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

Feb 12, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RUSSELL D. ROSCO and BONNIE
R. ROSCO,

Plaintiffs,

v.

MONTGOMERY PURDUE
BLANKINSHIP & AUSTIN, PLLC;
SCHUCKIT & ASSOCIATES, PC;
TRANSUNION, LLC; SCOTT
BRADY; EXPERIAN
INFORMATION SOLUTIONS,
INC.; and FIRST BANK
MORTGAGE,

Defendants.

NO: 2:18-CV-240-RMP

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is Plaintiffs Russell D. Rosco and Bonnie R. Rosco's
Motion for Reconsideration, ECF No. 30. Plaintiffs ask this Court to reconsider its

1 order granting the motions to dismiss Plaintiffs’ complaint filed by Defendants
2 Montgomery Purdue Blankinship & Austin, PLLC (“Montgomery Purdue”),
3 Schuckit & Associates, P.C. (“Schuckit”), Trans Union, LLC (“Trans Union”), Scott
4 Brady, Experian Information Solutions, Inc. (“Experian”), and First Bank
5 Mortgage’s (“First Bank”) (collectively, “Defendants”). ECF No. 28. The Court
6 has considered the parties’ briefings and the record, and is fully informed.

7 **BACKGROUND**

8 This Court is very familiar with Plaintiffs from their multiple filings against
9 Defendants before this Court. ECF No. 28 at 2–4 (detailing Plaintiffs’ litigation
10 history). The latest litigation attempt by Plaintiffs was a complaint alleging that
11 Defendants were liable for defamation, publication of private information, and
12 unjust enrichment. ECF No. 1-1. The Court dismissed Plaintiffs’ complaint for lack
13 of subject matter jurisdiction as to the defamation claims and barred by res judicata
14 for the other claims. ECF No. 28. The Court also imposed a pre-filing injunction
15 against Plaintiffs as to any future claims filed against Trans Union, Experian, and
16 First Bank. *Id.* at 20.

17 Undeterred by this Court’s numerous warnings to Plaintiffs regarding their
18 vexatious litigation habits, Plaintiffs filed the present motion for reconsideration as
19 to the Court’s order dismissing Plaintiffs’ complaint. ECF No. 30. They argue that
20 the Court committed clear error when it allowed Trans Union to “benefit from the
21 defamation of character by their attorneys,” when it dismissed the publication of

1 private information claims, and by finding that there was no settlement agreement
2 with Experian. *Id.* Plaintiffs also ask for sanctions against Experian. *Id.* at 3.

3 **LEGAL STANDARD**

4 A motion for reconsideration under Fed. R. Civ. P. Rule 59(e) should not be
5 granted, “absent highly unusual circumstances, unless the district court is presented
6 with newly discovered evidence, committed clear error, or . . . there is an intervening
7 change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656,
8 665 (9th Cir. 1999). A litigant may not use a motion for reconsideration “to raise
9 arguments or present evidence for the first time when they could reasonably have
10 been raised earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
11 877, 890 (9th Cir. 2000). In addition, “[a] motion for reconsideration cannot be used
12 to ask the Court to rethink what the Court has already thought through merely
13 because a party disagrees with the Court’s decision.” *Collegesource, Inc. v.*
14 *Academyone, Inc.*, No. 08CV1987-GPC(MDD), 2015 WL 8482753, at *1 (S.D. Cal.
15 Dec. 8, 2015).

16 “Granting a motion for reconsideration is a matter of judicial discretion and is
17 considered to be an ‘extraordinary remedy, to be used sparingly in the interests of
18 finality and conservation of judicial resources.’” *United States v. Bamdad*, No. CR
19 08-506-GW, 2017 WL 4064210, at *5 n.11 (C.D. Cal. May 3, 2017) (quoting
20 *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)).
21

1 **DISCUSSION**

2 ***Plaintiffs’ Arguments on Defamation, Publication of Private Information, and***
3 ***Res Judicata***

4 Plaintiffs argue that Trans Union is benefitting from the alleged defamation of
5 Plaintiffs’ character and that the publication of private information claim is not
6 barred by res judicata. ECF No. 30 at 1.

7 First, the Court made no ruling on the merits of Plaintiffs’ defamation claims
8 against Defendants. As this Court held in its order, the Court has no subject matter
9 jurisdiction over the defamation claims. ECF No. 28 at 8. Plaintiffs are free to bring
10 the defamation claims against Defendants in a court with subject matter jurisdiction
11 over the claims. The Court did not commit clear error as to the defamation claims.

12 Second, Plaintiffs argue that the res judicata ruling as to the publication of
13 private information claims conflicts with the Court’s prior order in a different case
14 filed by Plaintiffs. ECF No. 30 at 1. Specifically, they argue that the Court
15 dismissed their complaint from case number 17-CV-086 because the complaint
16 “could not be amended to a state cause,” but now dismiss their complaint from this
17 case because the publication of private information claims are barred by res judicata.
18 *Id.* at 2.

19 Plaintiffs misunderstand the Court’s prior order. In the previous case,
20 Plaintiffs argued that Defendants violated the Washington Consumer Protection Act
21 (“WCPA”) by publishing Plaintiffs’ personally identifiable financial information.

1 *Rosco v. Transunion, LLC*, No. 17-CV-086-RMP, 2017 WL 2945730, at *2 (E.D.
2 Wash. July 10, 2017). The Court dismissed Plaintiffs’ complaint because they failed
3 to allege how Defendants committed an unfair or deceptive act or practice, as
4 required to state a WCPA claim. *Id.* Further, the Court found that leave to amend
5 the complaint would be futile because the complaint could not be saved by an
6 amendment. *Id.* at *3. Therefore, the Court dismissed Plaintiffs’ claims against
7 Defendants. *Id.*

8 In this case, the Court dismissed Plaintiffs’ publication of private information
9 claims against Defendants as barred by res judicata created by the 2017 order. ECF
10 No. 28 at 11–12. As the Court found in its order, res judicata bars claims that have
11 been brought or could have been brought in previous cases. *Id.* at 11. Even though
12 Plaintiffs did not bring publication of private information claims in their previous
13 case, their claims under the WCPA were based on Defendants’ alleged publication
14 of personally identifiable financial information. *Rosco*, 2017 WL 2945730, at *2.
15 Because the claims were based on the same underlying conduct, the claims were
16 similar, and the new claims were barred by res judicata. ECF No. 28 at 12.

17 The Court does not find grounds to reconsider its ruling on the publication of
18 private information claims.

19 ***Plaintiffs’ Claims Regarding a Settlement with Experian***

20 Plaintiffs argue that there is a settlement agreement with Experian that
21 Experian violated for unjust enrichment. ECF No. 30 at 2. In its response, Experian

1 states that Plaintiffs are referring to an Indiana small-claims court settlement
2 agreement with Plaintiffs from 2014. ECF No. 32 at 5.

3 The Court dismissed Plaintiffs' claims against Experian for unjust enrichment
4 because Plaintiffs' complaint did not allege specific facts giving Experian fair notice
5 of the claims against it. ECF No. 28 at 15. Without fair notice to Defendants and
6 the Court, Plaintiffs' complaint cannot state a claim for which relief may be granted.
7 Fed. R. Civ. P. 8(a); 12(b)(6). If the party who has the responsibility to make
8 specific allegations of claims for relief, here the Plaintiffs, does not meet the
9 requirements of Rules 8 and 12(b)(6), the Court must dismiss the complaint. *See*
10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plaintiffs' complaint in this
11 case was so ambiguously worded that it was unclear whether a settlement even
12 existed between the parties in the first place. *See* ECF No. 1-1 at 21. Now,
13 Experian has submitted some evidence that a settlement exists between the parties,
14 but that evidence was not previously part of the record and Plaintiffs did not
15 sufficiently allege the existence of this settlement agreement to satisfy the standards
16 of notice pleading. *See* ECF No. 33-1 at 5.¹ The Court's previous conclusion that
17 there was not a settlement agreement between the parties was not the Court's error.
18 It was lack of specific allegations made by Plaintiffs.

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¹ The Court takes judicial notice of the small claims court docket because it is not
subject to reasonable dispute. Fed. R. Evid. 201.

1 Clear error is committed when the Court has a definite and firm conviction
2 that a mistake has been committed. *McMillan v. United States*, 112 F.3d 1040, 1044
3 (9th Cir. 1997). Despite the Court’s ruling as to whether a settlement agreement
4 existed between the parties, the Court finds that it did not commit clear error when it
5 dismissed Plaintiffs’ claim against Experian because Plaintiffs failed to allege with
6 necessary particularity the existence of the settlement agreement at that point in the
7 proceedings.

8 “Unjust enrichment is the method of recovery for the value of the benefit
9 retained absent any contractual relationship because notions of fairness and justice
10 require it.” *Young v. Young*, 191 P.3d 1258, 1262 (Wash. 2008). Essentially, unjust
11 enrichment is the remedy for a party who performs services for another despite the
12 absence of a contract. *Id.* Here, the existence of a settlement agreement between the
13 parties show that there is a contractual agreement, and, therefore, unjust enrichment
14 does not apply.

15 Even if unjust enrichment was an appropriate claim to bring in this case,
16 Plaintiffs’ complaint failed to allege the elements of unjust enrichment. A plaintiff’s
17 claim will be dismissed if it fails to state a claim upon which relief can be granted.
18 Fed. R. Civ. P. 12(b)(6). The plaintiff must plead “enough facts to state a claim to
19 relief that is plausible on its face.” *Bell Atl. Corp.*, 550 U.S. at 570. To succeed on
20 an unjust enrichment claim, a plaintiff must prove (1) the defendant received a
21 benefit; (2) the received benefit was at the expense of the plaintiff; and (3)

1 circumstances make it unjust to retain the benefit without payment. *Young*, 191 P.3d
2 at 1262. Plaintiffs claimed that the settlement with Experian was unjust enrichment
3 because of an alleged confidentiality clause in the settlement. ECF No. 1-1 at 22.
4 This claim does not allege that Plaintiffs conferred a benefit to Experian or
5 performed services for Experian at Plaintiffs' expense. *Young*, 191 P.3d at 1262.
6 Therefore, Plaintiffs failed to properly allege an unjust enrichment claim and
7 dismissal is still appropriate.

8 CONCLUSION

9 Plaintiffs failed to show newly discovered evidence, clear error, or an
10 intervening change in controlling law. *389 Orange St. Partners*, 179 F.3d at 665.
11 Because Plaintiffs are not successful on their motion for reconsideration, the Court
12 declines to issue sanctions against Experian. ECF No. 30 at 3.

13 Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for
14 Reconsideration, **ECF No. 30**, is **DENIED**.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
16 Order and provide copies to Plaintiffs and counsel.

17 **DATED** February 12, 2019.

18 *s/ Rosanna Malouf Peterson*
19 ROSANNA MALOUF PETERSON
20 United States District Judge
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