters v. Wesair, LLC*, 2010 WL 1462707 (D. Nev. 2010) *2
8 further states that:

9 “Reconsideration is appropriate if the district court (1) is presented
10 with newly discovered evidence, (2) committed clear error or the
11 initial decision was manifestly unjust, or (3) if there is an intervening
12 change in controlling law.” *Sch. Dist. No. 1J, Multnomah County, Or.
13 v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). “A motion for
14 reconsideration is not an avenue to re-litigate the same issues and
15 arguments upon which the court already has ruled.” *In re
16 AgriBioTech, Inc.*, 319 B.R. 207, 209 (D.Nev.2004).

17 Plaintiffs argue that the Court should award them higher attorney’s fees and costs incurred
18 in prosecuting their motion for sanctions. Plaintiffs note that under Rule 37(b)(2)(C) the court must
19 order a party that unjustifiably disobeys a discovery order to pay the reasonable expenses, including
20 attorney’s fees caused by the failure. The court, however, has broad discretion in imposing
21 sanctions under Rule 37(b), including determining the amount of monetary sanctions that are
22 appropriate under the circumstances of the case. *Parker v. Upsher-smith Laboratories, Inc.*, 2009
23 WL 418596 (D.Nev. 2009) *5, citing *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d
24 1101,1105-06 (9th Cir. 2001).

25 Because the Court did not fully explain its reasons for awarding Plaintiff’s only \$1,000 on
26 their motion for sanctions, the Court will, to that extent, entertain Plaintiffs’ motion for
27

28 ¹ The Northern District of California has adopted a local rule that imposes a higher burden
to justify reconsideration of an interlocutory order than is applied on a motion for reconsideration
of a final order or judgment. *Nidec Corporation v. Victor Company of Japan, Ltd.*, 2007 WL
4108092 (N.D.Cal. 2007) *4 explains that this higher standard “lessens the likelihood that parties
will . . . opportunistically move the Court to reconsider any order that it (sic) disagrees with,
needlessly impeding the progress of the case and unduly burdening opposing parties and the
Court.”

1 reconsideration by explaining its reasons for the award. There is no question that Mr. Rizzolo's
2 discovery responses prior to January, 2010 were deceptive. After Mr. Rizzolo retained Mr. Frizzell
3 as his new counsel, however, he began supplementing his discovery responses in a manner that at
4 least indicated a willingness to comply with his discovery obligations. Those supplementations,
5 which continued to be served even after Plaintiffs' filed their renewed motion to compel on
6 February 5, 2010, were still insufficient. Therefore, on March 12, 2010 the Court ordered
7 Defendant to further supplement his discovery responses. *See Order (#314)*. Mr. Rizzolo served
8 additional discovery responses in compliance with the order on a rolling basis and continued to
9 supplement his discovery responses after Plaintiffs' filed their motion for case dispositive sanctions
10 on May 11, 2010.

11 For the reasons set forth in Order (#437), the Court concluded that Plaintiffs' request for the
12 severe sanction of default was both premature and unjustified. Because the Court denied Plaintiffs'
13 principal request in its motion, it could have denied any award of attorney's fees to Plaintiffs. The
14 Court concluded, however, that an award of \$1,000.00 in attorney's fees against Mr. Rizzolo was a
15 proper sanction for his continued failure to comply with the Court's order that he produce the
16 statements for the RLR Trust's bank account. The Court again reminded Defendant that more
17 severe sanctions, including the default sanction, could be imposed if he continued to fail to comply
18 with his discovery obligations and the court's orders.

19 The Court finds no basis for reconsidering the amount of attorney's fees awarded to
20 Plaintiffs in Order (#437). While the attorney's fees incurred by Plaintiffs on the motion for
21 sanctions are greater than \$1,000.00, Plaintiffs are not entitled to recover the attorney's fees
22 incurred in prosecuting a motion for sanctions that was in large measure unsuccessful.

23 Accordingly,

24 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Reconsideration of Order (#437)
25 on Motion for Rule 37(b)Sanctions (#371) (#448) is **denied**.

26 DATED this 10th day of September, 2010.

27 
28 _____
GEORGE FOLEY, JR.
U.S. MAGISTRATE JUDGE