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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

ARTURO GONZALEZ,

Debtor.

No. 2:15-bk-25283-RK

Chapter 7

**MEMORANDUM DECISION ON DEBTOR'S  
MOTION FOR RECONSIDERATION BASED  
ON FACTS DISCOVERED ON 11-28-22 IN  
STUDYING THE CASE**

**Vacated Hearing**

Date: January 10, 2023

Time: 2:30 p.m.

19 On December 7, 2022, Debtor Arturo Gonzalez filed a "Motion for: 1. Motion for  
20 Reconsideration Based on Facts Discovered on 11-28-22 in Studying the Case 2.  
21 Motion to Amend Prior Reconsideration Motion Zoom Meeting Notice 3. Motion  
22 Pursuant to Rule 60(b), incorporated by Bankruptcy Rule 9024" (the "motion") (Docket  
23 No. 697). Debtor filed a separate notice of motion for the motion (Docket No. 698),  
24 noticing the motion for hearing before the court on January 10, 2023 at 2:30 p.m.  
25 Chapter 7 Trustee Wesley H. Avery filed an opposition to the motion on December 16,  
26 2022 (Docket No. 715) (the "opposition"). Having considered the motion and  
27 opposition, pursuant to Local Bankruptcy Rule 9013-1(j)(3), the court determines that  
28 oral arguments are not necessary, dispenses with oral arguments on the motion, takes

1 the motion under submission, the court will deny the motion for the following reasons  
2 and will enter a separate order denying the motion.

3 On September 21, 2022, the court entered its “Order on Final Fee Applications  
4 Allowing Payment of: (1) Court and U.S. Trustee Fees; and (2) Final Fees and  
5 Expenses of Trustee and Professionals [LBR 2016-1(c)(4)]” (Docket No. 654) (the “fee  
6 allowance order”). On October 4, 2022, Debtor filed a prior motion to reconsider this  
7 order entitled “Motion for Reconsideration on Compensation of Fees to Trustee and  
8 Trustee’s CPA and Any Party (the “prior motion for reconsideration”) (Docket 668). The  
9 court denied the prior motion for reconsideration, which Debtor brought under Federal  
10 Rules of Civil Procedure Rule 59(e) by its “Order (1) Denying Debtor’s Motion for  
11 Reconsideration of Fees to Trustee and Trustee’s CPA and Any Party; (2) Vacating the  
12 November 15, 2022 Hearing; and (3) For Related Relief” (“the prior reconsideration  
13 order”) (Docket No. 680) and explained the reasons for denial of the prior motion for  
14 reconsideration through its “Memorandum Decision on Debtor’s Motion for  
15 Reconsideration of Fees to Trustee and Trustee’s CPA and Any Party” (Docket No.  
16 681), entered on November 9, 2022. This order stated “No further motion for  
17 reconsideration under Federal Rule of Bankruptcy Procedure 9023, making applicable  
18 Federal Rule of Civil Procedure 59(e), is permitted. Any such further motion will be  
19 stricken without further order.” Docket No. 680 at 2, ¶ 4. On November 30, 2022,  
20 Debtor filed a notice of appeal of the fee allowance order and the prior reconsideration  
21 order (Docket No. 688).

22 Instead of proceeding with the appeal, it appears Debtor, through this new  
23 motion, again seeks reconsideration of the fee allowance order and the prior  
24 reconsideration order, requesting amendment of his prior reconsideration motion this  
25 court previously denied.

26 This new motion for reconsideration sets out three different requests for relief as  
27 stated in the caption of the motion: 1. Motion for Reconsideration Based on Facts  
28 Discovered on 11-28-22; 2. Motion to Amend Prior Reconsideration Motion; and 3.

1 Motion Pursuant to Rule 60(b), Incorporated by Bankruptcy Rule 9024. As discussed  
2 below, the court will deny all three requests for relief.

3 First, Debtor seeks reconsideration of the prior motion for reconsideration based  
4 on alleged “facts discovered on 11-28-22.” The court assumes that Debtor is attempting  
5 to make an argument based on newly discovered evidence under Federal Rule of Civil  
6 Procedure 60(b)(2). As stated by the United States Court of Appeals for the Ninth  
7 Circuit in *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082 (9th Cir. 2003), “Relief  
8 from judgment on the basis of newly discovered evidence is warranted if (1) the moving  
9 party can show the evidence relied on in fact constitutes ‘newly discovered evidence’  
10 within the meaning of Rule 60(b); (2) the moving party exercised due diligence to  
11 discover this evidence; and (3) the newly discovered evidence must be of ‘such  
12 magnitude that production of it earlier would have been likely to change the disposition  
13 of the case.’” 331 F.3d at 1093 (citation omitted).

14 As stated in the caption of Debtor’s motion, he is seeking reconsideration “Based  
15 on Facts Discovered on 11-28-22 in Studying the Case.” However, in the motion,  
16 Debtor does not cite to any specific newly discovered facts. In the motion, Debtor  
17 discusses his review of the proceedings in this bankruptcy case. If Debtor recently  
18 reviewed this case and now thinks of a new argument to make for this second motion  
19 for reconsideration, that is not newly discovered evidence, it is a newly discovered  
20 argument. All the facts listed in the motion have previously been known to Debtor as  
21 this case has been pending since 2015. Debtor makes the same argument that the  
22 bankruptcy case has no useful purpose that he has repeatedly argued on prior motions  
23 considered and rejected by the court, which argument is now before the United States  
24 District Court on his appeal of the fee order and related order denying the prior motion  
25 for reconsideration. Even if Debtor recently discovered or learned of new evidence,  
26 such evidence was available to Debtor at the time of the filing and hearing of the  
27 Chapter 7 Trustee’s final report and fee applications and his first motion for  
28 reconsideration of the order allowing fees. Debtor has not presented any newly

1 discovered evidence that was previously unavailable, and none of these “new facts” will  
2 change the disposition of the case.

3 Second, Debtor does not state any factual or legal grounds to amend his prior  
4 motion for reconsideration, which was filed under Federal Rule of Civil Procedure 59(e).  
5 Even though the court stated in its November 9, 2022 order denying the first  
6 reconsideration motion that there should be no further motion for reconsideration under  
7 Federal Rule of Civil Procedure 59(e) and Debtor filed this motion under Federal Rule of  
8 Civil Procedure 60(b), he seeks to amend his prior motion for reconsideration under  
9 Federal Rule of Civil Procedure 59(e) motion. Amendment under Federal Rule of Civil  
10 Procedure 59(e) is no longer possible because as the rule states: “A motion to alter or  
11 amend a judgment must be filed no later than 28 days after the entry of the judgment.”  
12 Federal Rule of Civil Procedure 59(e). Or in this bankruptcy case, Federal Rule of  
13 Bankruptcy Procedure 9023 governs, which makes Federal Rule of Civil Procedure 59  
14 applicable in this bankruptcy case, but which provides that such motion under Federal  
15 Rule of Bankruptcy Procedure 9023 must be made “no later than 14 days after entry of  
16 judgment.” The time limit to file a motion under Federal Rule of Bankruptcy Procedure  
17 9023 has long expired, and Debtor cannot file another such motion under the guise of  
18 amending the prior Rule 9023 motion.

19 Also, it appears Debtor seeks reconsideration of his first motion for  
20 reconsideration filed on October 4, 2022 which the court denied on November 9, 2022  
21 and is now the subject of an appeal. This court, as a trial court, has no authority to  
22 reconsider its orders which are the subject of an appeal is pending in an appellate court:  
23 “The filing of a notice of appeal is an event of jurisdictional significance – it confers  
24 jurisdiction on the court of appeals and divests the [trial] court of its control over those  
25 aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount*  
26 *Co.*, 459 U.S. 56, 58 (1982). Generally, when an appeal is filed, the trial court lacks  
27 jurisdiction over the matters being appealed. *United States v. Phelps*, 283 F.3d 1176,  
28 1181 n. 5 (9th Cir. 2002) (citations omitted). In other words, it is not procedurally proper

1 for this court to reconsider its prior orders which are now on appeal before the appellate  
2 court because the court does not have jurisdiction to rule on any aspects of the case  
3 involved on the appeal, including reconsideration of orders now on appeal. If Debtor  
4 seeks relief from this court's orders allowing professional fees and denying his motion  
5 for reconsideration of the fee allowance order, his judicial remedy is his appeal before  
6 the appellate court, which is the United States District Court.

7 Third, in the motion, Debtor does not state any factual or proper legal grounds for  
8 reconsideration under Federal Rule of Civil Procedure 60(b), made applicable in this  
9 bankruptcy case pursuant to Federal Rule of Bankruptcy Procedure 9024. Based on  
10 the facts Debtor presented in the motion, there are no grounds for reconsideration  
11 under Federal Rule of Civil Procedure 60(b). In his motion, Debtor cited to Federal Rule  
12 of Civil Procedure 60(b)(1)-(6), but did not cite to any specific subsection of Rule 60(b)  
13 to which he seeks relief. Federal Rule of Civil Procedure 60(b)(1)-(6) states:

14 **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion  
15 and just terms, the court may relieve a party or its legal representative from a  
16 final judgment, order, or proceeding for the following reasons:

- 17 (1) mistake, inadvertence, surprise, or excusable neglect;  
18 (2) newly discovered evidence that, with reasonable diligence, could not have  
19 been discovered in time to move for a new trial under Rule 59(b);  
20 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or  
21 misconduct by an opposing party;  
22 (4) the judgment is void;  
23 (5) the judgment has been satisfied, released, or discharged; it is based on an  
24 earlier judgment that has been reversed or vacated; or applying it prospectively is  
25 no longer equitable; or  
26 (6) any other reason that justifies relief.

27 Federal Rule of Civil Procedure 60(b)(1)-(6). Debtor does not cite to any specific  
28 grounds under Rule 60(b), other than "new facts" which might be considered "newly  
discovered" evidence. As stated above, there is no newly discovered evidence, that is,  
Debtor only seeks to amend his prior motion for reconsideration based on his new  
argument, and not new evidence. Otherwise, the court does not see any colorable

1 grounds for relief under Federal Rule of Civil Procedure 60(b)(1)-(6). Moreover,  
2 assuming for the sake of argument that Debtor in his motion stated a proper ground for  
3 relief from judgment under Federal Rule of Civil Procedure 60(b)(1)-(6), because the  
4 orders that he seeks relief from judgment are the subject of his pending appeal in the  
5 United States District Court, this court as the trial court lacks jurisdiction to rule on the  
6 motion as stated above regarding his request to amend the prior motion for  
7 reconsideration.

8 Because Debtor has an appeal of the fee allowance order and the order denying  
9 reconsideration of the fee allowance order pending before the United States District  
10 Court, the court cannot consider this or any other motion for reconsideration relating to  
11 these matters because the appeal has divested this court of jurisdiction of these  
12 matters.

13 Having ruled in this memorandum decision and the separate order thereon that  
14 the bankruptcy court as the trial court no longer has jurisdiction over matters which are  
15 the subject of a pending appeal, the court advises and warns Debtor that he may not  
16 now file another motion for reconsideration of the orders of this court which are subject  
17 of a pending appeal, and if Debtor files another such motion, the court will consider it to  
18 be unreasonable in fact and law and will subject him to sanctions, including monetary  
19 sanctions, pursuant to Federal Rule of Bankruptcy Procedure 9011, Local Bankruptcy  
20 Rule 9011-3 and this court's inherent authority to impose sanctions to deter vexatious  
21 litigation.

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1 Because the court has ruled on Debtor's motion, the hearing on the motion for  
2 January 10, 2023 at 2:30 p.m. is vacated. No appearances are required on the motion  
3 on January 10, 2023 as the court will not call the motion for hearing on that date.

4 IT IS SO ORDERED.

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26 Robert Kwan  
27 United States Bankruptcy Judge  
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