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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a
Connecticut corporation,

Plaintiff,

v.

SIDNEY B. DUNMORE, an individual;
SIDNEY DUNMORE TRUST DATED
FEBRUARY 28, 2003, a California trust;
SIDNEY B. DUNMORE, Trustee for Sid
Dunmore Trust dated February 28, 2003;
DHI DEVELOPMENT, a California
corporation; WILLIAM H. NIEMI, an
individual; and WILLIAM & BETH
NIEMI, 1985 REVOCABLE FAMILY
TRUST, a California trust,

Defendants.

No. 07-cv-02493-TLN-DB

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION**

This matter is before the Court on Defendants Sidney B. Dunmore, Sidney Dunmore Trust Dated February 28, 2003, Sidney B. Dunmore as Trustee for Sid Dunmore Trust dated February 28, 2003, DHI Development, William H. Niemi, and William & Beth Niemi, 1985 Revocable Family Trust's (collectively "Defendants") motion for reconsideration of this Court's Order to repatriate funds dated December 11, 2017. (ECF No. 400.) Plaintiff Travelers Casualty and Surety Company of America ("Plaintiff") opposes the motion. (ECF No. 407.) The Court has

1 carefully considered the briefing filed by the parties. For the reasons set forth below, the Court
2 hereby DENIES Defendants' Motion for Reconsideration. (ECF No. 400.)

3 The Court entered judgment in this matter on March 29, 2017, awarding Plaintiff
4 \$15,599,237.28. (ECF No. 376.) After judgment was entered, Plaintiff entered a Notice of Entry
5 of Judgment. (ECF No. 378.) Additionally, Plaintiff requested and obtained an Abstract of
6 Judgment. (ECF Nos. 379 & 380.) Plaintiff then requested payment of the judgment from
7 Defendants multiple times. (ECF No. 383-1 at 4.)

8 Still without payment of the judgment, Plaintiff began to investigate Defendants' possible
9 assets. (ECF No. 383-1 at 4.) This included attempts by the Plaintiff to conduct debtor
10 examinations. (ECF Nos. 390, 391, & 392.) However, Defendants did not appear at the
11 examinations. (ECF No. 398.) Plaintiff became aware of Defendants assets held overseas that
12 could satisfy the judgment. (ECF No. 383-1 at 4.) In a motion for repatriation, Plaintiff learned
13 Defendants obtained a \$10,489,135 tax return in 2008 and produced other documents showing the
14 transfer of millions of dollars to accounts outside of the United States. (ECF No. 383 at 4.)

15 The Court issued an order on December 11, 2017, granting Plaintiff's motion for
16 repatriation. (ECF No. 399.) The Court found that it had the authority to order the repatriation of
17 funds based on the personal jurisdiction it held over Defendants. (ECF No. 399 at 4.) The Court
18 ordered Defendants to repatriate funds necessary to satisfy the judgment within thirty days of the
19 Order. (ECF No. 399 at 4.) Defendants filed the instant motion for reconsideration on December
20 18, 2017. (ECF No. 400.)

21 Before reconsideration may be granted, there must be a change in the controlling law,
22 facts, or other circumstances, the need to correct a clear error, or the need to prevent manifest
23 injustice. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th
24 Cir. 2009). As with motions to alter or amend a judgment made pursuant to Federal Rule of Civil
25 Procedure 59(a), motions to reconsider are not vehicles permitting an unsuccessful party to
26 "rehash" arguments previously presented. *See United States v. Rezzonico*, 32 F.Supp.2d 1112,
27 1116 (D. Az. 1998) (a motion for reconsideration "should not be used to ask the court to rethink
28 what the court has already thought through—rightly or wrongly") (omitting internal citations and

1 quotation marks). Nor is a motion to reconsider justified on the basis of new evidence which
2 could have been discovered prior to the court’s ruling. Finally, “after thoughts” or “shifting of
3 ground” do not constitute an appropriate basis for reconsideration. *Fay Corp. v. BAT Holdings*
4 *One, Inc.*, 651 F.Supp. 307, 309 (W.D. Wash. 1987), *aff’d* 896 F.2d 1227 (9th Cir. 1990).

5 Defendants argue the Court should review the factual basis underlying its previous order
6 and deny the remedy of repatriation because personal service was not affected on Defendants for
7 the debtor’s exam. (ECF No. 400 at 2.) In the alternative, Defendants ask the Court to clarify
8 whether personal service of the debtor’s exam was a prerequisite for the Court’s order. (ECF No.
9 400 at 2.) Defendants argue that California Code of Civil Procedure § 708.110(d) requires
10 personal service on all debtors for a debtor’s exam. (ECF No. 400 at 2.) Defendants argue
11 Plaintiff did not present any evidence that it personally served Defendants with notice of the
12 debtor’s exam. (ECF No. 400 at 2.) In so arguing, Defendants argue personal service of notice of
13 a debtor’s exam is a prerequisite for an order to repatriate. (ECF No. 400 at 2.) Defendants offer
14 no explanation as to why a statute known and in effect at the time of the motion for repatriation is
15 valid grounds for reconsideration by this Court.¹ Additionally, at the time of the motion for
16 repatriation the Orders to appear at the debtor’s exam were already on the docket. Defendants
17 through simple diligence would have known — and in fact admitted in their opposition to the
18 motion for repatriation that they did know about the debtor’s exam — that they had not been
19 personally served with orders to appear at the debtor’s exam. (*Compare* ECF Nos. 393 & 394
20 *with* ECF No. 395.) Simply put, Defendants could have, and should have, made an argument
21 regarding personal service in their opposition. Thus, Defendants are procedurally barred from
22 raising an argument here for the first time that they were not personally served for the debtor’s
23 exam.

24 Second, Defendants discuss the case cited by the Court in its order, *Gilmore Bank v. Asia*
25 *Trust New Zealand Ltd.*, 223 Cal. App. 4th 1558, 1564 (2014), as finding personal service is

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27 ¹ The Court has considerable doubts regarding the nature of California Code of Civil Procedure § 703.110(d)
28 being a prerequisite to a motion or order for repatriation, and in fact finds no support for Defendants’ contention.
Nor do Defendants offer any support for this argument in their motion for reconsideration or reply. However, as the
Court is denying the instant motion on procedural grounds, this issue need not be determined.

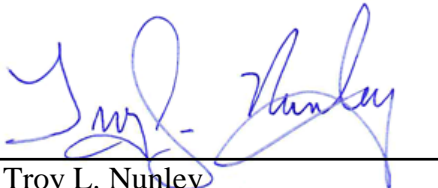
1 necessary to trigger any of the remedies provided for in California Civil Procedure Code §
2 708.110(a)–(e). Again, this case was available at the time of the Court’s previous order as is
3 demonstrated by the Court’s citation to the case in its Order. Defendants offer no explanation as
4 to why the evidence could not have been presented at the time of Defendants’ opposition to the
5 motion to repatriate.

6 Accordingly, Defendants’ motion for reconsideration (ECF No. 400) does not provide any
7 adequate grounds for the Court to reconsider granting Plaintiff’s request for repatriation. For the
8 foregoing reasons, Defendants’ motion for reconsideration is hereby DENIED. Defendants shall
9 promptly and timely repatriate funds in compliance with this Court’s previous Order.

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IT IS SO ORDERED.

Dated: August 16, 2018



Troy L. Nunley
United States District Judge