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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TANYA GRACE MCDANIEL,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

No. 2:15-cv-02627-KJM-EFB

ORDER

Plaintiff’s motion to reconsider is before the court. On January 31, 2017, the magistrate judge recommended this action be dismissed, finding “[p]laintiff’s allegations are too vague and conclusory to state a federal claim.” ECF No. 5 at 3. In light of “plaintiff’s history of filing deficient complaints as to her generalized claim of harassment,” the magistrate judge recommended dismissal without leave to amend. *Id.* at 5-6. Plaintiff objected. ECF No. 6. On June 16, 2017, the court adopted the magistrate judge’s recommendation, dismissed the case without leave to amend, entered judgment, and ordered plaintiff to show cause why the court should not declare plaintiff a vexatious litigant and impose sanctions. ECF Nos. 12, 13.

On June 28, 2017, plaintiff filed a “response and declaration,” ECF No. 14, and a notice of appeal, ECF No. 15. Viewing this filing, in part, as plaintiff’s response to the court’s order to show cause, the court declared plaintiff a “vexatious litigant.” ECF No. 19 at 3 (filed Aug. 30, 2017). The balance of plaintiff’s filing argued the court erred in dismissing this case.

1 See ECF No. 14 at 1-18. The Ninth Circuit, recognizing this portion of plaintiff's filing as a
2 pending motion, held appellate proceedings in abeyance pending this court's resolution of the
3 motion. ECF No. 18.

4 The court here construes the pending motion as a motion to reconsider the court's
5 dismissal order under Federal Rule of Civil Procedure 59(e). See *Am. Ironworks & Erectors, Inc.*
6 *v. N. Am. Const. Corp.*, 248 F.3d 892, 898 (9th Cir. 2001) (requests for reconsideration filed
7 within the time period identified in Rule 59(e) are construed as motions under that section).
8 Under Rule 59(e), a party may move to "alter or amend a judgment" within twenty-eight days of
9 the entry of the judgment. Although the Rule does not list specific grounds for such a motion, the
10 Ninth Circuit has said that a Rule 59(e) motion may be granted if "(1) the district court is
11 presented with newly discovered evidence, (2) the district court committed clear error or made an
12 initial decision that was manifestly unjust, or (3) there is an intervening change in controlling
13 law." *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) (citation omitted). The
14 court has "considerable discretion" when considering such a motion. *Turner v. Burlington N.*
15 *Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). The rule provides "an 'extraordinary
16 remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'"
17 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted). A
18 party moving for reconsideration should not ask the court "to rethink what the Court has already
19 thought through" simply because of a disagreement with the result of that thought process. *Above*
20 *the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983).

21 Here, plaintiff argues the court dismissed her action "without probable or just
22 cause." ECF No. 14 at 2. Plaintiff's motion largely duplicates her objections to the magistrate
23 judge's findings and recommendations. Compare ECF No. 14 at 6-18, with ECF No. 6 at 2-14.
24 Plaintiff also describes abuses she has suffered and argues the court is attempting to deprive her
25 of her constitutional rights. ECF No. 14 at 2-5. Yet plaintiff identifies no newly discovered
26 evidence, intervening changes in the law, or manifest injustice warranting reconsideration. The
27 court therefore DENIES plaintiff's motion for reconsideration.

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IT IS SO ORDERED.

DATED: November 7, 2017.


UNITED STATES DISTRICT JUDGE