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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 David H. Cheren; Catherine A. Conrad
Cheren,

No. CV-12-00206-PHX-JAT

10 Plaintiffs,

ORDER

11 v.

12 Compass Bank; BBVA Compass Bank; and
13 Does 1 through 10,

14 Defendants.

15
16 Pending before the Court is Defendant¹ Compass Bank's Application for
17 Attorneys' Fees Related to Plaintiffs' Motions for Sanctions (Doc. 25) and Plaintiffs'
18 Request for Reconsideration (Doc. 26).

19 **I. BACKGROUND**

20 On March 23, and on July 24, 2012, Plaintiffs filed three separate but identical
21 motions for sanctions against Defendant (Docs. 14, 15, 19) because Defendant argued
22 that a contract did not exist in this case in its motion to dismiss (Doc. 12). In opposing
23 Plaintiffs' motions for sanctions, Defendant requested that the Court award its attorneys'
24 fees expended in responding to Plaintiffs' motions. (Doc. 17 at 9). Defendant requested
25 an amount of \$1,000 or such other amount as the Court deemed appropriate. (*Id.*). The
26 Court granted Defendant's request for attorneys' fees and explained the basis for granting

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28 ¹ As Defendant, Compass Bank, has explained in a prior Motion, Defendants are a
single entity for purposes of this order. (Doc. 12 at 1).

1 Defendant's request in the Order granting Defendant's motion to dismiss. (Doc. 24 at 11-
2 14).

3 Following the Court's Order, Defendant filed its Application for Attorneys' Fees
4 justifying the actual attorneys' fees incurred in responding to Plaintiffs' motion and the
5 amount Defendant has agreed to pay its counsel. (Doc. 25 at 1). Defendant has agreed to
6 pay counsel \$5,955.50. (*Id.*). Plaintiff then filed the pending Request for
7 Reconsideration, asking the Court to reconsider the award of attorneys' fees. (Doc. 26).

8 **II. ANALYSIS**

9 **A. Plaintiffs' Motion for Reconsideration (Doc. 26)**

10 Plaintiffs initially argue that they filed only one motion for sanctions. (*Id.* at 1).
11 While all three motions for sanctions were identical, Plaintiff explains that the second
12 motion for sanctions (Doc. 15) was filed in error and that the third motion for sanctions
13 (Doc. 19) was filed "[a]fter a considerable time had passed and no notice of a hearing
14 came from the Court." (Doc. 26 at 2). The result of filing three separate but identical
15 motions is irrelevant to this Court's analysis and decision. The Court's award of
16 attorneys' fees was based on Defendant's sole response to all three motions (Doc. 17).

17 Plaintiffs go on to argue that their Rule 11 motion was well founded and ask the
18 Court to reconsider the award of attorneys' fees. (Doc. 26 at 2). Plaintiffs have not cited
19 any procedural rule or case law to justify their request.

20 Plaintiff's motion is for reconsideration of an interlocutory order because no
21 judgment has been ordered in this case. This court has adopted the following standards
22 on which motions for reconsideration will be granted for interlocutory orders:

23 (1) There are material differences in fact or law from that
24 presented to the Court and, at the time of the Court's decision,
25 the party moving for reconsideration could not have known of
the factual or legal differences through reasonable diligence;

26 (2) There are new material facts that happened after the
27 Court's decision;

28 (3) There has been a change in the law that was decided or
enacted after the Court's decision; or

1 (4) The movant makes a convincing showing that the Court
2 failed to consider material facts that were presented to the
3 Court before the Court's decision.

4 No motion for reconsideration shall repeat in any manner any
5 oral or written argument made in support of or in opposition
6 to the original motion.

7 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 586 (D. Ariz. 2003).

8 Plaintiffs urge reconsideration on the ground that Defendant filed its motion to
9 dismiss while it knowingly denied that a contract existed. (Doc. 26 at 2). Plaintiffs claim
10 that their attached declaration proves that a contract existed. (*Id.*). Plaintiffs do not point
11 out what parts of the fifty page declaration and attached documents serve as proof.
12 Nevertheless, even if the Court were to cull Plaintiffs' declaration in order to verify
13 Plaintiffs' claim for them, the Court would still deny Plaintiffs' motion for
14 reconsideration because Plaintiffs have failed to meet any of the standards set out in
15 *Motorola*.

16 Plaintiffs have failed to show that there are any material differences in fact or law
17 from those presented to the Court that could not have been known to Plaintiffs at the time
18 of the Court's Order. Plaintiffs' declaration and the attached documents (Doc. 26 at 4-
19 53) were known to Plaintiffs when the Court granted Defendant's motion to dismiss
20 (Doc. 24). Further, Plaintiffs have claimed neither that new material facts have happened
21 nor that there has been a change in the law following the Court's decision. Finally,
22 Plaintiffs have failed to make a convincing showing that the Court failed to consider
23 material facts that were presented to the Court before the Court's decision.

24 Plaintiffs merely repeat in their motion for reconsideration the same arguments
25 they made in their motion for sanctions. Plaintiffs argued in their motion for sanctions
26 that "Defendant, at all relevant times, knew the allegations in support of the Motion [to
27 dismiss] were untrue, that the Complaint contained all necessary allegations; that
28 Defendant's own documents showed that a contract had been entered into; and, that all
necessary elements claimed missing from the Complaint were, in fact, contained within

1 the [Complaint].” (Doc. 14 at 5). Plaintiffs then re-argued in their motion for
2 reconsideration that “Defendants . . . knew that their factual allegations [in the motion to
3 dismiss], i.e., that the essential elements of a contract . . . did not exist, were simply not
4 true statements and were not supported by any evidence. That their statements were false
5 and was [sic] known to be false by the Defendants when such allegations were made.”
6 (Doc. 26 at 2). The Court has already addressed this claim by Plaintiffs and will not
7 endeavor to explain its conclusion again. *See* (Doc. 24 at 11-14).

8 **B. Defendant’s Application for Attorneys’ Fees (Doc. 25)**

9 In its Response to Plaintiffs’ Motion for Sanctions, Defendant requested the Court
10 award attorneys’ fees expended in responding to Plaintiffs’ motion in the amount of
11 \$1,000. (Doc. 17 at 9). The Court then awarded this amount to Defendant pending the
12 filing of an application for attorneys’ fees to justify this amount. (Doc. 24 at 13).
13 Defendant has filed its application justifying up to \$5,955.50. (Doc. 25 at 1). Because
14 Defendant originally requested \$1,000 and the Court awarded \$1,000 to Defendant, and
15 further because Defendant has justified at least this amount, the Court now orders
16 Plaintiffs to reimburse Defendant \$1,000 for forcing Defendant to defend against
17 Plaintiffs’ frivolous motion for sanctions.

18 **III. CONCLUSION**

19 Based on the foregoing,

20 **IT IS ORDERED** that Plaintiffs’ Motion for Reconsideration (Doc. 26) is denied.

21 **IT IS FURTHER ORDERED** that Defendant’s Application for Attorneys’ Fees
22 (Doc. 25) is granted: the Court awards Defendant \$1,000.00 in attorneys’ fees.

23 Dated this 24th day of June, 2013.

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James A. Teilborg
Senior United States District Judge