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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD J. JOHNSON,	
	Plaintiff,
v.	
GERALD JOHNSON,	
	Defendant.

1:15-cv-01793 MJS
**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF MOTION TO
DISMISS**
(ECF No. 49)
**AMENDED COMPLAINT DUE: January 27,
2017**

I. Introduction

Before the Court is Plaintiff Edward Johnson's Motion for Reconsideration of the Court's Order granting Defendant's motion to dismiss in part and limiting Plaintiff's RICO claim to post-bankruptcy discharge conduct. (ECF No. 48.) Defendant Gerald Johnson opposed the motion on November 2, 2016, and Plaintiff filed a reply on November 10, 2016. (ECF Nos. 51-52.) Having found the matter appropriate for submission upon the record and briefs (See Local Rule 230(g)), and having carefully considered the parties' briefs, Plaintiff's Motion for Reconsideration is DENIED.

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1 **II. Background**

2 **A. Factual Background**

3 The Court set forth the relevant facts in its order on the motion to dismiss. Those
4 facts remain unchanged.

5 Plaintiff originally sought damages from Defendant for contribution, promissory
6 estoppel, and unjust enrichment resulting from an alleged breach of, and wrongful
7 disassociation from, a real estate investment partnership.

8 On August 2, 2016, Plaintiff filed an additional claim for civil RICO¹ as a
9 counterclaim in reply. (ECF No. 42.) The claim alleged that Defendant engaged in a
10 pattern of criminal activity including acts of tax, real estate, and bankruptcy fraud that
11 resulted in harm to Plaintiff. Defendant and his wife had jointly filed for Chapter 7
12 bankruptcy protection in the Bankruptcy Court for the Eastern District of Pennsylvania in
13 2012, and obtained discharge in May 2013. Plaintiff's RICO claim was based, in
14 significant part, on Defendant's alleged pre-discharge criminal activity.

15 Defendant moved to dismiss the counterclaim in reply arguing that Plaintiff was
16 barred from seeking damages for events occurring prior to bankruptcy discharge. (ECF
17 No. 43.) The Court agreed and granted the motion. (ECF No. 48.) Plaintiff filed the
18 instant motion for reconsideration challenging the Court's order. (ECF No. 49.)

19 **B. The Parties' Arguments**

20 Plaintiff seeks review of the Court's order on the motion to dismiss. He argues
21 that bankruptcy and RICO laws are in tension, and that by preventing Plaintiff from
22 reviewing Defendant's pre-discharge conduct to establish a pattern of racketeering
23 activity, the Court did not provide RICO law sufficient deference. It appears, but is still
24 uncertain, that Plaintiff acknowledges that he is not able to base claims on pre-discharge
25 conduct, and only seeks to review pre-discharge conduct to show a pattern of

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¹ RICO refers to the Racketeer Influenced and Corrupt Organizations Act ("RICO"). 18 U.S.C. §§
28 1961 et seq.

1 racketeering activity.² Defendant contends that the motion to dismiss was rightfully
2 decided, and Plaintiff has not met the heavy burden required for granting a motion for
3 reconsideration.

4 **III. Discussion**

5 **A. Legal Standard**

6 Eastern District Local Rule 230(j) requires that a party moving for reconsideration
7 show "what new or different facts or circumstances are claimed to exist which did not
8 exist or were not shown upon such prior motion, or what other grounds exist for the
9 motion, and why the fact or circumstances were not shown at the time of the prior
10 motion." E.D. Cal. L.R. 230(j).

11 To prevail on a motion for reconsideration, "a party must set forth facts or law of a
12 strongly convincing nature to induce the court to reverse its prior decision." Hansen v.
13 Schubert, 459 F.Supp.2d 973, 998 (E.D. Cal. 2006). "A motion for reconsideration
14 should not be granted, absent highly unusual circumstances, unless the district court is
15 presented with newly discovered evidence, committed clear error, or if there is an
16 intervening change in the controlling law," Marlyn Nutraceuticals, Inc. v. Mucos Pharma
17 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks and citations
18 omitted) "A party seeking reconsideration must show more than a disagreement with the
19 Court's decision, and recapitulation of the cases and argument considered by the court
20 before rendering its original decision fails to carry the moving party's burden." United
21 States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2006) (internal
22 citations omitted).

23 **B. Analysis**

24 Plaintiff has not presented any new law or evidence that indicate that the Court
25 committed clear error. While Plaintiff may disagree with the Court's decision to prevent
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27 ² Plaintiff still seeks to recover damages based on pre-discharge conduct: "Plaintiff does not
28 abandon the argument that pre-discharge debts could overlap RICO injuries and be recoverable in a RICO
claim, and does not waive any such damages." (Mot. at 12, ECF No. 50.)

1 review of Defendant's pre-discharge conduct, the decision was purposeful on the part of
2 the Court. 11 U.S.C. § 524(a) provides that bankruptcy discharge acts as an injunction to
3 broadly prevent not just legal proceedings, but any other acts to collect discharged debts
4 including "all forms of collection activity." 4-524 Collier on Bankruptcy § 524.02. Plaintiff's
5 attempt to conduct discovery and base his RICO claim on pre-discharge activity is in
6 direct violation of the principles of bankruptcy intending to provide the debtor an
7 unencumbered fresh start. Kokoszka v. Belford, 417 U.S. 642, 647 (1974); Walls v.
8 Wells Fargo Bank, N.A., 276 F.3d 502, 509 (9th Cir. 2002).

9 Unlike Plaintiff, the Court sees no inherent tension between bankruptcy and RICO
10 laws. It is clear that the government may reach back and review pre-discharge conduct
11 in a criminal RICO prosecution. However, as explained in the order on the motion to
12 dismiss, Plaintiff's civil claim under RICO was not excepted from discharge, nor did
13 Plaintiff seek to revoke the discharge within the relevant period. The discharge therefore
14 remains in effect with regard to the debt in question, even if procured by fraud. Allowing
15 a claim, based in part on Defendant's pre-discharge conduct, would undermine the
16 purpose of bankruptcy protections.

17 Plaintiff, in his motion for reconsideration, presents essentially the same
18 arguments set forth in the motion to dismiss. The only additional case mentioned by
19 Plaintiff, Cadle Co. v. Flanagan, 271 F. Supp. 2d 379 (D. Conn. 2003), does not
20 persuade the Court that its reasoning was incorrect, let alone clearly erroneous. In
21 Cadle, the court allowed a civil RICO claim to proceed based on bankruptcy fraud.
22 However, in Cadle, the defendant debtor had yet to obtain discharge. Therefore there is
23 no evidence that the Court allowed such claim despite a bankruptcy discharge order.
24 Having allowed Defendant to obtain a discharge, and failing to challenge the propriety of
25 the discharge, Plaintiff is in a fundamentally different position than the plaintiffs in Cadle.

26 The Court's order that "Plaintiff may not pursue any claims for damages against
27 Defendant arising from pre-discharge conduct" stands. This ruling does not determine
28 whether evidence of pre-discharge activities may or may not be introduced to establish a

1 pattern of racketeering activity; that issue is not before the Court at this time. However,
2 in no event will Plaintiff be permitted to seek to recover damages from those pre-
3 discharge activities. In this regard, it is noted, as it was in the order on the motion to
4 dismiss, that the factual basis for Plaintiff's RICO claim focused almost exclusively on
5 Defendant's actions in connection with the real estate investment partnership and
6 bankruptcy proceedings. The only alleged criminal act occurring post-discharge was tax
7 fraud. (See, e.g., ECF No. 42 at ¶ 113.) Those claims of tax fraud previously were found
8 to lack particularity, and the Court granted Defendant's motion for a more definite
9 statement.

10 With regard to attempts to produce evidence of a pattern of racketeering activity,
11 the Supreme Court has held that a plaintiff "must show that the racketeering predicates
12 are related, *and* that they amount to or pose a threat of continued criminal activity." H.J.,
13 Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 239 (1989). Thus, if Plaintiff is
14 permitted to proceed on such claims, he will be required to plead and show the relation
15 of pre-discharge activity to defendant's alleged post-discharge tax fraud, that is, how the
16 past predicates posed a continued threat. Plaintiff also "must demonstrate that the
17 racketeering activity proximately caused the loss." Guerrero v. Gates, 442 F.3d 697, 707
18 (9th Cir. 2006) (citing Chaset v. Flear/Skybox Int'l, 300 F.3d 1083, 1087 (9th Cir. 2002)).
19 Thus, in addition to providing further factual detail to support such a claim if he wishes to
20 proceed with it, Plaintiff must show how Defendant's alleged tax fraud or other post-
21 discharge criminal acts caused Plaintiff injury.

22 In conclusion, the argument presented in the motion simply restates the argument
23 presented in the underlying motion, and does not show that the Court committed clear
24 error. See Marlyn Nutraceuticals, Inc., 571 F.3d at 880. Accordingly, Plaintiff's motion for
25 reconsideration is denied. To the extent that Plaintiff desires further review he may seek
26 interlocutory appeal. 28 U.S.C. 1292(b). And to the extent that Defendant considers
27 Plaintiff's actions in this case to be in violation of the injunction created by the discharge
28 order, he can move the bankruptcy court for an order of contempt to enforce the

1 discharge order. See Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186 (9th Cir.
2 2011); 4-524 Collier on Bankruptcy § 524.02(2)(c).

3 Finally, Plaintiff contends that his due process rights were violated by the failure of
4 the Court to hold oral argument on the motion or allow Plaintiff further briefing to address
5 the arguments and legal authority presented in the order. The Federal Rules of Civil
6 Procedure and the Local Rules for the Eastern District of California do not require
7 litigants to have the opportunity to orally present argument. Fed. R. Civ. P. 78(b) (“By
8 rule or order, the court may provide for submitting and determining motions on briefs,
9 without oral hearing.”); Local Rule 230(g). The Court determined that oral argument
10 would not have been helpful in determining the merits of motion to dismiss, nor does it
11 find oral argument necessary to determine this motion for reconsideration. Had the Court
12 decided the case on completely different grounds than presented in the briefs, further
13 briefing or argument might be appropriate. Here, the Court only cited to legal authority
14 and case law directly relevant to the arguments presented in the parties’ briefs. The
15 parties were provided sufficient opportunity to argue the merits of their positions in their
16 briefs. The fact that the parties did not raise relevant legal authority in their briefs does
17 not obligate the Court to provide the parties additional opportunity to present argument.
18 Moreover, Plaintiff, in presenting his new arguments in his motion for consideration, only
19 confirms that the Court would not have benefited from oral argument or further briefing.

20 **IV. Conclusion**

21 For the reasons discussed herein, Plaintiff’s Motion for Reconsideration is
22 DENIED. Plaintiff’s amended complaint is due on or before January 27, 2017.

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24 IT IS SO ORDERED.

25 Dated: November 16, 2016

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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