UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

G.P.P., INC. d/b/a GUARDIAN INNOVATIVE SOLUTIONS,

Plaintiff,

v.

GUARDIAN PROTECTION PRODUCTS, INC., RPM WOOD FINISHES GROUP, INC.,

Defendants.

_____/

Case No. 1:15-cv-00321-SKO

ORDER GRANTING IN PART AND DENYING IN PART THE PARTIES' MOTIONS FOR RECONSIDERATION

(Docs. 143 & 147)

GUARDIAN PROTECTION PRODUCTS, INC.,

Counterclaimant,

v.

G.P.P., INC. d/b/a GUARDIAN INNOVATIVE SOLUTIONS,

Counter-defendant.

_____/

Before the Court are the following: (1) Defendant/Counterclaimant Guardian Protection Products, Inc.'s ("Guardian") Motion for Clarification, or Reconsideration, of the Court's January 18, 2017 Order Granting in Part and Denying in Part the Parties' Motions for Summary Judgment ("Guardian's Motion"), (Doc. 143); and (2) Plaintiff/Counter-defendant G.P.P., Inc. d/b/a Guardian Innovative Solutions' ("GIS") Motion for Reconsideration ("GIS's Motion"), (Doc. 147). In Guardian's Motion and GIS's Motion, the parties request that the Court reconsider certain portions of its January 18, 2017 Order Granting in Part and Denying in Part the Parties' Motions for Summary Judgment (the "Order").[1] (See Docs. 143 & 147.) These motions are currently before the Court on the parties' initial and opposition briefs, which were submitted without oral argument.[2]

For the reasons provided herein, the Court GRANTS IN PART and DENIES IN PART both Guardian's Motion, (Doc. 143), and GIS's Motion, (Doc. 147).

I. LEGAL STANDARD

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (quoting 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999)). "'A party seeking reconsideration must show more than a disagreement with the Court's decision, and recapitulation . . .' of that which was already considered by the Court in rendering its decision." Andrews v. Pride Indus., No. 2:14-cv-02154-KJM-AC, 2017 WL 117899, at *2 (E.D. Cal. Jan. 11, 2017) (quoting United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001)). Further, "[a] motion for reconsideration 'may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.'" Marlyn Nutraceuticals, Inc., 571

[1] In Guardian's Motion, Guardian requests that the Court reconsider portions of its Order. (See Doc. 143.) The Court therefore construes Guardian's Motion as a motion to reconsider.

[2] In its order entered on January 31, 2017, the Court ordered "that no reply briefs are allowed as to either Guardian's Motion or GIS's Motion." (Doc. 151.) Additionally, in its order entered on February 10, 2017, the Court found "that Guardian's Motion and GIS's Motion are suitable for decision without oral argument pursuant to Local Rule 230(g)" and, as such, the Court vacated the hearing regarding these motions. (Doc. 159.)

F.3d at 880 (quoting Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)). Ultimately, "[t]o succeed" in a motion for reconsideration, "a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Andrews, 2017 WL 117899, at *2 (citation omitted); see, e.g., E.D. Cal. Local Rule 230(j) (stating that a party seeking reconsideration must show, in part, "what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion").

In both Guardian's Motion and GIS's Motion, the parties assert that reconsideration is warranted due to discrete errors in the Court's Order. (See Docs. 143 & 147.) "Where there is an error in the underlying order, only a failure to correct 'clear error' constitutes an abuse of discretion." Andrews, 2017 WL 117899, at *2 (citing McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999)); see also id. ("The Ninth Circuit has held it is not an abuse of discretion to deny a motion for reconsideration merely because the underlying order is 'erroneous,' rather than 'clearly erroneous." (quoting McDowell, 197 F.3d at 1255 n.4)). "Clear error occurs when 'the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.'" Smith v. Clark Cty. Sch. Dist., 727 F.3d 950, 955 (9th Cir. 2013) (quoting United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)). "Whether or not to grant reconsideration is committed to the sound discretion of the court." Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing Kona Enters., Inc., 229 F.3d at 883).

II. GUARDIAN'S MOTION

In Guardian's Motion, Guardian argues, in pertinent part, that the Court clearly erred in portions of its analysis relating to the warehousing distributor agreement between the parties pertaining to Cook County in Illinois (the "Cook County Agreement"). (See Doc. 143 at 1–4.) For the reasons that follow, the Court finds that these arguments have merit.

A. Whether EFPPs are Covered by the Cook County Agreement

Guardian first argues that the Court clearly erred in denying Guardian's First Counterclaim on the issue of whether electronic furniture protection plans ("EFPPs") are covered by the Cook County Agreement. (See Doc. 143 at 2–3.) The Court agrees with Guardian's position.

In its Order, the Court noted the following as to the parties' warehousing distributor agreements relating to the State of Florida (the "Florida Agreement") and certain counties in Pennsylvania, the State of Maryland, the District of Columbia, and certain counties in New York (the "Mid-Atlantic Agreement"):

> The Florida and Mid-Atlantic Agreements provide, in pertinent part, that "[i]t is understood that unless specifically noted by a mutually agreed upon Addendum hereto, Guardian Labeled Distributor Products shall be only those items indicated on Exhibit #A which is attached hereto." (Doc. 120, Ex. 2 ¶ 7; id., Ex. 8 ¶ 7.) As noted above, this language provides that, unless there is a relevant addendum, the list of products provided in "Exhibit #A" are the only products that qualify as "Guardian Labeled Distributor Products." (See id., Ex. 2 ¶ 7; id., Ex. 8 ¶ 7.) EFPPS—or any variation of an electronic protection plan—are not listed on these exhibits. (See id., Ex. 2 ¶ 7; id., Ex. 8 ¶ 7.) Additionally, these agreements do not include an addendum providing that these products qualify as "Guardian Labeled Distributor Products." (See id., Exs. 2 & 8.) As such, the Court finds that EFPPs are not "Guardian Labeled Distributor Products" under the Florida and Mid-Atlantic Agreements.

(Doc. 133 at 71.) As to the Cook County Agreement, the Court noted that this agreement "include[s] the same language that, absent a relevant addendum, limits the products that qualify as 'Guardian Labeled Distributor Products' to those provided in a specified attached exhibit." (Id. at 71–72.) The Court stated, however, that the "pertinent exhibit[] providing" a product list for the Cook County Agreement was "not a part of the record for this case." (Id. at 72.) The Court declined to speculate as to whether EFPPs are included as "Guardian Labeled Distributor Products" and, instead, denied Guardian's motion for summary judgment on the issue in the First Counterclaim of whether EFPPs are covered by the Cook County Agreement. (See id.)

As Guardian correctly notes in Guardian's Motion, the Court clearly erred in stating that the exhibit listing "Guardian Labeled Distributor Products" under the Cook County Agreement is not a part of the record for this case. To the contrary, the Cook County Agreement in the record

includes the relevant list identified by this agreement as providing the list of "Guardian Labeled Distributor Products." (See Doc. 120, Ex. 4 at 12–17.)

As such, the analysis pertaining to the Cook County Agreement is identical to that the Court employed for the Florida Agreement and the Mid-Atlantic Agreement, both of which also included the pertinent list of "Guardian Labeled Distributor Products." Specifically, as with these other two agreements, EFPPs—or any variation of an electronic protection plan—are not listed on the relevant list of products for the Cook County Agreement. (See id.) Additionally, the Cook County Agreement does not include an addendum providing that EFPPs qualify as "Guardian Labeled Distributor Products." (See id. at 1–26.) Consequently, EFPPs are not "Guardian Labeled Distributor Products" under the Cook County Agreement and Guardian was entitled to summary judgment as to this issue on its First Counterclaim. The Court therefore finds that its ruling denying summary judgment as to this claim was based on a clear error of fact and reconsideration is warranted. See, e.g., Smith v. Clark Cty. Sch. Dist., 727 F.3d 950, 955 (9th Cir. 2013) ("Clear error occurs when the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." (citation omitted)).

For these reasons, the Court GRANTS Guardian's Motion, (Doc. 143), insofar as Guardian requests reconsideration of the Court's Order denying summary judgment on Guardian's First Counterclaim for declaratory relief as to whether EFPPs are covered by the Cook County Agreement. Accordingly, the Court RECONSIDERS the Order, (Doc. 133), in part, and GRANTS Guardian's motion for summary judgment, (Doc. 92), to the extent Guardian seeks summary judgment on its request in its First Counterclaim for a declaration that EFPPs are not within the scope of the Cook County Agreement.

B. Whether the Bob's Discount Furniture Agreement is Supported by Consideration as it Pertains to the Area Covered by the Cook County Agreement

In Guardian's Motion, Guardian also requests that the Court reconsider its ruling as to GIS's third claim in the Complaint, in which GIS alleges that Guardian breached an agreement between the parties relating to a third party—Bob's Discount Furniture (the "Bob's Discount

Furniture Agreement")—by selling certain products to this third party without providing compensation to GIS. (See Doc. 143 at 3–4.) The Court again agrees with Guardian's position.

In the Court's Order, it found that the products Guardian sold to Bob's Discount Furniture—"private-label products . . . under the brand name 'Bob's Goof Proof'"—were not covered by the Florida Agreement and the Mid-Atlantic Agreement because they were not included in the list of products provided for those agreements. (See Doc. 133 at 33.) The Court also found that, as these products were not covered under these two agreements, GIS did not give any consideration and, consequently, the Bob's Discount Furniture Agreement was not a valid contract as it pertained to Guardian's sales to Bob's Discount Furniture in the geographic areas covered by the Florida Agreement and the Mid-Atlantic Agreement. (Id.) On the issue of the Cook County Agreement, however, the Court found that the absence of a product list ultimately resulted in "genuine issues of material fact regarding whether GIS provided consideration—and, consequently, whether there was a valid contract—for the Bob's Discount Furniture Agreement, to the extent this agreement pertains to Guardian's sales to Bob's Discount Furniture in the geographic areas covered by the . . . Cook County . . . Agreement[]." (Id. at 34.)

As Guardian correctly notes, the Court clearly erred insofar as it did not apply the same analysis to the Cook County Agreement on this issue as the Court employed with regard to the Florida Agreement and the Mid-Atlantic Agreement. Specifically, contrary to the Court's statement in the Order, the record includes the relevant product list for the Cook County Agreement. (See Doc. 120, Ex. 4 at 12–17.) That product list does not include the products Guardian sold to Bob's Discount Furniture in the geographic areas covered by the Cook County Agreement—namely, "private-label products . . . under the brand name 'Bob's Goof Proof.'" (See id.) Additionally, the Cook County Agreement does not include an addendum indicating that these products qualify as "Guardian Labeled Distributor Products." (See id. at 1–26.) Thus, these products are not covered by the Cook County Agreement. As these products are not covered under this agreement, GIS did not relinquish any form of consideration by permitting Guardian to distribute these products to Bob's Discount Furniture in the geographic areas covered by the Cook County Agreement. Finally, without consideration, the Bob's Discount Furniture Agreement is

not a valid and binding contract as it pertained to Guardian's sales to Bob's Discount Furniture in these areas, see, e.g., Cal. Civ. Code § 1550 ("It is essential to the existence of a contract that there should be . . . sufficient cause or consideration."), and the Court clearly erred in finding that there were genuine issues of material fact on this issue.

For these reasons, the Court GRANTS Guardian's Motion, (Doc. 143), to the extent Guardian requests reconsideration of the Court's findings as to whether the Bob's Discount Furniture Agreement was a valid contract as it pertained to the areas covered by the Cook County Agreement. Accordingly, the Court RECONSIDERS the Order, (Doc. 133), in part, and finds that the Bob's Discount Furniture Agreement was not a valid contract as it relates to Guardian's sales of products to Bob's Discount Furniture in the geographic areas covered by the Cook County Agreement.[3]

III. GIS'S MOTION

In GIS's Motion, GIS argues that the Court (1) committed clear error in its analysis pertaining to the EFPPs, (2) should consider certain additional arguments, and (3) erred when addressing whether the dreamGUARD products are "competing products." (See Doc. 147, Ex. 1.) The Court agrees only with GIS's last argument.

A. Whether the Court Erred in its Analysis Pertaining to the EFPPs

GIS first argues that the Court committed clear error by finding "that EFPPs are not covered by the" parties' warehousing distributor agreements (cumulatively, the "Agreements") because "[t]he Court based its decision entirely on a provision that neither Guardian nor GIS raised as grounds for granting or denying summary judgment." (Doc. 147, Ex. 1 at 11.) The Court disagrees.

[3] Guardian further argues in Guardian's Motion that, "in light of the Court's finding that EFPPs are not 'Guardian Labeled Distributor Products' covered by the Florida and Mid-Atlantic Agreements, [GIS's] Ninth Cause of Action for Breach of the Mid-Atlantic Agreement should be dismissed as a matter of law." (Doc. 143 at 2.) The Court disagrees. Only GIS—and not either Defendant—moved for summary judgment on GIS's Ninth Cause of Action. (See, e.g., Doc. 92 (Guardian's motion for summary judgment); Doc. 93, Ex. 1 (Defendants' memorandum in support of their motion for summary judgment); Doc. 98 (GIS's motion for summary judgment).) Of course, if Guardian sought dismissal of this claim, it could have included this request in its extensive briefing at the summary judgment stage. However, the Court will not entertain this novel request for dismissal at the posture of a motion for reconsideration.

Accordingly, the Court DENIES Guardian's Motion, (Doc. 143), insofar as Guardian requests dismissal of GIS's ninth cause of action in the Complaint.

In its motion for summary judgment, Guardian argued that it was "entitled to a [j]udicial [d]eclaration" that EFPPs are not "Guardian Labeled Distributor Products" under the Agreements. (Doc. 92 at 13.) As noted by the Court in its Order, most of the Agreements[4] include a dispositive definition for "Guardian Labeled Distributor Products" which, absent a relevant "Addendum hereto," limits the products that qualify as "Guardian Labeled Distributor Products" to those listed on a specified attached exhibit. (Doc. 133 at 71 (citations omitted).) As such, Guardian's motion for summary judgment clearly described its stated basis for moving for summary judgment as to the EFPPs and—with the exception of the Pennsylvania Agreement—the Agreements provide the requisite dispositive language to resolve this motion. The Court therefore did not err—let alone clearly err—in disposing of Guardian's motion for summary judgment as to the EFPPs based on the language of the parties' Agreements. Cf. Davis v. Patel, 506 F. App'x 677, 678 (9th Cir. 2013) ("Only 'if the moving party placed the nonmovant party on proper notice' can the latter fairly 'be held to have failed to satisfy its duty . . . to designate specific facts showing that there is a genuine issue for trial.'" (alteration in original) (quoting *Katz v. Children's Hosp. of Orange* Cty., 28 F.3d 1520, 1534 (9th Cir. 1994))).

Despite the plain language of the parties' Agreements, GIS chose—intentionally or inadvertently—to ignore the dispositive language relating to "Guardian Labeled Distributor Products" in its briefing at the summary judgment stage. (See, e.g., Doc. 104 at 7–12.) However, the fact that GIS's litigation strategy on this point was unsuccessful is not a valid basis for reconsideration. GIS was given ample opportunity to make arguments related to this dispositive language, including extensive briefing regarding the parties' motions for summary judgment. (See, e.g., Doc. 123 (GIS's 41-page brief in support of its motion for summary judgment); Doc. 112 (GIS's 19-page reply brief in support of its motion for summary judgment); Doc. 104 (GIS's 25-page brief in opposition to Guardian's motion for summary judgment).) GIS may not now use the vehicle of reconsideration to relitigate this issue.[5] See, e.g., In re Taco Bell Wage & Hour, No.

[4] As noted by the Court in the Order, the parties' warehousing distributor agreement covering certain counties in Pennsylvania (the "Pennsylvania Agreement") "does not include any definition of what constitutes 'Guardian Labeled Distributor Products.'" (Doc. 133 at 72 (citing Doc. 120, Ex. 1).)

[5] On January 5, 2017, the Court entered an order directing the parties to file the following by noon the next day: "(1) the exhibits . . . listing the 'Guardian Labeled Distributor Products' for each of the [Agreements] at issue in

CV F 07–1314 LJO DLB, 2013 WL 204661, at *1 (E.D. Cal. Jan. 17, 2013) ("A reconsideration motion 'is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple.'" (quoting Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998))).

Accordingly, the Court DENIES GIS's Motion, (Doc. 147), insofar as GIS argues that the Court clearly erred by finding that the EFPPs are not covered by certain of the parties' Agreements based on the language of these Agreements.

B. GIS's Additional Arguments

In GIS's Motion, GIS also raises arguments regarding whether (1) Guardian is estopped from claiming that EFPPs are not "Guardian Labeled Distributor Products," (2) the Court should consider the parties' course of conduct regarding EFPPs, and (3) the Bob's Discount Furniture Agreement is supported by consideration. (See Doc. 147, Ex. 1 at 12–27.) GIS was free to raise each of these arguments in its expansive briefing regarding the parties' motions for summary judgment. Indeed, GIS did raise the latter two arguments in its briefing, to a certain extent. (See Doc. 104 at 8–10 (GIS's argument that the parties' course of conduct demonstrates that the EFPPs are covered by the Agreements); Doc. 112 at 11–13 (GIS's argument that the Bob's Discount Furniture Agreement is supported by consideration).) As such, GIS may not now raise these arguments in the posture of a motion for reconsideration. See, e.g., Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) ("A motion for reconsideration 'may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.'" (quoting Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000))); Chapman v. Starbucks Corp., No. 2:09–cv–2526–

[Guardian's motion for summary judgment]; and (2) any 'mutually agreed upon Addend[a],' as referenced in the [A]greements' paragraph pertaining to the 'Guardian Labeled Distributor Products' included in these [A]greements." (Doc. 119.) On January 6, 2017, GIS filed a response to this order. (Doc. 121.)

In GIS's Motion, GIS argues that it "explained in its response" that "this was not a reasonably sufficient period of time for it to gather a complete set of evidence responding to the Court's" January 5, 2017 order. (Doc. 147 at 11.) However, at no point in GIS's January 6, 2017 response did GIS indicate that the Court did not provide enough time to respond to the Court's January 5, 2017 order, or request additional time to respond. (See Doc. 121.) Instead, GIS stated in its response that it was "not in a position to provide [the responsive documents] to the Court at this time." (Id. at 2.) The Court is therefore not persuaded by GIS's current argument that its January 6, 2017 response included a representation that the Court did not provide the parties with "a reasonably sufficient period of time" to respond to the Court's January 5, 2017 order.

GEB–EFB, 2011 WL 826810, at *3 (E.D. Cal. Mar. 3, 2011) ("[A] motion for reconsideration 'may not be used to relitigate old matters[.]'" (second alteration in original) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008))).

For these reasons, the Court DENIES GIS's Motion, (Doc. 147), to the extent GIS argues that the Court should consider these additional arguments.

C. Whether dreamGUARD Products are "Competing Products"

GIS's final argument is that the Court committed clear error in finding that the dreamGUARD products are "competing products" under the Agreements. (See Doc. 147, Ex. 1 at 27–28.) The Court agrees with this assertion.

As noted by the Court in the Order, each of the Agreements include the following non-compete provision:

> [GIS] agrees that it will not compete with [Guardian] by selling competing products during the term of this Agreement in its assigned area(s). For purposes of this Agreement, "competing products" mean products of comparable claims or qualities. Should [Guardian] develop new products and amend Exhibit "B" to reflect said new products and prices, [GIS] agrees not to sell products which compete with said new products.

(Doc. 133 at 66 (citations omitted).) In the Order, the Court found "that the dreamGUARD mattress protector is a 'competing product,'" under the second sentence of this definition—namely, the record reflected that the dreamGUARD products were "products of comparable claims or qualities." (Id.)

However, as GIS properly notes, the Court did not take into account the third sentence—whether Guardian's comparable product was a "new product[]." (See id.) Under this third sentence, if Guardian's comparable product satisfied this "new product" requirement, then the dreamGUARD product was only a "competing product" under the Agreements if Guardian amended the specified exhibit "to reflect said new products and prices." (See id. (citations omitted).) However, it is not clear based on the available record whether Guardian's comparable product satisfies this "new product" requirement, thereby implicating the third sentence of the definition. (Cf. Doc. 92 at 6–7 (providing Guardian's argument that both GIS and Guardian sold

"a micro fleece mattress protector" in 2011).) The Court therefore finds that it clearly erred in making a finding regarding whether dreamGUARD products are "competing products." This issue is properly reserved for trial.

Accordingly, the Court GRANTS GIS's Motion, (Doc. 147), only to the limited extent that GIS requests reconsideration of the Court's finding that the dreamGUARD products are "competing products" under the Agreements. The Court therefore RECONSIDERS the Order, (Doc. 133), in part, and finds that the issue of whether the dreamGUARD products are "competing products" under the Agreements presents genuine issues of material fact.

IV. Conclusion

For the reasons provided above, the Court GRANTS IN PART and DENIES IN PART Guardian's Motion, (Doc. 143), and GIS's Motion, (Doc. 147). Specifically, the Court RECONSIDERS its Order, (Doc. 133), only to the following limited extent:

(1) Guardian's motion for summary judgment, (Doc. 92), is GRANTED insofar as Guardian seeks summary judgment on its request in its First Counterclaim for a declaration that EFPPs are not within the scope of the Cook County Agreement;

(2) the Court FINDS that the Bob's Discount Furniture Agreement was not a valid contract as it relates to Guardian's sales of products to Bob's Discount Furniture in the geographic areas covered by the Cook County Agreement; and

(3) the Court FINDS that the issue of whether the dreamGUARD products are "competing products" under the Agreements presents genuine issues of material fact.

The Court DENIES the remainder of both Guardian's Motion, (Doc. 143), and GIS's Motion, (Doc. 147).

IT IS SO ORDERED.

Dated: **February 21, 2017**

/s/ *Sheila K. Oberto*
UNITED STATES MAGISTRATE JUDGE