

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Brandon Eugene Hunter v. Jackowitz, et al.

Hunter v. Jackowitz · No. 2:22-cv-1281-DAD-SCR · Decided July 16, 2025

SUMMARY

The document contains findings and recommendations in a prisoner civil rights action under 42 U.S.C. § 1983. The magistrate judge recommends denying the plaintiff’s Rule 60(b) motion for reconsideration of a judgment entered as a discovery sanction and denying defendants’ bill of costs. The recommendations rely on the plaintiff’s failure to establish grounds for relief, his limited financial resources, and the potential chilling effect of imposing costs in civil rights litigation.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 16, 2025
DOCKET	2:22-cv-1281-DAD-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations on plaintiff's motion for reconsideration and defendants' bill of costs following entry of judgment as a terminating sanction.
STANDARD OF REVIEW	A motion to alter or amend judgment is governed by the standards in Federal Rule of Civil Procedure 59(e); relief from judgment is governed by Rule 60(b). The award of costs under Rule 54(d)(1) is discretionary, subject to the presumption favoring costs for the prevailing party and the requirement that reasons be specified when costs are denied.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Brandon Eugene Hunter v. Jackowitz, et al.

TOPICS

- motion for reconsideration
- costs
- sanctions
- civil rights
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

costs

motions for reconsideration

QUESTIONS PRESENTED

1. Whether plaintiff's untimely motion for reconsideration should be construed under Federal Rule of Civil Procedure 60(b) and granted based on his asserted mental-health circumstances, alleged conspiracies, or other grounds.
2. Whether defendants should be awarded \$2,628.50 in deposition transcript costs under Federal Rule of Civil Procedure 54(d)(1).

HOLDINGS

1. The motion for reconsideration should be construed as a Rule 60(b) motion because it was not filed within Rule 59(e)'s 28-day period, and relief should be denied because plaintiff did not establish mistake, surprise, newly discovered evidence, fraud, or another basis for setting aside the judgment.
2. The bill of costs should be denied despite the Rule 54(d)(1) presumption favoring an award of costs to the prevailing party.

KEY QUOTATIONS

“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.” (at 1)

“Rule 54(d)(1) of the Federal Rules of Civil Procedure creates a rebuttable presumption that costs, other than attorney’s fees, should be awarded to the prevailing party.” (at 3)

FACTUAL BACKGROUND

Plaintiff, a county detainee proceeding in forma pauperis, failed to comply with discovery obligations and court orders, including failing to appear for two depositions. The court previously granted defendants terminating sanctions and entered judgment against plaintiff. Plaintiff later sought reconsideration, citing suicidal ideation and alleged conspiracies, while defendants sought \$2,628.50 for deposition-related costs. Plaintiff had only \$0.07 in his inmate trust account when he filed the complaint and remained in custody.

PROCEDURAL HISTORY

Plaintiff brought a pro se 42 U.S.C. § 1983 action while in county custody. Judgment was entered for defendants on January 30, 2025, as a sanction for plaintiff's willful failure to comply with discovery rules and court orders. Plaintiff moved for reconsideration, and defendants submitted a bill of costs for deposition transcripts; the magistrate judge recommended denying both matters and advised that objections could be filed under 28 U.S.C. § 636(b)(1).

DISPOSITION

CASES CITED

- Houston v. Lack, 487 U.S. 266 (1988)
- Sch. Dist. Number 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1262-63 (9th Cir. 1993)
- Ass’n of Mexican-Am. Educators v. California, 231 F.3d 572, 591 (9th Cir. 2000)
- Save Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003)
- National Org. for Women v. Bank of Cal., 680 F.2d 1291, 1291 (9th Cir. 1982) (per curiam)
- Stanley v. Univ. of Southern California, 178 F.3d 1069, 1080 (9th Cir. 1999)
- Draper v. Rosario, 836 F.3d 1072 (9th Cir. 2016)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRANDON EUGENE HUNTER, No. 2:22-cv-1281-DAD-SCR 12 Plaintiff,
13 v. FINDINGS AND RECOMMENDATIONS 14 JACKOWITZ, et al., 15 Defendants. 16 17
Plaintiff is in county custody and is representing himself in this civil rights action filed 18 pursuant
to 42 U.S.C. § 1983. Judgment for defendants was entered on January 30, 2025 as a 19 sanction
for plaintiff’s willful failure to comply with the discovery rules and the court’s orders.

20 ECF Nos. 41-43. This matter was referred back to the undersigned on April 8, 2025 based on
21 defendants’ bill of costs and plaintiff’s motion for reconsideration. ECF Nos. 44, 46. For the 22
reasons discussed in further detail below, the undersigned recommends denying these pending 23
motions. 24 I. Plaintiff’s Motion for Reconsideration 25 On March 5, 2025, plaintiff filed a motion
to reconsider all of the court’s rulings since 26 July 1, 2024 based on “rare and unusual
circumstances.”¹ ECF No. 46.

Plaintiff asserts that he 27 1 The filing date was calculated using the prison mailbox rule. See
Houston v. Lack, 487 U.S. 28 266 (1988). 1 was suicidal from July through October 2024. ECF
No. 46 at 6. He also describes various 2 conspiracies involving jail staff and defense counsel that
were working against him during the 3 pendency of this case. 4 Defendants filed an opposition to
the motion, asserting that it is an untimely motion to 5 alter or amend judgment pursuant to Rule
59(e) of the Federal Rules of Civil Procedure.

ECF No. 6 48. Regarding the merits of the motion, defendants contend that the conspiracy
allegations are 7 unsupported and do not provide a legal basis to set aside the judgment in this
case. ECF No. 48. 8 A district court may reconsider a ruling under either Federal Rule of Civil
Procedure 59(e) 9 or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d
1255, 1262 (9th 10 Cir.

1993). “Reconsideration is appropriate if the district court (1) is presented with newly 11 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) 12 if there is an intervening change in controlling law.” *Id.* at 1263. A Rule 59(e) motion to alter or 13 amend a judgment must be filed within 28 days of judgment. Fed.

R. Civ. P. 59(e). Since 14 plaintiff’s motion to reconsider was not filed within 28 days of judgment, even using the prison 15 mailbox rule, the court construes the motion as filed pursuant to Rule 60(b). 16 The legal grounds for setting aside a judgment pursuant to Rule 60(b) include “mistake, 17 inadvertence, surprise, or excusable neglect,” newly discovered evidence, or fraud.

Fed. R. Civ. 18 P. 60(b)(1)-(3). A judgment may also be set aside if it is void or has been satisfied. Fed. R. Civ. 19 P. 60(b)(4),(5). A Rule 60(b) motion must be made “with a reasonable time-and for reasons (1), 20 (2), and (3) no more than a year after the entry of the judgment....” Fed. R. Civ. P. 60(c)(1). 21 Plaintiff has not demonstrated any mistake, surprise, newly discovered evidence, or fraud 22 that relates to the final judgment in this matter.

Plaintiff was provided numerous extensions of 23 time to comply with his discovery obligations in light of his depressed mental state, which 24 plaintiff previously described to the court. See ECF Nos. 32, 36. He was also warned about the 25 consequences of failing to comply with discovery and court orders. See ECF No. 39.

Therefore, 26 the terminating sanctions imposed in this case were not a surprise. His conclusory allegations of 27 a conspiracy are not sufficient to justify setting aside the judgment in this case. Therefore, the 28 undersigned recommends denying plaintiff’s motion to reconsider. 1 II. Defendants’ Bill of Costs 2 On February 11, 2025, defendants submitted a bill of costs requesting plaintiff reimburse 3 their costs for two separate deposition transcripts in the amount of \$2,628.50.

ECF No. 44. 4 Plaintiff filed an objection to the bill of costs based on the amount requested because neither 5 deposition occurred. ECF No. 45. Plaintiff cannot remember why he did not attend either 6 deposition. ECF No. 45.

In response, defendants assert that the transcripts of plaintiff’s non- 7 appearance at the depositions were used in their motion for sanctions. ECF No. 47; see also ECF 8 No. 31-1 at 9-13. 9 Rule 54(d)(1) of the Federal Rules of Civil Procedure creates a rebuttable presumption 10 that costs, other than attorney’s fees, should be awarded to the prevailing party.

However, a 11 district court has the discretion to refuse an award of costs. See *Ass’n of Mexican-Am. Educators* 12 v. California, 231 F.3d 572, 591 (9th Cir. 2000). If the court declines to award costs to the 13 prevailing party, it “must specify reasons for its refusal to award costs.” *Mexican-Am. Educators*, 14 231 F.3d at 591 (citation omitted). Reasons to refuse to award costs include “the losing party’s 15 limited financial resources; misconduct on the part of the prevailing party; the importance of the 16 issues; the importance and complexity of the issues; the merit of the

plaintiff's case, even if the 17 plaintiff loses; and the chilling effect on future civil rights litigants of imposing high costs.

Save 18 *Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003) (internal citations omitted); see 19 also *National Org. for Women v. Bank of Cal.*, 680 F.2d 1291, 1291 (9th Cir. 1982) (per curiam) 20 (upholding the refusal to award costs based on the losing party's limited financial resources); 21 *Stanley v. Univ. of Southern California*, 178 F.3d 1069, 1080 (9th Cir.

1999) (finding that the 22 district court abused its discretion in awarding costs for failing to consider the chilling effect on 23 future civil rights litigation and the losing party's indigency). 24 In this case, the undersigned recommends refusing defendants' bill of costs for multiple 25 reasons.

First and foremost, plaintiff is a prisoner proceeding in forma pauperis. At the time that 26 he filed the complaint in this case, he had \$ 0.07 in his inmate trust account. ECF No. 2 at 3. He 27 has remained in custody for the last three years.

Therefore, there is no indication on the record 28 before the court that he has any financial resources with which to pay the costs. Since this case 1 | involved allegations of excessive force against a prisoner, the court also finds that the issues 2 || involved were important and that an award of costs may have a chilling effect on future civil 3 || rights litigation by individual detained in county custody.

See *Draper v. Rosario*, 836 F.3d 1072 4 | (9th Cir. 2016) (emphasizing that "[i]ndividual Eighth Amendment cases are important for 5 || safeguarding the rights and safety of prisoners" and collecting cases where district courts have 6 || declined to tax costs due to chilling effect on civil rights litigation). Additionally, the procedural 7 || history of this case makes an award of costs inappropriate.

Defendants could have requested the 8 || deposition costs as a monetary sanction when they filed their second motion to compel on May 9 || 10, 2024 which included the May 7, 2024 deposition transcript. ECF No. 31-1 at 9-13. Instead, 10 | they requested evidentiary sanctions. See ECF No. 31 at 7.

Having won terminating sanctions, 11 | an award of costs seems needlessly punitive at this juncture. For all these reasons, defendant's 12 | bill of costs should be denied. 13 Accordingly, IT IS HEREBY RECOMMENDED that: 14 1. Plaintiff's motion for reconsideration (ECF No. 46), construed as a Rule 60(b) motion 15 | for relief from judgment, be denied. 16 2.

Defendants' bill of costs (ECF No. 44) be denied. 17 These findings and recommendations are submitted to the United States District Judge 18 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days 19 | after being served with these findings and

recommendations, any party may file written 20 | objections with the court and serve a copy on all parties.

Such a document should be captioned 21 | “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 22 || objections shall be filed and served within fourteen days after service of the objections.

The 23 || parties are advised that failure to file objections within the specified time may waive the right to 24 || appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 25 ||
DATED: July 15, 2025 md 27 SEAN C. RIORDAN 28 UNITED STATES MAGISTRATE
JUDGE