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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NELSON LAC,
Plaintiff,
v.
NATIONSTAR MORTGAGE, LLC,
Defendant.

No. 2:15-cv-00523-KJM-DB

ORDER

On December 8, 2016, the court heard argument on the parties' stipulated request filed on September 29, 2016, to vacate five of the court's prior orders. Roger G. Kosla appeared for plaintiff Nelson Lac, and Jered T. Ede appeared telephonically for defendant Nationstar. After considering the reasoning contained within the stipulation as well as the parties' arguments at hearing, the court DENIES the request.

I. BACKGROUND¹

This case concerns a dispute over the propriety of foreclosure proceedings that began in 2010. In 2006, Lac obtained a mortgage loan with a principal amount of \$480,000, and

¹ Because the parties attached no filings to the pending stipulated request for vacatur, the court draws on documents in the record to supply the background.

1 the loan was secured by a deed of trust recorded against his home on Citrus Avenue in
2 Sacramento, California. *See* Req. for Judicial Notice (“RJN”) Ex. L, ECF No. 67.² In 2008,
3 Lac’s construction business closed, and he fell behind on his mortgage payments. Lac Decl. ¶ 3,
4 ECF No. 56-2. In November 2010, a notice of default was recorded, RJN Ex. M, and a few
5 months later, a notice of trustee’s sale was recorded, *id.* Ex. N. For reasons not disclosed by the
6 record, the sale did not go forward.

7 Nationstar began servicing Lac’s loan in July 2013 and is the loan’s current
8 servicer. Janati Decl. ¶¶ 2, 5, ECF No. 66-1. On July 1, 2014, Lac’s attorney at the time, Aldon
9 Bolanos, sent Nationstar two letters requesting Nationstar consider a loan modification. Bolanos
10 Decl. Ex. 1 at 3–4, ECF No. 56-4. On July 31, Nationstar sent Bolanos a letter inviting Lac to
11 apply for payment assistance options, apologizing that it had forgotten to forward an application
12 for a loan modification as Bolanos had previously requested, and providing details to guide Lac in
13 his response. Janati Decl. Ex. A. Nationstar received no response from Bolanos or Lac. Janati
14 Decl. ¶ 9.

15 On October 21, 2014, Bolanos sent Nationstar another letter. Bolanos Decl. Ex. 1,
16 at 6. In this letter, Bolanos claimed Nationstar had not responded to his request for a loan
17 modification application. *Id.* Nationstar wrote back on October 28, 2014, explaining it had
18 previously sent the loan modification package for Lac to fill out and return, and attaching a new
19 copy of the application package to that letter. Janati Decl. Ex. B. Bolanos and Lac again did not
20 respond. Janati Decl. ¶ 12.

21 A. Complaint

22 Lac filed a complaint in this court on March 9, 2015, represented by Bolanos.
23 ECF No. 1. Among other things, Lac’s complaint alleged Nationstar ignored the letters Bolanos
24 sent in July and October 2014. *Id.* ¶¶ 3–6. Consequently, Lac alleged the foreclosure
25 proceedings against his property were commenced in violation of California Civil Code § 2923.6
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28 ² The court’s prior orders took judicial notice of this document and the other matters of
public record cited in this order. *See* Fed. R. Evid. 201 (governing judicial notice).

1 and § 2923.7. *Id.* Lac requested damages, declaratory relief, an equitable accounting, interest,
2 attorneys' fees and costs. *Id.* at 7–8.

3 Nationstar did not timely file a responsive pleading to Lac's complaint, so in
4 September 2015, Lac moved for the entry of Nationstar's default. ECF No. 12. On November
5 18, 2015, the court instructed the Clerk's Office to enter Nationstar's default. ECF No. 30.

6 Because the matter before the court is a request to vacate five prior interlocutory
7 orders, the court briefly reviews the background and nature of each order.

8 B. Three Temporary Restraining Orders

9 Based on the premise that the scheduled foreclosure in this case was being
10 conducted in violation of California Civil Code § 2923.6 and § 2923.7, Bolanos filed three *ex*
11 *parte* requests for temporary restraining orders ("TRO") on Lac's behalf. ECF Nos. 13, 38, 49.
12 Nationstar did not oppose the first request, and in fact stipulated to a sixty-day suspension of
13 foreclosure proceedings. *Mins.*, ECF No. 23. Nationstar opposed the second and third TRO
14 requests, but only to explain the absence of any emergency due to its voluntary postponement of
15 the date of foreclosure proceedings. ECF Nos. 39, 52. Nationstar did not refute the factual basis
16 of any TRO request. *See* ECF No. 52. The court granted all three requests for TROs and
17 temporarily barred the foreclosure sales. Order Oct. 14, 2015, ECF No. 24; Order Dec. 29, 2015,
18 ECF No. 41; Order Mar. 7, 2016, ECF No. 54.

19 C. Order Granting Attorneys' Fees

20 After the court granted the first TRO, Bolanos filed requests for an award of
21 attorneys' fees for obtaining the TRO on Lac's behalf. ECF Nos. 34, 36. At the time, Nationstar
22 was in default, so it filed no opposition. The court awarded attorneys' fees of \$6,660. *See* ECF
23 No. 61 at 6–8 (citing Cal. Civ. Code § 2924.12 and *Monterossa v. Superior Court of Sacramento*
24 *Cty.*, 237 Cal. App. 4th 747, 753, 757 (2015)). In the same order, the court set aside Nationstar's
25 default after finding the default was inadvertent, Nationstar's defense was potentially meritorious,
26 and the decision to set aside default would not prejudice Lac's case. *Id.* at 4–6.

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1 D. Order Denying Motion to Reconsider

2 Nationstar then moved for reconsideration of the fee award, arguing the court’s
3 order granting attorneys’ fees was “clearly erroneous” because California law limits attorneys’
4 fee awards to preliminary injunctions, not temporary restraining orders. Mot. Recons. 5–9, ECF
5 No. 69. The court denied Nationstar’s request for reconsideration, explaining at length why
6 Nationstar’s distinction between TROs and preliminary injunctions was irrelevant for purposes of
7 awarding attorneys’ fees. ECF No. 104.

8 II. STIPULATED REQUEST TO VACATE PRIOR ORDERS

9 On September 9, 2016, the court suspended Bolanos from practice in this district
10 for conduct in this case, namely authorizing other attorneys to use his credentials to electronically
11 file documents he signed on his client’s behalf while he was suspended from practice. ECF No.
12 120; *see also* Order Aug. 17, 2016, ECF No. 8, at 2 (stating findings upon which later suspension
13 order was based). Soon thereafter, Lac retained his current attorney, Roger Kosla. Substitution
14 Notice, ECF No. 112. On September 29, 2016, Mr. Kosla and counsel for Nationstar submitted a
15 stipulated request to vacate the three orders granting Lac’s *ex parte* TRO requests, the court’s
16 order granting attorneys’ fees in connection with obtaining the first TRO and the court’s order
17 denying Nationstar’s motion to reconsider the attorneys’ fee award. ECF No. 123. The parties
18 base their request to vacate on an assertion that Bolanos misrepresented the foundational facts to
19 the court, and that the court’s orders were therefore wrongly decided. *Id.* at 2.

20 A. Legal Standard

21 There are several methods by which a party may request that a court alter its prior
22 orders, including a request to reconsider, reverse, strike or vacate. In a motion to reconsider or
23 reverse, the party is asking the court to reconsider a prior decision and come to an alternative
24 conclusion. In a motion to strike or vacate, the party is requesting that the court eliminate its
25 prior order from the record entirely. The latter method, vacatur, is what the parties request in this
26 case. *See generally* 56 Am. Jur. 2d Motions, Rules, and Orders § 40.

27 “As long as a district court has jurisdiction over [a] case, then it possesses the
28 inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen

1 by it to be sufficient.” *City of L.A. v. Santa Monica BayKeeper*, 254 F.3d 882, 885 (9th Cir.
2 2001) (citation, quotation marks, and emphasis omitted). Rule 54(b) of the Federal Rules of Civil
3 Procedure expressly authorizes courts to revise “any order or other decision . . . that adjudicates
4 fewer than all the claims or the rights and liabilities of fewer than all the parties . . . at any time
5 before the entry of a judgment adjudicating all the claims and all the parties’ rights and
6 liabilities.” Fed. R. Civ. P. 54(b).

7 Relief from a prior judgment or order is appropriate where it is necessary to
8 correct clear error or prevent manifest injustice, where new evidence has become available, or
9 where there has been an intervening change in controlling law. *Cachil Dehe Band of Wintun*
10 *Indians v. California*, 649 F. Supp. 2d 1063, 1069 (E.D. Cal. 2009) (citing *Sch. Dist. No. 1J*
11 *Multnomah Cty. v. AC&S Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). “To succeed [on such a
12 request], a party must set forth facts or law of a strongly convincing nature to induce the court to
13 reverse its prior decision.” *Knight v. Rios*, No. 09-00823, 2010 WL 5200906, at *2 (E.D. Cal.
14 Dec. 15, 2010).

15 The Supreme Court has emphasized the importance of considering the public
16 interest when contemplating the equitable remedy of vacatur: “Judicial precedents are
17 presumptively correct and valuable to the legal community as a whole. They are not merely the
18 property of private litigants and should stand unless a court concludes that the public interest
19 would be served by a vacatur.” *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18,
20 26–27 (1994) (“*Bonner Mall*”) (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips*
21 *Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)). Thus, “quite apart from any
22 considerations of fairness to the parties,” vacatur disturbs the “orderly operation of the federal
23 judicial system” by deviating from the primary route Congress has prescribed for parties who
24 seek relief from the legal consequences of court judgments: appeal as of right and certiorari. *Id.*
25 at 27.

26 In *American Games, Inc. v. Trade Products, Inc.*, the Ninth Circuit distinguished
27 *Bonner Mall* in holding that district courts, due to the “fact-intensive nature of the inquiry
28 required,” enjoy “greater equitable discretion when reviewing [their] own judgments than do

1 appellate courts operating at a distance.” 142 F.3d 1164, 1170 (9th Cir. 1998). Therefore, a
2 district court in this circuit may vacate one of its own judgments absent exceptional
3 circumstances. *See id.* at 1167–68. The proper approach is to apply an “equitable balancing
4 test,” which balances the hardships of the parties and the public interests at stake. *Id.* at 1166;
5 *Zinus, Inc. v. Simmons Bedding Co.*, No. C 07-3012 PVT, 2008 WL 1847183, at *1 (N.D. Cal.
6 Apr. 23, 2008). Some district courts have said that in applying this balancing test, a court should
7 consider “the parties’ desire to avoid any potential preclusive effect; the parties’ interest in
8 conserving their resources; the public interest in the orderly operation of the federal judicial
9 system; and the potential to conserve judicial resources.” *White v. Shen*, No. C09-0989 BZ, 2011
10 WL 2790475, at *1 (N.D. Cal. Jul. 13, 2011) (citation omitted); *see also Ohio Willow Wood Co.*
11 *v. Thermo–Ply, Inc.*, 769 F.Supp.2d 1065 (E.D. Tex. 2011); *White v. Shen*, No. C09-0989 BZ,
12 2011 WL 2790475, at *1 (N.D. Cal. July 13, 2011); *Cisco Sys., Inc. v. Telcordia Tech., Inc.*, 590
13 F. Supp. 2d 828, 831 (E.D. Tex. 2008) (analyzing these same factors in equitable balancing test).

14 In both *Bonner Mall* and *American Games*, the questions presented related to
15 requests to vacate judgments rather than orders. The instant case has not reached the judgment
16 stage and the parties are asking the court to vacate interlocutory orders. In a situation such as
17 this, as provided by Rule 54(b), “[a] court has complete power over interlocutory orders . . . and
18 has authority to revise them when it is ‘consonant with equity’ to do so.” *De La O v. Arnold-*
19 *Williams*, Nos. CV-04-0192 EFS, CV-05-0280 EFS, 2008 WL 4192033, at *1 (E.D. Wash.
20 Aug. 27, 2008) (quoting *Simmons v. Brier Bros. Co.*, 258 U.S. 82 (1922)); *see also Persistence*
21 *Software, Inc. v. The Object People, Inc.*, 200 F.R.D. 626, 627 (N.D. Cal. 2001) (standard for
22 vacatur of nonfinal orders under Rule 54(b) less rigid than for vacatur of final judgment under
23 Rule 60(b)).

24 The court should consider several factors when determining if vacatur is
25 appropriate. Such factors, as relevant here, include “whether all the parties involved in the
26 ruling(s) request and agree to vacatur as a condition of a proposed settlement of the action; . . .
27 whether a former party to the action would be adversely affected by a vacatur; and whether the
28 costs of continuing the action with uncertain results are outweighed by the benefits of the

1 proposed settlement of the action.” *De La O*, 2008 WL 4192033, at *1; *cf. RE2CON, LLC v.*
2 *Telfer Oil Co.*, 2:10-CV-00786-KJM, 2013 WL 1325183 (E.D. Cal. Mar. 29, 2013). However the
3 court assesses a party’s request, it must be guided by equitable considerations in resolving it.
4 *Cuviello v. Cal Expo*, 2014 WL 1379873, at *3 (E.D. Cal. Apr. 8, 2014).

5 B. Discussion

6 In urging the court to vacate five prior orders, the parties cite no case law and
7 provide no evidence to support their request. *See* ECF No. 123. They also do not engage in any
8 equitable balancing of interests, and instead they argue the TROs were based on erroneous facts.
9 They assert plaintiff’s new counsel, Mr. Kosla, recently discovered Nationstar did, in fact,
10 respond to Lac’s letters requesting a loan modification, and that Mr. Bolanos did not reply to
11 Nationstar’s letters, did not contact Nationstar prior to filing this lawsuit, and did not submit any
12 loan modification application to Nationstar despite being presented with the opportunity. *Id.* at 2.
13 Based on this new information, Lac now agrees Nationstar did not violate California law
14 justifying a TRO; he agrees no TRO should have issued. *Id.* Because the TROs were based on
15 erroneous facts, they say, the court’s order granting attorneys’ fees in connection with the first
16 TRO request was similarly unsupported. The parties’ stipulation offers no support for these
17 blanket assertions or any proof of the facts Mr. Kosla says he recently discovered.

18 Even if the parties’ request were supported, balancing the equities weighs against
19 vacatur. Not one of the prior orders has an ongoing impact in the case. No order made legal or
20 factual determinations that bind the parties or establish law of the case. The last TRO expired in
21 June of 2016. Regarding the attorneys’ fees award, the parties stipulate that Lac may retain the
22 fees awarded. *Id.* at 3.

23 Moreover, vacatur is not a condition of any proposed settlement of this action. *See*
24 *Bonner Mall*, 513 U.S. 26 (settlement conditioned on vacatur weighed in favor of granting request
25 to vacate). Vacatur also would not alter the case factually so as to advance settlement
26 negotiations or avoid needless motions on the merits in the future. Thus, the general judicial
27 policy favoring settlement is not implicated. *See Major League Baseball Props., Inc. v. Pac.*
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1 *Trading Cards, Inc.*, 150 F.3d 149, 152 (2d Cir. 1998) (circumstances surrounding motion and
2 settlement so exceptional that vacatur was appropriate).

3 The court also notes the negative impact vacatur would have on the orderly
4 progress of this litigation. One order covered by the parties' stipulation is an order for which the
5 court previously denied a request to reconsider. To vacate that order now would signal that any
6 court order is fair game after the fact. *Cf. Bonner Mall*, 513 U.S. at 27 ("To allow a party who
7 steps off the statutory path [of appeal following an unfavorable judgment] to employ the
8 secondary remedy of vacatur as a refined form of collateral attack on the judgment would . . .
9 disturb the orderly operation of the federal judicial system."); *Philip Servs. Corp. v. City of*
10 *Seattle*, Civil Action No. H-06-2518, 2007 WL 3396436 (S.D. Tex. Nov. 17, 2007) (quoting
11 *Cater v. Rosenberg & Estis*, No. 95 CIV. 10439(DLC), 1999 WL 13036, at *3 (S.D.N.Y. 1999)
12 ("there is a 'systemic' interest in preserving district court judgments because 'they play a
13 significant role in the development of decisional law by providing guidance to private parties with
14 respect to the availability of remedies and to litigation strategy,' and they 'can also be useful to
15 the courts of appeals in rendering decisions."). The public interest in the orderly progress of a
16 case weighs against vacatur here.

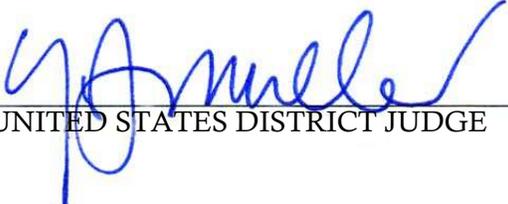
17 **III. CONCLUSION**

18 For the foregoing reasons, the court DENIES the parties' stipulated request to
19 vacate five interlocutory orders of the court (ECF Nos. 24, 41, 54, 61, 104) in its entirety.

20 This resolves ECF No. 123.

21 IT IS SO ORDERED.

22 DATED: August 7, 2017.

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25 UNITED STATES DISTRICT JUDGE
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