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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No.: CV 01-4530 LGB (AJWx)

Date: March 21, 2002

Title: Henry Waxman et al. v. Donald L. Evans,
Secretary of Commerce

DOCKET ENTRY

PRESENT: Hon. Lourdes G. Baird, United States District Judge

Catherine Jeang
Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS: In Chambers

The Court is in receipt of the Secretary's Motion for Reconsideration, Plaintiffs' opposition, and the Secretary's reply brief.¹

Motions for reconsideration are governed by Central District of California Local Rule 7-18 which states:

A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such

¹ Motions for reconsideration may be either a Rule 59 motion or a Rule 60 motion. See United States v. Nutri-Cology, Inc., 982 F.2d 394, 396-97 (9th Cir. 1992); Fuller v. M.G. Jewelry, 950 F.2d 1437, 1441-42 (9th Cir. 1991) (motion to reconsider can be construed as Rule 60 or Rule 59 motion even when movant brought it under Local Rules and cited no governing Federal Rules of Civil Procedure). Because a Rule 59 motion must be brought no more than ten days after entry of judgment, the Secretary's motion for a reconsideration of this Court's January 22, 2002 Order is deemed to have been brought under Rule 60(b). See Fed. R. Civ. P. 59(e); Fed. R. Civ. P. 60(b); see also Nutri-Cology, 982 F.2d at 396-97. However, the Court finds that even if it were brought under Rule 59(e), the Secretary's motion still must be denied.

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decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

Local Rule 7-18. A motion for reconsideration is appropriate where new developments may necessitate a reevaluation of the previous decision. Courts will not consider arguments or facts that were or could have been presented in the original motion. See Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1231 (3rd Cir. 1995) ("Reargument should not be used as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided."). Reconsideration is only appropriate under the above conditions or other "highly unusual circumstances." School Dist. No. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Rule 60(b) provides for reconsideration

only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence, (3) fraud, (4) a void judgment, (5) a satisfied or discharged judgment, or (6) 'extraordinary circumstances' which would justify relief.

Fuller, 950 F.2d at 1442; see Fed. R. Civ. P. 60(b).

The Secretary seeks reconsideration of the Court's January 22, 2002 Order granting Plaintiffs summary judgment "in order to address a crucial but unexamined premise that lies at the heart of that ruling-namely, that [P]laintiffs were entitled to invoke the powers of the Court under the statutes on which they rely." The Secretary's Motion at 1. Specifically, he argues that the Court failed to "fully consider" a number of flaws to Plaintiffs' requested relief: (1) Plaintiffs lack standing to sue for the release of the information subject to their request pursuant to Raines v. Byrd, 521 U.S. 811 (1997), the Secretary's Motion at 3-7; (2) Plaintiffs do not have a judicially enforceable right of action, express or implied, under either the Seven Member rule

itself, 5 U.S.C. § 2954, or the Administrative Procedure Act, the Secretary's Motion at 8-18; (3) a reading of Section 2954¹ allowing individual members of Congress to sue the Executive Branch for failure to comply with an investigatory request, without the express consent of their respective chamber, is unconstitutional, id. at 19-21; and (4) Section 2954 has been superseded by House Rules and is therefore no longer judicially enforceable. Id. at 21.

The Secretary's arguments lack merit. First, though Plaintiffs specifically discussed the standing issue in their opening brief, Pl's Motion for Summary Judgment at 17-21, the Secretary declined to address it. He simply cannot now seek to argue this standing issue. Bhatnagar, 52 F.3d at 1231. Similarly, the Secretary failed to raise arguments concerning whether Plaintiffs possessed a judicially enforceable right of action and whether House Rules superseded Section 2954 in his opposition papers to Plaintiffs' motion for summary judgment, in his own motion to dismiss or, in the alternative, motion for summary judgment, or during oral argument. The Court will not consider these arguments which could have been presented in the original motion papers, see id., especially since these arguments do not appear to be based on either "newly discovered evidence" or otherwise "extraordinary circumstances."² Fed. R. Civ. P. 60(b); see also Kona Enters. V. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (noting that a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law). Finally, the Court emphasizes that the unconstitutionality argument that the Secretary proffers is the same one that he had raised before and that the Court had considered and rejected in its January 22, 2002 Order. See the Secretary's Opposition to Pl's Motion and Memo in Support of Own Motion to Dismiss or, in the alternative, Motion for Summary Judgment at 17-20. The Secretary has done nothing to persuade the Court that it committed clear error with this rejection. Thus,

² The Secretary's characterization of this Court's January 22, 2002 Order as having "dramatic impact," see the Secretary's Reply Brief at 1, does not persuade the Court of the existence of any "highly unusual circumstances," id., nor does the Court find the Secretary's argument that "[t]he reach of [the Seven Member Rule] and the many flaws in plaintiffs' novel claim simply did not become apparent until the Court's ruling" to adequately excuse his failure to raise these "flaws" prior to the Court's January 22, 2002 Order.

the Court will not reconsider this argument. See Bhatnagar, 52 F.3d at 1231; Local Rule 7-18.

Based on the foregoing, the Court DENIES the Secretary's motion for reconsideration.³

Deputy Clerk Jerry

³ The Court's entry of a stay of execution of judgment on the January 22, 2002 Order is hereby VACATED.