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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ASIA ECONOMIC INSTITUTE, LLC, *et al.*, **Plaintiffs,** v. **XCENTRIC VENTURES, LLC, *et al.*,** **Defendants**.	Case No: 2:10-cv-01360-SVW-PJW **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION** Hearing Date: Sept. 20, 2010 Time: 1:30 PM Courtroom: 6

Reconsideration is appropriate if the district court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.1993).

Pursuant to Local Rule LR 7–18, "No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." Applying that standard, the vast majority (if not all) of Plaintiffs'

instant Motion for Reconsideration should be rejected outright because it does nothing more than rehash old arguments that were raised, considered, and rejected in Plaintiffs' opposition to Defendants' original Motion for Summary Judgment. On that basis alone, the court may appropriately deny Plaintiffs' motion in its entirety.

Placing their old arguments aside, Plaintiffs' motion is primarily founded upon "newly discovered evidence" of two different types. The first type relates to events occurring *after* the July 12, 2010 summary judgment hearing and July 19 order. For instance, under the heading "New Facts Emerging After the Order of July 19, 2010" Plaintiffs claim that Defendants and defense counsel made unlawful threats to Plaintiffs during a settlement conference which took place on July 20, 2010. Plaintiffs also claim Defendants "threatened" a witness named Kenton Hutcherson (who is an attorney who represents and has represented three different parties adverse to Defendants in lawsuits) by posting a statement on August 6, 2010 explaining that Mr. Hutcherson made false statements in a press release he issued on July 28, 2010.

Although Plaintiffs' characterization of these events is inaccurate and highly misleading, this is irrelevant because events occurring *after* a judgment or other ruling are not "newly discovered evidence" within the meaning of either Fed. R. Civ. P. 59 or 60; "Under both rules, the evidence must have been in existence at the time of the [original decision from which relief is sought] … ." 11 Wright & Miller, Fed. Prac. & Proc. Civ. § 2859; *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996, 1005 (9th Cir. 2007) (events occurring after entry of judgment were not "newly discovered evidence" because evidence was not in existence at the time of the original judgment).

Put simply, as a matter of law events which took place *after* this court entered partial summary judgment on July 12, 2010 cannot support reconsideration of the court's prior ruling:

> There can be no Rule 60(b)(2) relief for evidence which has only come into existence after the trial is over, for the obvious reason that to allow such a procedure could mean the perpetual continuation of all trials. 'Newly

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> discovered evidence' under Rule 60(b) refers to evidence of facts *in existence at the time* of the trial of which the aggrieved party was excusably ignorant.

N.L.R.B. v. Jacob E. Decker & Sons, 569 F.2d 357 (5th Cir. 1978) (emphasis added) (citing *State of Washington v. United States*, 214 F.2d 33, 46 (9th Cir. 1954)).

If Defendants made any unlawful threats against Plaintiffs during the July 20, 2010 settlement conference (which they did not), or if Defendants' August 6, 2010 statement about the press release issued by Mr. Hutcherson is inaccurate or unlawful in any way (which it is not), those events might give rise to a new claim or claims. These after-the-facts events do not, however, provide any basis for the relief requested—reconsideration of the court's July 12, 2010 decision granting partial summary judgment as to Plaintiffs' extortion claims. That ruling was entirely correct and Plaintiffs' current motion fails to show otherwise.

Separate and apart from this issue, Plaintiffs do present a single article of evidence which was in existence at the time of the July 12, 2010 summary judgment ruling—the "Second Questionnaire" which Ripoff Report has sent to various third parties in the past. Bearing in mind that this questionnaire was never sent to or seen by Plaintiffs during the events which gave rise to this litigation, Plaintiffs offer no explanation or analysis showing how this "evidence" has any bearing on the sole issue resolved on summary judgment—whether any unlawful threats were made *against Plaintiffs*. Indeed, this exact point was discussed at length in the court's July 19, 2010 order (Doc. #94) in which the court noted that it was undisputed that Plaintiffs were never sent the Second Questionnaire at any time and therefore the document was irrelevant here:

> Plaintiffs admitted at the July 12, 2010 hearing that the Second Questionnaire and the CAP Agreement were never sent to the Plaintiffs at any time and that they did not learn of such documents until after this lawsuit was filed. Thus, while these documents may be relevant to the issue of "pattern", they cannot assist Plaintiffs in showing that a triable issue of fact exists as to whether Defendants attempted to extort money from Plaintiffs in 2009.

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Doc. #94 at 43:20–27 (emphasis added). As this court has already ruled, evidence showing that Defendants somehow threatened *someone else* is not relevant to the question of whether Plaintiffs were actually threatened. Because Plaintiffs never saw or received the Second Questionnaire, this document cannot change the court's conclusion that Plaintiffs failed to demonstrate a triable question of fact as to whether they were extorted. *See Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir.1990) (finding that to prevail on a motion for reconsideration based on newly discovered evidence, the movant must show the new evidence is "of such magnitude that production of it earlier would have been likely to change the disposition of the case.")

The remaining "arguments" contained in Plaintiffs' motion are simply irrelevant to the factual and legal bases upon which the court granted partial summary judgment. For instance, on pages 11–12 of their motion, Plaintiffs argue that after the court's July 12, 2010 ruling, they "discovered" that a third party named Tina Norris was unable to post rebuttals at various times in the past. For purposes of context, the court should be aware that Ms. Norris is a member an anti-Ripoff Report group working with Plaintiffs. In fact, Ms. Norris was not only present in court on July 12, 2010 when Defendants' summary judgment motion was argued, she was ordered to pay a sanction of $100 to the court after her cell phone rang during the hearing.

Even if Ms. Norris's testimony about difficulty she claims to have experienced posting rebuttals was relevant to any part of this case (which it is not), this testimony is not "newly discovered" and Plaintiffs have failed to show why this testimony could not have been obtained many, many months ago. Indeed, Ms. Norris has been working closely with Plaintiffs for months and she submitted a declaration (Doc. #57; filed June 14, 2010) in support of their opposition to Defendants' original summary judgment motion. Plaintiffs have offered no explanation as to why Ms. Norris could not have discussed these issues at the time of her original declaration in June 2010. For that reason, Ms. Norris's newly devised statements cannot support the present motion because Plaintiffs have failed to show any valid reason for its late discovery; "[t]o prevail on a

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motion for reconsideration on the basis of newly discovered evidence, the moving party must demonstrate that while the evidence existed at the time the court initially addressed the issue, it could not have been discovered through due diligence." *Spacey v. Burgar*, 207 F.Supp.2d 1037, 1051 (C.D.Cal. 2001).

Finally, Defendants note that pages 19–25 of Plaintiffs' motion contain nothing more than legal arguments which were already raised and rejected in the original briefing. Having already been raised, these arguments are improper under LR 7–18 and they merit no response here. *See Motorola, Inc. v. J.B. Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D.Ariz. 2003) (explaining a motion for reconsideration is not "to be used to ask the Court to rethink what it has already thought.")

For all these reasons, Plaintiffs' Motion for Reconsideration should be denied.

DATED August 30, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on August 30 2010 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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And a courtesy copy of the foregoing delivered to:
Honorable Stephen V. Wilson
U.S. District Judge

/s/David S. Gingras

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