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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA ex rel. CECILIA GUARDIOLA	Case No. 3:12-cv-00295-LRH-VPC
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ORDER

Plaintiff,

v.

RENOWN HEALTH, RENOWN REGIONAL  
 MEDICAL CENTER, and RENOWN SOUTH  
 MEADOWS MEDICAL CENTER,

Defendants.

The Ninth Circuit remanded this matter to the court for the limited purpose of deciding Cecilia Guardiola’s Federal Rule of Civil Procedure 60(b) motion. The court now grants Guardiola’s motion—as indicated in its August 4, 2017 order (ECF No. 206)—and vacates its prior orders: ECF No. 190 and ECF No. 197.

**I. BACKGROUND**

On June 30, 2016, Guardiola filed a motion under the False Claims Act (“FCA”) for a share of proceeds recovered by the United States through an “alternate remedy.” ECF No. 179. On September 14, 2016, the court ruled it lacked jurisdiction to determine Guardiola’s proceeds because the government was not a party to the original action. ECF No. 190. Guardiola moved to amend her complaint. ECF No. 191. But the government asserted that sovereign immunity barred her claim, rendering amendment futile. *See* ECF No. 192. The court agreed with the government. ECF No. 197.

1           Guardiola appealed the ruling to the Ninth Circuit. ECF No. 198. In its briefing before the  
2 Ninth Circuit, the government reversed its position and asserted that the FCA acts as a waiver of  
3 sovereign immunity. *See* Brief for Intervenor United States of America (“USA Br.”) at 9th Cir.  
4 Dkt. 22-2 at 22, *United States of America ex rel. Cecilia Guardiola v. Renown Health and United*  
5 *States of America (Intervenor)*, No. 16-17205 (9th Cir. 2017). The government also asserted that  
6 the Ninth Circuit should reverse the district court’s order (ECF No. 197). *Id.* Accordingly, the  
7 only issue before the Ninth Circuit—whether the government was entitled to sovereign  
8 immunity—became moot.

9           Guardiola then moved this court to issue an indicative ruling under Rule 62.1. ECF  
10 No. 204. The court granted Guardiola’s motion and stated: “If the Ninth Circuit Court of Appeals  
11 remands the case to this court, the court shall vacate its prior orders (ECF Nos. 190, 197) and  
12 move forward with Guardiola’s motion for a share of the alternate remedy (ECF No. 179).” ECF  
13 No. 206. Shortly thereafter, the Ninth Circuit remanded the matter to the court for the limited  
14 purpose of enabling the court to consider Guardiola’s 60(b) motion. ECF No. 207.

## 15       **II.     LEGAL STANDARD**

16           Rule 60(b)(1) vests the court with the power to relieve a party from a final judgment,  
17 order, or proceeding for mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P.  
18 60(b)(1). A mistake “consists of instances where the court changes its mind ... because it made a  
19 legal or factual mistake in making its original determination ....” *Blanton v. Anzalone*, 813 F.2d  
20 1574, 1576 n.2 (9th Cir. 1987). This mistake can be on the part of counsel or the court itself. *See*  
21 *Fid. Fed. Bank, FSB v. Durga Ma Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004).

## 22       **III.    DISCUSSION**

23           The government concedes it was mistaken to argue for sovereign immunity before the  
24 district court. Because the government reversed its position on the issue of sovereign immunity,  
25 Guardiola’s suit is not barred by the doctrine and should not be dismissed. Had the government  
26 adopted its current position when the parties were originally before the court, the court would not  
27 have held that Guardiola’s motion to amend was futile. Therefore, under Rule 60(b)(1), the court  
28 now vacates its prior orders: ECF No. 190 and ECF No. 197.

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**IV. CONCLUSION**

IT IS THEREFORE ORDERED that Cecilia Guardiola's motion for relief from judgment (ECF No. 204) is **GRANTED**.

IT IS FURTHER ORDERED that the court's prior orders (ECF No. 190 and ECF No. 197) are hereby **VACATED**.

IT IS SO ORDERED  
DATED this 23<sup>rd</sup> day of October, 2017.

  
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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE