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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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NATIONAL GRANGE and
CALIFORNIA STATE GRANGE,
Plaintiffs,

v.

CALIFORNIA GUILD, formerly
doing business as "California
State Grange," and ROBERT
MCFARLAND,
Defendants.

Civ. No. 2:16-0201 WBS DB

ORDER RE: MOTION FOR
RECONSIDERATION

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On May 12, 2017, the court issued an order ("May 12 order") denying plaintiffs National Grange and California State Grange's motion to disqualify the Ellis Law Group, counsel for defendant Robert McFarland, from this case. (May 12, 2017 Order (Docket No. 135).) Plaintiffs now move for reconsideration of that order. (Pls.' Mot. (Docket No. 136).)

Motions for reconsideration seek an "extraordinary remedy," one "to be used sparingly in the interests of finality

1 and conservation of judicial resources." Kona Enterprises, Inc.
2 v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). Such
3 motions "should not be granted, absent highly unusual
4 circumstances, unless the district court is presented with newly
5 discovered evidence, committed clear error, or . . . there is an
6 intervening change in the controlling law." 389 Orange St.
7 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). The party
8 moving for reconsideration "may not . . . raise arguments or
9 present evidence for the first time when [such arguments or
10 evidence] could reasonably have been raised earlier in the
11 litigation." Kona Enterprises, 229 F.3d at 890.

12 None of plaintiffs' arguments persuade the court to
13 change its May 12 order.

14 First, plaintiffs argue that the court erroneously
15 applied the burden-shifting framework for vicarious
16 disqualification set forth in Kirk v. First Am. Title Ins. Co.,
17 183 Cal. App. 4th 776 (2d Dist. 2010) by failing to "focus on the
18 procedures put in place by [the Ellis Law Group]" to screen
19 Valenti from working on this case and "requir[ing that
20 plaintiffs] demonstrate . . . Valenti has been actively
21 participating in [this] case." (Pls.' Mot., Mem. ("Pls.' Mem.")
22 at 5 (Docket No. 136-1).) This argument plainly ignores the
23 content of the May 12 order, which discussed the Ellis Law
24 Group's screening procedures on pages ten and eleven, expressly
25 cited such procedures in support of its holding on pages thirteen
26 and fourteen, and, at no point, "required [that plaintiffs]
27 demonstrate that Mr. Valenti has been actively participating in
28 [this] case," as plaintiffs claim. The court's application of

1 Kirk was not clearly erroneous.

2 Second, plaintiffs continue to dispute the efficacy of
3 the Ellis Law Group's ethical wall. They challenge the
4 credibility of two declarations submitted by McFarland at the
5 time their disqualification motion was argued, (see id. at 10-11
6 (discussing Valenti declaration); Pls.' Reply at 4-5 (discussing
7 Mueller declaration) (Docket No. 146)); offer a new declaration
8 from a former Ellis Law Group secretary, Roxy Chipak, who
9 testifies that she was not made aware of the screening procedures
10 imposed by the Ellis Law Group against Valenti, (see Pls.' Mem.
11 at 9-10);¹ and contend that the Ellis Law Group's screening
12 procedures did not satisfy the "primary elements of an ethical
13 wall" discussed in Kirk, (see id. at 6-11; Pls.' Reply at 3-6).
14 The Kirk elements cited by plaintiffs are merely factors for
15 consideration, not requirements. See Kirk, 183 Cal. App. 4th at
16 810-11. Neither of the declarations challenged by plaintiffs was
17 dispositive of the court's disqualification analysis. The court
18 will not change its ruling based on this argument.

19 Third, plaintiffs argue that a California appellate
20 court's affirmance of disqualification of the Ellis Law Group
21 from two related state cases constitutes an intervening change in
22 controlling law. (Pls.' Mem. at 12.) The two state cases
23 referenced by plaintiffs are materially distinguishable from this
24 case because there, Valenti switched sides during the same cases,
25 whereas here, he switched sides after representing the National
26

27 ¹ Plaintiffs provide no explanation for why the Chipak
28 declaration could not reasonably have been submitted at the time
their disqualification motion was argued.

1 Grange in a related, but different case. This court noted in the
2 May 12 order that under California law, vicarious
3 disqualification is required where the conflicted attorney
4 switches sides during the same case, but is subject to a case-by-
5 case analysis where he switches sides after representing an
6 opposing party in a related, but different case. (See May 12,
7 2017 Order at 6-7.) Accordingly, the California appellate
8 court's rulings do not apply here.

9 IT IS THEREFORE ORDERED that plaintiffs' Motion for
10 reconsideration of the May 12, 2017 order be, and the same hereby
11 is, DENIED.

12 Dated: August 4, 2017



13 WILLIAM B. SHUBB
14 UNITED STATES DISTRICT JUDGE
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