

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHAWN HUSS, a single man, and
others similarly situated,

Plaintiff,

v.

SPOKANE COUNTY, a municipal
corporation,

Defendant,

v.

ATTORNEY GENERAL FOR THE STATE OF
WASHINGTON,

Intervenor Defendant.

No. CV-05-0180-FVS

ORDER DENYING DEFENDANT'S
MOTIONS FOR RECONSIDERATION
GRANTING DEFENDANT'S REQUEST
FOR INTERLOCUTORY APPEAL,
STAYING ACTION, AND VACATING
SCHEDULING ORDER

THIS MATTER comes before the Court on Defendant's September 4, 2008 motion for reconsideration of the Court's order granting Plaintiff's motion to certify the matter as a class action. (Ct. Rec. 166). Also before the Court is Plaintiffs' second motion for reconsideration filed pursuant to Fed. R. Civ. P. 60(b)(6) on October 10, 2008. (Ct. Rec. 173). Defendant's second motion for reconsideration requests relief from this Court's October 12, 2007 order granting Plaintiff's motion for partial summary judgment as to

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1 liability. (Ct. Rec. 173). In the alternative, Defendant requests
2 that the Court certify the matter for interlocutory review pursuant to
3 28 U.S.C. § 1292. *Id.* Plaintiff is represented by Breean Beggs,
4 Jeffry K. Finer and John D. Sklut. Defendant Spokane County is
5 represented by Michael A. Patterson and James H. Kaufman. Timothy
6 Ford represents intervenor Defendant the Washington State Attorney
7 General.

8 Although Defendant's motions for reconsideration are each noted
9 for oral argument, the Court finds oral argument is not necessary.
10 Pursuant to this Court's authority under Local Rule 7.1(h)(3), the
11 Court vacates the hearings on these motions and shall herein address
12 the motions without oral presentation.

13 **BACKGROUND**

14 Plaintiff, Shawn Huss, filed suit individually and on behalf of a
15 class of others similarly situated, under 42 U.S.C. §§ 1983 and 1988,
16 seeking both monetary damages and declaratory and injunctive relief.
17 Plaintiff's second amended complaint, filed December 21, 2005, alleges
18 that the booking fee policy of the Defendant Spokane County Jail ("the
19 Jail"), as well as the underlying statute, RCW § 70.48.390, are
20 facially unconstitutional in that they deprive individuals who are
21 arrested of their property without due process of law. (Ct. Rec. 61).

22 In May 1999, the Washington legislature passed RCW § 70.48.390,
23 authorizing city, county, and regional jails to take a \$10.00 booking
24 fee from the person of each individual booked into jail. In May 2003,
25 the Washington legislature amended RCW § 70.48.390, allowing jails to
26 require each person who is booked into jail to pay a fee based on the

1 jail's actual booking costs or one hundred dollars, whichever is less.
2 The "fee is payable immediately from any money then possessed by the
3 person being booked" into jail. RCW § 70.48.390.

4 In accordance with RCW § 70.48.390, on or about February 24,
5 2004, the Spokane County Board of Commissioners passed Resolution 04-
6 0160, which authorized the Jail to develop and implement a procedure
7 to collect a fee from persons booked into jail. On May 5, 2004,
8 pursuant to Resolution 04-0160, the Jail adopted an official policy
9 authorizing the collection of a booking fee. Under the policy,
10 federal inmates are charged the federal daily rate while non-federal
11 inmates are charged the actual jail booking costs - - \$89.12.
12 Pursuant to the statute, the policy allows the fees to be taken
13 directly from any funds in the person's possession at the time of
14 booking. If the person does not have adequate funds to cover the
15 booking fee, a charge is assessed to the person's account. The policy
16 does not provide for a pre-deprivation hearing or any other
17 opportunity for persons to contest the taking of their money.
18 Instead, the Jail adopted a separate reimbursement policy. Under this
19 reimbursement policy, the individual is required to prove the charges
20 against him or her were dropped or that he or she was acquitted, and
21 then, upon investigation by the Jail Staff, the inmate may be
22 reimbursed for the intake fee.

23 In the present case, Plaintiff was arrested based on a domestic
24 violence complaint and booked into the Jail on October 31, 2004.
25 Plaintiff's wallet was inventoried as personal property that would be
26 returned upon his release, but the Jail took all of the money from

1 Plaintiff's wallet (\$39.30) as payment on the booking fee (\$89.12).
2 The Jail did not inform Plaintiff he was being charged a booking fee,
3 that there was a reimbursement policy in place, or that the money was
4 required to be returned if his charges were dropped or he was
5 acquitted. Plaintiff was released from jail the next day after all of
6 the charges were dropped. Upon his release, his money was not
7 returned and he did not receive a copy of the Jail's reimbursement
8 policy. The Jail returned Plaintiff's money on February 23, 2005,
9 approximately four months after the charges against him were dropped,
10 and after Plaintiff's lawyer sent a letter to Spokane County stating
11 that the Jail's booking fee policy was unconstitutional.

12 In January 2005, the Jail modified its forms and procedures
13 related to the collection of booking fees. It is now a requirement
14 that each person booked into jail receive paperwork outlining methods
15 for obtaining reimbursement. Further, persons who are released and
16 not charged within 72 hours, automatically, without request, have
17 their booking fees returned if paid in part or in full. The Jail also
18 automatically voids any unpaid booking fee for all inmates who are
19 found not-guilty, acquitted, or have their charges dismissed.

20 On August 29, 2006, the Court granted Plaintiff's motion for
21 partial summary judgment, holding that RCW § 70.48.390 and the booking
22 fees premised upon it are facially unconstitutional. (Ct. Rec. 75 at
23 14-15). Defendant, as well as the State of Washington, moved for
24 reconsideration on the basis of a number of issues, including standing
25 and mootness. On April 13, 2007, the Court found that Plaintiff does
26 not have standing to seek declaratory or injunctive relief, granted

1 Defendant's motion for reconsideration, and withdrew its prior order.
2 (Ct. Rec. 117). The Court directed the parties to submit supplemental
3 briefing addressing the question: "Is partial summary judgment
4 appropriate on any element of the Plaintiff's suit for damages under
5 28 U.S.C. § 1983?" (Ct. Rec. 117 ¶ 6).

6 On October 12, 2007, after considering the parties' supplemental
7 briefing, the Court granted Plaintiff's motion for partial summary
8 judgment as to liability. (Ct. Rec. 140). The Court determined that
9 Defendant is liable, under Section 1983, because the Jail's booking
10 fee policy deprived Plaintiff, and others similarly situated, of
11 property without due process of law. (Ct. Rec. 140). The Court
12 thereafter set a briefing schedule regarding Plaintiff's Motion for
13 Class Certification.

14 On August 25, 2008, the Court granted Plaintiff's Motion For
15 Class Certification. (Ct. Rec. 162). The Court determined that Shawn
16 Huss shall serve as the class representative in this matter and
17 certified the class as follows:

18 The class of all individuals, from May 5, 2004 to December 20,
19 2006, who were deprived of their property pursuant to the booking
20 fee policy of the Spokane County Jail without being provided the
constitutionally guaranteed due process of law.

21 (Ct. Rec. 162).

22 On September 4, 2008, Defendant filed a motion for
23 reconsideration challenging the Court's definition of the class. (Ct.
24 Rec. 166). Plaintiff did not respond to Defendant's motion for
25 reconsideration.

26 On October 10, 2008, Defendant filed an additional motion for
reconsideration, pursuant to Fed. R. Civ. P. 60(b)(6), contesting the

1 Court's order granting Plaintiff's motion for partial summary judgment
2 as to liability (Ct. Rec. 140). (Ct. Rec. 173).

3 DISCUSSION

4 I. FIRST MOTION FOR RECONSIDERATION

5 It is a basic principle of federal practice that "courts
6 generally . . . refuse to reopen what has been decided"
7 *Messinger v. Anderson*, 225 U.S. 436, 444 (1912); *see*,
8 *Magnesystems, Inc. v. Nikken, Inc.*, 933 F.Supp. 944, 948 (C.D. Cal.
9 1996). However, reconsideration is appropriate if the court: (1) is
10 presented with newly discovered evidence; (2) has committed clear
11 error or the initial decision was manifestly unjust; or (3) is
12 presented with an intervening change in controlling law. *School*
13 *District 1J, Multnomah County v. A C and S, Inc.*, 5 F.3d 1255, 1263
14 (9th Cir. 1993), *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2742 (1994);
15 *see, also, Alliance for Cannabis Therapeutics v. D.E.A.*, 15 F.3d 1131,
16 1134 (D.C. Cir. 1994). There may also be other highly unusual
17 circumstances warranting reconsideration. *School District 1J*, 5 F.3d
18 at 1263.

19 Under Federal Rule of Civil Procedure 59(e), a party may move to
20 amend a judgment within ten days of the filing of the judgment. Fed.
21 R. Civ. P. 59(e). However, such a motion for reconsideration "offers
22 an 'extraordinary remedy, to be used sparingly in the interests of
23 finality and conservation of judicial resources.'" *Carroll v.*
24 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12 James Wm.
25 Moore et al., *Moore's Federal Practice* § 59.30[4] (3d ed. 2000)). "A
26 Rule 59(e) motion may not be used to raise arguments or present

1 evidence for the first time when they could reasonably have been
2 raised earlier in the litigation." *Carroll*, 342 F.3d at 945; *Kona*
3 *Enters. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "Nor
4 is reconsideration to be used to ask the Court to rethink what it has
5 already thought." *Motorola, Inc. v. J.B. Rodgers Mech. Contrs., Inc.*,
6 215 F.R.D. 581, 582 (D. Ariz. 2003). *See, also, Taylor v. Knapp*, 871
7 F.2d 803, 805 (9th Cir. 1988) (holding denial of a motion for
8 reconsideration proper where "it presented no arguments that had not
9 already been raised in opposition to summary judgment"); *Backlund v.*
10 *Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (same). "Motions for
11 reconsideration serve a limited function: to correct manifest errors
12 of law or fact or to present newly discovered evidence." *Publisher's*
13 *Resource, Inc. v. Walker Davis Publications, Inc.*, 762 F.2d 557, 561
14 (7th Cir. 1985) (quoting *Keene Corp. v. International Fidelity Ins.*
15 *Co.*, 561 F.Supp. 656, 665-666 (N.D. Ill. 1982), *aff'd*, 736 F.2d 388
16 (7th Cir. 1984)); *see, Novato Fire Protection Dist. v. United States*,
17 181 F.3d 1135, 1142, n. 6 (9th Cir. 1999), *cert. denied*, 529 U.S.
18 1129, 120 S.Ct. 2005 (2000). Absent exceptional circumstances, only
19 three types of arguments do provide an appropriate basis for a motion
20 for reconsideration: arguments based on newly discovered evidence,
21 arguments that the court has committed clear error, and arguments
22 based on "an intervening change in the controlling law." *89 Orange*
23 *St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

24 Defendant fails to present newly-discovered evidence to warrant
25 reconsideration and is not contending that there has been an
26 intervening change in controlling law. Defendant essentially argues

1 that there is clear error of law with respect to the class definition
2 and that the definition of the class should therefore be corrected to
3 prevent manifest injustice. (Ct. Rec. 166).

4 **A. Timeframe Included in the Class Definition**

5 The Court's definition of the class included all individuals,
6 "from May 5, 2004 to December 20, 2006 (the date the instant motion
7 was filed)." (Ct. Rec. 162 at 15).

8 May 5, 2004, represents the date the Jail adopted the policy
9 authorizing the collection of a booking fee. December 20, 2006, as
10 indicated by the Court within its definition, represents the date
11 Plaintiff's motion for class certification was filed.¹

12 **1. August 30, 2006**

13 Defendant argues that because booking fees were no longer
14 assessed in Spokane County after August 30, 2006, the class definition
15 should be revised to reflect the proper timeframe that Spokane County
16 Jail's booking fee policy was actually in effect, May 5, 2004 through
17 August 30, 2006. (Ct. Rec. 166 at 4). Harold J. Brady, the Spokane
18 County Jail Commander since March 16, 2005, declares, "[t]o the best
19 of my knowledge, intake fees were no longer assessed at booking in the
20 Spokane County Jail after August 30, 2006." (Ct. Rec. 167 ¶ 5).

21 Even considering Mr. Brady's declaration as a true statement of
22 the Jail's policy in August of 2006, it does not result in an invalid
23

24 ¹Plaintiff's December 20, 2006 motion for class
25 certification requested that the class be certified as all
26 persons deprived of their property without due process of law
"from May 5, 2004 through the present [December 20, 2006]." (Ct.
Rec. 94-2 at 2).

1 definition of the class as defined by the Court. If the Jail
2 discontinued taking booking fees on August 30, 2006, no members of the
3 class would be identified after this date. However, if an individual
4 did, in fact, have a booking fee assessed by the Jail between August
5 30, 2006, and December 20, 2006, he may be included in the class.
6 There is no legal error established as a result of the Court's
7 timeframe for the class.

8 **2. Booking Fee Policy as of January 2005**

9 Defendant also asserts that Individuals booked at the Jail after
10 January 2005 should not be included in the Class since the Jail
11 modified its procedures related to the collection of booking fees in
12 January of 2005. (Ct. Rec. 166 at 8-9). Defendant made an identical
13 argument in opposition to Plaintiff's motion for class certification.
14 As indicated above, reconsideration should not be used "to ask the
15 Court to rethink what it has already thought." *Motorola, Inc.*, 215
16 F.R.D. at 582.

17 Nevertheless, the Court notes, as previously explained, although
18 the January 2005 policy mandates that individuals booked into jail
19 receive paperwork outlining methods for reimbursement and booking fees
20 are automatically returned to persons not charged within 72 hours, it
21 still results in the deprivation of individuals' property upon booking
22 into the Jail without due process. The actual deprivation of
23 property, without due process, occurs upon the collection of a booking
24 fee without an opportunity to contest the taking of the money. A
25 later refund or notice of methods for reimbursement does not void the
26 earlier deprivation without due process. Accordingly, the Court's

1 timeframe for the class, May 5, 2004 through December 20, 2006, is not
2 erroneous.

3 **B. Inclusion of Convicted Individuals**

4 Defendant additionally argues that the Court committed clear
5 error by including convicted individuals in the class definition.
6 (Ct. Rec. 166 at 4-8). This, too, is an argument Defendant raised in
7 opposition to Plaintiff's motion for class certification. As stated
8 above, reconsideration should not be used "to ask the Court to rethink
9 what it has already thought." *Motorola, Inc.*, 215 F.R.D. at 582.

10 As this Court previously concluded, "[u]nder the Defendant's
11 booking fee policy, everyone who is arrested is deprived, at least
12 temporarily, of the use of their property." (Ct. Rec. 140 at 8). The
13 Constitutional violation at issue in this case occurs following an
14 arrest and at the moment of the taking without due process. The
15 actual deprivation of property, without due process, occurs upon the
16 collection of a booking fee. Whether the individual is later
17 convicted or acquitted does not distinguish members of the class,
18 except with respect to potential claims for damages. The fact that
19 damage claims will vary among members of the class does not defeat
20 typicality. Typicality may exist even though "there is a disparity in
21 the damages claimed by the representative parties and the other
22 members of the class." 7A Charles A. Wright, et al., *Federal Practice*
23 *and Procedure* § 1764, at 235-236, 241 (1986). Furthermore, it is well
24 established that individual damage issues generally do not defeat
25 predominance. See, *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238
26 F.R.D. 482, 494 (C.D. Cal. 2006) (collecting cases). Defendant fails

1 to demonstrate legal error as a result of the Court's definition of
2 the class.

3 **C. Redefine Class**

4 Defendant requests that the Court modify its definition of the
5 class in light of the arguments made in Defendant's motion for
6 reconsideration. (Ct. Rec. 166 at 9-10). Defendant requests the
7 Court redefine the class as follows:

8 All individuals who were deprived of their property pursuant to
9 the booking fee policy of the Spokane County Jail from May 5,
10 2004 to January 6, 2005, who were booked and not charged, or who
11 were acquitted, or whose charges were dismissed.

(Ct. Rec. 166 at 10).

12 However, as determined above, the timeframe of the defined class,
13 as well as the decision to not limit the class to only those
14 individuals who were not later convicted, was not erroneous. A class
15 proposed under Rule 23(b)(3) must be sufficiently well defined so that
16 the Court may provide individual notice to all members who can be
17 identified through reasonable effort. *Mendoza v. Zirkle Fruit Co.*,
18 222 F.R.D. 439, 442 (E.D. Wash. 2004). The test is whether the
19 description of the class is "sufficiently definite so that it is
20 administratively feasible for the court to determine whether a
21 particular individual is a member." 7A C. Wright et al., *Federal*
22 *Practice & Procedure* § 1760, at 121 (2d ed. 1986). The Class, as
23 defined in the Court's August 25, 2008 order (Ct. Rec. 162), is clear
24 and precise and appropriate given the facts and allegations in this
25 case.

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1 **II. SECOND MOTION FOR RECONSIDERATION**

2 **A. Rule 60(b) (6) Motion**

3 Defendant's request for reconsideration with respect to the
4 Court's order granting Plaintiff's motion for partial summary judgment
5 as to liability (Ct. Rec. 140) is based upon Rule 60(b) (6). Rule
6 60(b) (6) is a catch-all ground for relief. It provides, in pertinent
7 part, that a "court may relieve a party . . . from a final judgment,
8 order, or proceeding for the following reasons: . . . (6) any other
9 reason justifying relief from the operation of the judgment." Fed. R.
10 Civ. P. 60(b) (6). "Rule 60(b) (6) has been used sparingly as an
11 equitable remedy to prevent manifest injustice. The rule is to be
12 utilized only where extraordinary circumstances [exist]." *United*
13 *States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir.),
14 *cert. denied*, 510 U.S. 813, 114 S.Ct. 60, 126 L.Ed.2d 29 (1993).

15 On October 12, 2007, the Court concluded, under *Matthews v.*
16 *Eldridge*, that the application of the Jail's booking fee policy
17 deprived Plaintiff and others similarly situated of their property
18 without due process of law. (Ct. Rec. 140). In addressing the
19 *Matthews v. Eldridge* factors, the Court found that Plaintiff's
20 interest in the continued use and possession of his money is a
21 significant interest, the risk of erroneous deprivation is great, and
22 Defendant's interest in the immediate collection of booking fees at
23 the time of booking was not compelling. (Ct. Rec. 140).

24 As stated in Defendant's motion for reconsideration, "the
25 opportunity to present reasons, either in person or in writing, why
26 proposed action should not be taken is a fundamental due process

1 requirement." (Ct. Rec. 173 at 6) (citations omitted). The Due
 2 Process Clause requires reasonable notice and a fair opportunity to be
 3 heard **before** the issues are decided. (Ct. Rec. 173 at 7) (citations
 4 omitted) (emphasis added). The Jail's booking fee policy permits fees
 5 to be taken directly from any funds in a person's possession at the
 6 time of booking without an opportunity for these individuals to
 7 contest the taking of their money. Plaintiff and others similarly
 8 situated were not given an opportunity to respond prior to the
 9 deprivation of their property and were thus denied due process. (Ct.
 10 Rec. 140). The contentions provided by Defendant in the Rule 60(b)(6)
 11 motion for reconsideration (Ct. Rec. 173) do not persuade the Court
 12 that this finding is erroneous. Defendant's motion fails to present
 13 extraordinary circumstances warranting relief under Rule 60(b)(6).
 14 Accordingly, Defendant's Rule 60(b)(6) motion for reconsideration is
 15 denied.

16 **B. Certification for Interlocutory Review**

17 Defendant requests, in the alternative, that the Court certify
 18 this matter for interlocutory review pursuant to 28 U.S.C. § 1292(b).
 19 (Ct. Rec. 173 at 10). Section 1292(b) of Title 28 of the United State
 20 Code provides, in pertinent part:

21 "When a district judge, in making in a civil action an order not
 22 otherwise appealable under this section, shall be of the opinion
 23 that such order involves a controlling question of law as to
 24 which there is substantial ground for difference of opinion and
 25 that an immediate appeal from the order may materially advance
 the ultimate termination of the litigation, he shall so state in
 writing in such order. The Court of Appeals . . . may thereupon,
 in its discretion, permit an appeal to be taken from such order .
 . . ."

26 "[Section] 1292(b) acts as a safety valve for serious legal questions

1 taking the case out of the ordinary run." *Kennedy v. Bell Helicopter*
2 *Textron, Inc.*, 283 F.3d 1107, 1116 (9th Cir. 2002). Certification for
3 appeal under § 1292(b) is appropriate on an issue "raising an
4 important and unsettled question of law whose disposition will advance
5 the ongoing proceedings." *James v. Price Stern Sloan, Inc.*, 283 F.3d
6 1064, 1067 (9th Cir. 2002).

7 Defendant must meet three requirements in order to prosecute an
8 interlocutory appeal. First, the decision it seeks to appeal must
9 involve a "controlling question of law." 28 U.S.C. § 1292(b).
10 Second, there must be "substantial ground for difference of opinion"
11 concerning the question. Third, an immediate appeal must "materially
12 advance the ultimate termination of the litigation." 28 U.S.C. §
13 1292(b).

14 Here, the Court finds that all requirements have been met for the
15 Court to certify this matter for interlocutory review pursuant to 28
16 U.S.C. § 1292(b). Defendant's alternative motion to certify for
17 interlocutory review the Court's order granting Plaintiff's motion for
18 partial summary judgment as to liability (Ct. Rec. 140) is granted.

19 The Court being fully advised, **IT IS HEREBY ORDERED:**

20 1. Defendant's First Motion for Reconsideration (Ct. Rec. 166)
21 is **DENIED**.

22 2. Defendant's Second Motion for Reconsideration (Ct. Rec. 173)
23 is **DENIED**.

24 3. Defendant's request for certification of an interlocutory
25 appeal pursuant to 28 U.S.C. § 1292(b) is **GRANTED**.

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