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

HOPSCOTCH ADOPTIONS, INC.,
et al.,

Plaintiffs,

vs.

VANESSA KACHADURIAN,

Defendant.

CASE NO. CV F 09-2101 LJO MJS

ORDER TO DENY RECONSIDERATION
(Doc. 86.)

Pro se plaintiff Vanessa Kachadurian (“Ms. Kachadurian”) seeks reconsideration of denial to dismiss this action based on her claim that plaintiffs Hopscotch Adoptions, Inc. and Robin Sizemore (collectively “plaintiffs”) failed to serve her with a summons and complaint within 120 days to comply with F.R.Civ.P. 4(m). This Court DENIES Ms. Kachadurian reconsideration.

A basic principle of federal practice is that courts generally refuse to reopen decided matters. *Magnesystems, Inc. v. Nikken*, 933 F.Supp. 944, 948 (C.D. Cal. 1996). Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A reconsideration motion “should not be granted absent highly unusual circumstances.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999), *cert. denied*, 490 U.S. 1059, 109 S.Ct. 1972 (1989). A reconsideration motion “is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the

1 merits, or otherwise taking a ‘second bite at the apple.’” *See Sequa Corp. v. GBJ Corp.*, 156 F.3d 136,
2 144 (2nd Cir. 1998). “A party seeking reconsideration must show more than a disagreement with the
3 Court's decision, and recapitulation of the cases and arguments considered by the court before rendering
4 its original decision fails to carry the moving party's burden.” *United States v. Westlands Water Dist.*,
5 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (internal citations omitted). “To succeed, a party must set
6 forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.”
7 *Westlands Water*, 134 F.Supp.2d at 1131.

8 Reconsideration is appropriate if the district court: (1) is presented with newly discovered
9 evidence; (2) has committed clear error or the initial decision was manifestly unjust; or (3) is presented
10 with an intervening change in controlling law. *School District 1J, Multnomah County v. ACandS, Inc.*,
11 5 F.3d 1255, 1263 (9th Cir. 1993), *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2742 (1994). There may be
12 other highly unusual circumstances warranting reconsideration. *School District 1J*, 5 F.3d at 1263.
13 Denial of reconsideration is reviewed for abuse of discretion. *School District 1J*, 5 F.3d at 1262.

14 A motion for reconsideration is restricted and serves “a limited function: to correct manifest
15 errors of law or fact or to present newly discovered evidence.” *Publisher’s Resource, Inc. v. Walker*
16 *Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (quoting *Keene Corp. v. International*
17 *Fidelity Ins. Co.*, 561 F.Supp. 656, 665-666 (N.D. Ill. 1982), *aff’d*, 736 F.2d 388 (7th Cir. 1984) (italics
18 in original)); *see Novato Fire Protection Dist. v. United States*, 181 F.3d 1135, 1142, n. 6 (9th Cir. 1999),
19 *cert. denied*, 529 U.S. 1129, 120 S.Ct. 2005 (2000). Reconsideration “may not be used to raise
20 arguments or present evidence for the first time when they could reasonably have been raised earlier in
21 the litigation.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
22 Reconsideration should not be used “to argue new facts or issues that inexcusably were not presented
23 to the court in the matter previously decided.” *See Brambles USA, Inc. v. Blocker*, 735 F.Supp. 1239,
24 1240 (D. Del. 1990). Under this Court’s Local Rule 230(j), a party seeking reconsideration must
25 demonstrate “what new or different facts or circumstances are claimed to exist which did not exist or
26 were not shown upon such prior motion, or what other grounds exist for the motion” and “why the facts
27 or circumstances were not shown at the time of the prior motion.”

28 Ms. Kachadurian appears to claim that this Court erred in denying dismissal of this action in that

1 this Court misunderstood the process server's statement "regarding the substitute service." According
2 to Ms. Kachadurian, the key issue is whether she received mail at her parents' residence, where plaintiffs
3 claim substituted service was accomplished. Ms. Kachadurian takes issue whether the U.S. Postal
4 Service confirmed that she received mail at her parents' residence. Ms. Kachadurian has failed to
5 challenge meaningfully the U.S. Postal Service's confirmation that she received mail at her parents'
6 residence and in turn plaintiffs' substitute service on her at that address. Ms. Kachadurian presents no
7 new credible, meaningful evidence or law to support reconsideration, and the gist of her papers is to nit
8 pick inconsequential process server error.

9 In conclusion, this Court DENIES Ms. Kachadurian reconsideration. This Court encourages Ms.
10 Kachadurian to devote her efforts to defend the merits of plaintiffs' claims.

11 IT IS SO ORDERED.

12 **Dated: January 4, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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