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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 28, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RONALD W. ROUSH and JAMES
H. HUNTER,

Plaintiffs,

v.

AKAL GROUP OF COMPANIES,
LLC, doing business as Akal
Security, Inc.,

Defendant.

NO: 2:17-CV-358-RMP

ORDER DENYING DEFENDANT’S
MOTION FOR RECONSIDERATION

BEFORE THE COURT is a motion for reconsideration, ECF No. 48, by Defendant Akal Security, Inc. (“Akal”) of the Court’s denial of Defendant’s prior motion to dismiss for lack of personal jurisdiction, or, in the alternative, motion to transfer to the United States District Court for the District of New Mexico. *See also* ECF Nos. 26 (Defendant’s motion to dismiss) and 46 (Order denying motion to dismiss). Plaintiffs Ronald Roush and James Hunter, proceeding *pro se* in this matter, responded in opposition to Defendant’s motion, ECF No. 54, and Defendant

1 replied, ECF No. 55. Having reviewed the parties' filings, the remaining record, and
2 the relevant law, the Court is fully informed.

3 **BACKGROUND**

4 The Court previously found that specific personal jurisdiction over Defendant
5 exists on the basis that Defendant purposely directed activity relevant to the claims
6 at issue in this case at the Eastern District of Washington. Specifically, the Court
7 found that Defendant "specifically reached out by telephone to Plaintiffs and other
8 individuals in Eastern Washington to interview them for potential employment and
9 solicit materials from them demonstrating their qualifications and experience." ECF
10 No. 46 at 9. In dispute for purposes of Plaintiffs' tortious misappropriate and
11 intentional infliction of emotional distress claims is "the propriety of [Defendant's]
12 use of those materials related to securing the TSA contract." *Id.*

13 Defendant moves for reconsideration on the basis that the Court committed
14 clear error in finding Defendant's contacts with this forum sufficient for personal
15 jurisdiction in light of a *Walden v. Fiore*, 571 U.S. 271 (2014), because Plaintiffs'
16 "mere status as Washington residents" is not a sufficient basis upon which to assert
17 jurisdiction over Defendant. ECF No. 55 at 4. Defendant further asserts that the
18 Court erroneously credited as true allegations that Plaintiffs were in Washington
19 when they received the initial telephone call from Defendant and that Defendant
20 knew that Plaintiffs were in Washington when Defendant initially reached out to
21 Plaintiffs. *Id.* at 2.

1 Plaintiffs argue that Defendant raise for the first time in its motion for
2 reconsideration “that there is no allegation or record evidence that Plaintiffs were in
3 Eastern Washington at the time [Defendant] contacted them.” ECF No. 54 at 2.
4 Plaintiffs also maintain that Plaintiff’s allegations that they were domiciled in
5 Washington when Defendant reached out to them are in the Plaintiffs’ amended
6 complaint, ECF No. 20, and Plaintiffs’ response to the motion to dismiss, ECF No.
7 31, and that Defendant itself filed as exhibits in this record the letters of intent sent
8 to Plaintiffs at their Washington addresses in September 2012, ECF Nos. 26-3 and
9 26-4. *Id.* at 3. With respect to the Court’s legal conclusions, Plaintiffs argue that
10 Defendant’s argument regarding “minimum contacts” under *Walden*, 571 U.S. 271,
11 is merely a repetition of the same argument that the Court previously considered in
12 resolving the motion to dismiss, inappropriately raises new arguments in a motion to
13 reconsider, and that the Court rightly determined that Defendant’s conduct was
14 aimed at Washington. *Id.* at 3.

15 **LEGAL STANDARD**

16 A motion for reconsideration under Fed. R. Civ. P. Rule 59(e) should not be
17 granted, “absent highly unusual circumstances, unless the district court is presented
18 with newly discovered evidence, committed clear error, or . . . there is an intervening
19 change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656,
20 665 (9th Cir. 1999). A litigant may not use a motion for reconsideration “to raise
21 arguments or present evidence for the first time when they could reasonably have

1 been raised earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
2 877, 890 (9th Cir. 2000). In addition, “[a] motion for reconsideration cannot be used
3 to ask the Court to rethink what the Court has already thought through merely
4 because a party disagrees with the Court’s decision.” *Collegesource, Inc. v.*
5 *Academyone, Inc.*, 2015 U.S. Dist. LEXIS 164550, at * 2 (S.D. Cal. Dec. 8, 2015).

6 “Granting a motion for reconsideration is a matter of judicial discretion and is
7 considered to be an ‘extraordinary remedy, to be used sparingly in the interests of
8 finality and conservation of judicial resources.’” *United States v. Bamdad*, 2017
9 U.S. Dist. LEXIS 197727, at *13 (C.D. Cal. May 3, 2017) (quoting *Carroll v.*
10 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)).

11 **DISCUSSION**

12 The Court agrees with Plaintiffs that Defendant could have, and should have,
13 previously raised the argument that there was insufficient evidence in the record to
14 support that Plaintiffs were in Washington when Defendant initially contacted them.
15 *See Kona Enters., Inc.*, 229 F.3d at 890. Nonetheless, Defendant’s new argument
16 does not undermine the Court’s finding that the record supports that Defendant
17 directed its conduct at Washington, as Defendant does not dispute that the
18 documentation attached to Defendant’s motion to dismiss supports that Defendant
19 mailed the letters of intent to Plaintiffs at their Washington addresses. ECF Nos. 26-
20 3 and 26-4.

1 With respect to Defendant’s argument that the Court’s order was marred by a
2 clear error of law, the Court thoroughly addressed Defendant’s arguments whether
3 minimum contacts were present under *Walden* in its prior order and finds no
4 justification to revisit that analysis based on Defendant’s instant motion. The Court
5 did not conclude that specific jurisdiction was based solely on alleged injury to
6 Plaintiffs as residents of the forum state. Rather, the Court found that Defendant’s
7 activities were expressly aimed at the forum state in part because all of the “Key
8 Personnel” in the copy of the bid proposal were from Washington, and four out of
9 six personnel in an “Akai Program Management Organizational Chart” are Eastern
10 Washington residents. ECF No. 46 at 4 (citing ECF No. 41 at 17, 19). Those
11 documents, combined with the letters of intent sent to Plaintiffs in Washington,
12 support a conclusion that Defendant intentionally recruited individuals from Eastern
13 Washington and, thus, purposefully directed its activities at the forum, rather than
14 merely interacting with Plaintiffs as two individuals who happen to reside in
15 Washington. Defendant’s arguments in the motion for reconsideration do not
16 undermine that Eastern Washington was a focal point of Defendant’s recruitment
17 efforts in preparation for submitting the bid proposal.

18 Defendant has not shown that the Court committed clear error or that granting
19 the motion for reconsideration is warranted on any other basis.

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