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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AGNES XIE,

Plaintiff,

v.

DE YOUNG PROPERTIES 5418, LP,

Defendant.

No. 1: 16-cv-01518-DAD-SKO

ORDER DENYING MOTION FOR
RECONSIDERATION, DENYING MOTION
FOR EXTENSION OF TIME AS MOOT, AND
DENYING ALL OTHER MOTIONS AS MOOT

(Doc. Nos. 150, 151, 152, 154, 155, 158)

Plaintiff Agnes Xie, *pro se*, initiated this action against defendant De Young Properties 5418, LP (“defendant”) on October 7, 2016. (Doc. No. 1.) After two years of litigation, the court issued an order on November 16, 2018, which granted defendant’s motion for summary judgment, denied all other pending motions as moot, and directed the Clerk of the Court to close this action. (Doc. No. 144.) On November 26, 2018, plaintiff filed a motion for reconsideration of this decision. (Doc. No. 150.) Shortly thereafter, plaintiff also filed numerous other motions or documents.¹

¹ Following the granting of defendant’s motion for summary judgment, plaintiff has filed the following with the court: an amended reply to defendant’s objections to evidence in opposition to the motion for summary judgment (Doc. No. 147); a motion to supplement pleadings (Doc. No. 151); a motion for extension of time to amend the opposition to the motion for summary judgment and to file a cross-motion for summary judgment (Doc. No. 152); an amended opposition to the motion for summary judgment and cross-motion for summary judgment (Doc. No. 153); a motion to stay the judgment, reopen the case, and for reconsideration of the court’s order (Doc. No. 154); a request for extension of time to file a notice of appeal (Doc. No. 155); and a second request for extension of time to file a notice of appeal (Doc. No. 158).

1 **LEGAL STANDARD**

2 Pursuant to the Federal Rules of Civil Procedure, either party may file a motion for
3 reconsideration to alter or amend a judgment within twenty-eight days of entry of that judgment.
4 Fed. R. Civ. P. 59(e). District courts “possess[] the inherent procedural power to reconsider,
5 rescind, or modify an interlocutory order for cause seen by it to be sufficient.” *City of Los*
6 *Angeles v. Santa Monica Baykeeper*, 254 F. 3d 882, 885 (9th Cir. 2001) (citations and internal
7 quotation marks omitted). A motion for reconsideration, however, “should not be granted . . .
8 unless the district court is presented with newly discovered evidence, committed clear error, or if
9 there is an intervening change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F.
10 3d 656, 665 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F. 3d 1255, 1263 (9th Cir.
11 1993)). Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
12 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
13 *Bishop*, 229 F. 3d 877, 890 (9th Cir. 2000) (citation omitted); *Pyramid Lake Paiute Tribe of*
14 *Indians v. Hodel*, 882 F. 2d 364 n.5 (9th Cir. 1989) (“[T]he orderly administration of lengthy and
15 complex litigation such as this requires the finality of orders be reasonably certain.”).

16 **DISCUSSION**

17 Plaintiff makes several arguments in her motion for reconsideration. First, plaintiff states
18 that the court failed to consider plaintiff’s objections to defendant’s statement of undisputed facts
19 (Doc. No. 147), which were filed on the court’s docket on November 16, 2018, the same day that
20 the order granting summary judgment was issued. (Doc. No. 150 at 1.) However, motions for
21 reconsideration “may *not* be used to raise arguments or present evidence for the first time when
22 they could reasonably have been raised earlier in the litigation.” *Kona Enters.*, 229 F.3d at 890
23 (emphasis in original) (citing *389 Orange St. Partners*, 179 F.3d at 665); accord *Marlyn*
24 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).
25 Plaintiff’s objections to defendant’s statement of undisputed facts were filed more than a month
26 after the motion for summary judgment was taken under submission by the court for decision, and

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1 nearly five months after the defendant's statement of undisputed facts was filed.² Due to
2 plaintiff's status as a *pro se* litigant, the court considered her numerous untimely filings in
3 deciding the motion for summary judgment, several of which were received by the court after the
4 motion had been taken under submission. (*See* Doc. Nos. 127, 128, 129, 131, 133.)³ There has
5 been no showing that plaintiff could not have raised these arguments at an earlier point in the
6 litigation. Accordingly, the court declines to reconsider on that basis alone.

7 Plaintiff also argues that the court failed to consider her motion to stay prior to ruling on
8 the motion for summary judgment, which resulted in prejudice to the plaintiff. (Doc. No. 150 at
9 1.) The court denied plaintiff's motion to stay at the summary judgment hearing on October 16,
10 2018 after learning that plaintiff had not made progress in retaining counsel who could adhere to
11 the existing scheduling order in this case. Further, the undersigned notes that plaintiff waited
12 until a week prior to the hearing for the motion for summary judgment before beginning the
13 process of seeking counsel, even though this suit has been pending since October 2016.

14 Finally, plaintiff argues that the court failed to consider her realty agency contract
15 executed between the parties on June 25, 2013 and a breach of fiduciary duty stemming from that
16 contract. (Doc. No. 150 at 1.) The court denied plaintiff's motion to amend her complaint to add
17 these claims and additional defendants on September 28, 2018, finding that amendment at such an
18 advanced stage of litigation would be prejudicial to defendants. (Doc. No. 119.) Because
19 plaintiff was not permitted to further amend her complaint to include these claims and defendants,
20 such arguments do not provide a valid basis for reconsideration. For these reasons, petitioner's
21 motion for reconsideration (Doc. No. 23) is denied.

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23 ² Though defendant's motion was filed on June 26, 2018, a hearing on this motion was not held
24 until October 11, 2018, due to the court's efforts to accommodate plaintiff's various other
discovery related motions.

25 ³ Plaintiff also argues that the court failed to accommodate her disability, which restricted her
26 ability to work at the computer for extended periods of time. (Doc. No. 150 at 1.) Further, she
27 asserts that she was prejudiced because she did not have access to the court's electronic case
28 filing (ECF) system and thus, her filings with the court were subject to delays. (*Id.*) Pursuant to
Local Rule 133(a), all *pro se* parties are required to file their documents in paper form. The court
also notes that plaintiff has not been prejudiced by this requirement, since the court has
consistently considered plaintiff's litany of untimely filings throughout this litigation.

1 As a final issue, plaintiff filed a motion for an extension of time to file a notice of appeal
2 on December 11, 2018. (Doc. No. 155.) However, on December 13, 2018, plaintiff filed a notice
3 of her appeal to the Ninth Circuit. (Doc. Nos. 156, 157.) Because plaintiff has filed a notice of
4 appeal, an extension of time to do so is no longer necessary, and plaintiff's motion in that regard
5 will be denied as moot.

6 **CONCLUSION**

- 7 1. Plaintiff's motion for reconsideration (Doc. No. 70) is denied in its entirety;
8 2. Plaintiff's motions for extension of time to file a notice of appeal (Doc. Nos. 155, 158)
9 are denied as moot;
10 3. Plaintiff's remaining pending motions (Doc. Nos. 124, 125, 126, 135, 137) are denied
11 as moot.

12 IT IS SO ORDERED.

13 Dated: December 21, 2018

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16 UNITED STATES DISTRICT JUDGE
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