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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDY SHEPARD-HALL,
Plaintiff,

v.

GORDON AND WONG LAW GROUP
PC and DOES 1 to 10,
Defendant.

No. 2:16-cv-01361-MCE-GGH

MEMORANDUM AND ORDER

In this suit, Plaintiff Judy Shepard-Hall alleged Defendant Gordon & Wong Law Group, P.C. violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692–1692p, while collecting a state court judgment Defendant had been retained by a third party to enforce. On June 20, 2017, the Court granted Defendant’s motion for summary judgment, ECF No. 19, and judgment was entered in favor of Defendant the same day, ECF No. 20. The Court also granted Defendant’s motion for sanctions under Federal Rule of Civil Procedure 11, due to the frivolous nature of Plaintiff’s suit. Before the Court now are Plaintiff’s Amended¹ Motion for Reconsideration of the imposition of sanctions, ECF No. 22, and a second Motion for Sanctions filed by Defendant in response, ECF No. 24. For the reasons below, the Amended Motion for

¹ Plaintiff filed a Motion for Reconsideration, ECF No. 21, and then a superseding Amended Motion for Reconsideration, ECF No. 22, later the same day.

1 Reconsideration is DENIED and the Motion for Sanctions is GRANTED IN PART,
2 imposing sanctions in the amount of \$500.²

3 4 **BACKGROUND**

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6 Non-party Asset Acceptance, LLC, retained Defendant Gordon & Wong to enforce
7 a state court judgment entered against Plaintiff Shepard-Hall for the balance of a Dell
8 Financial Services account. Stmt. Undisputed Facts (“SUF”), ECF No. 9-1, ¶ 1. On
9 February 23, 2016, Defendant filed a writ of execution to garnish Plaintiff’s wages, which
10 was served on Plaintiff’s employer by the Sacramento County Sheriff’s Office. *Id.* ¶ 2.
11 On April 8, 2016, the parties agreed by phone to settle the debt for a single payment of
12 \$3,000. *Id.* ¶ 4. Plaintiff was represented by the Price Law Group, APC, (“PLG”) during
13 these negotiations. *See id.* ¶¶ 3–4.

14 On April 15, 2016, Defendant faxed a letter to PLG reflecting the settlement
15 terms. *Id.* ¶ 7. PLG then called Defendant, informing Defendant that Plaintiff’s wages
16 had been garnished by \$834.09 that morning, and the parties agreed to reduce the
17 \$3,000 settlement by the amount garnished. *Id.* ¶ 8. Four days later, Defendant sent a
18 new settlement letter to PLG, reflecting the new terms, and also faxed a notice to the
19 Sacramento County Sheriff’s Office to terminate the garnishment effective immediately.
20 *Id.* ¶¶ 9–10. On that same day—that is, four days after the new agreement was
21 reached—Plaintiff sent Defendant a signed copy of the original settlement agreement
22 and the full \$3,000, not deducting the amount garnished as specified in the new
23 agreement.

24 On April 29, 2016, as a result of an error by the Sheriff’s Office, Plaintiff’s wages
25 were garnished again, even though the Sheriff’s Office had been notified of the
26 garnishment’s termination. *Id.* ¶ 14. Because the garnishments resulted in

27 ² Because oral argument would not have been of material assistance, the Court ordered this
28 matter submitted on the briefs. *See* E.D. Cal. Local R. 230(g).

1 overpayment, Defendant voided the check it had received from the first garnishment,
2 and instructed the Sheriff's Office to return the second garnishment to Plaintiff, which it
3 did. Id. ¶ 16.

4 On May 5, 2016, Defendant received a letter from PLG demanding \$4,000 in
5 order to avoid suit under the FDCPA. Id. ¶ 14. Defendant refused to pay the \$4,000,
6 and this suit followed about a month later. Compl., ECF No. 2.

8 STANDARD

10 A. Motion for Reconsideration

11 A motion for reconsideration is properly brought pursuant to either Federal Rule of
12 Civil Procedure 59(e) or Rule 60(b). Taylor v. Knapp, 871 F.2d 803, 805 (9th Cir. 1989).
13 A motion for reconsideration is treated as a Rule 59(e) motion if filed within twenty-eight
14 days of entry of judgment, but as a Rule 60(b) motion if filed more than twenty-eight
15 days after judgment. See Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.,
16 248 F.3d 892, 898–99 (9th Cir. 2001). Plaintiffs here bring a timely Rule 59(e) motion.

17 A court should be loath to revisit its own decisions unless extraordinary
18 circumstances show that its prior decision was clearly erroneous or would work a
19 manifest injustice. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 817
20 (1988). This principle is embodied in the law of the case doctrine, under which “a court
21 is generally precluded from reconsidering an issue that has already been decided by the
22 same court, or a higher court in the identical case.” United States v. Alexander,
23 106 F.3d 874, 876 (9th Cir. 1997) (quoting Thomas v. Bible, 983 F.2d 152, 154 (9th Cir.
24 1993)). Nonetheless, in certain limited circumstances, a court has discretion to
25 reconsider its prior decisions.

26 While Rule 59(e) permits a district court to reconsider and amend a previous
27 order, “the rule offers an ‘extraordinary remedy, to be used sparingly in the interests of
28 finality and conservation of judicial resources.’” Kona Enters., Inc. v. Estate of Bishop,

1 229 F.3d 877, 890 (9th Cir. 2000) (quoting 12 James William Moore, et al., Moore's
2 Federal Practice § 59.30[4] (3d ed. 2000)). Indeed, a district court should not grant a
3 motion for reconsideration “absent highly unusual circumstances, unless the district court
4 is presented with newly discovered evidence, committed clear error, or if there is an
5 intervening change in the controlling law.” 389 Orange St. Partners v. Arnold, 179 F.3d
6 656, 665 (9th Cir. 1999) (citing Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263
7 (9th Cir. 1993)). Mere dissatisfaction with the court’s order, or belief that the court is
8 wrong in its decision, is not grounds for relief under Rule 59(e). Twentieth Century-
9 Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981).

10 Additionally, Local Rule 230(j) requires a party filing a motion for reconsideration
11 to show the “new or different facts or circumstances claimed to exist which did not exist
12 or were not shown upon such prior motion, or what other grounds exist for the motion.”
13 Finally, motions for relief from judgment pursuant to Rule 59(e) are addressed to the
14 sound discretion of the district court. Turner v. Burlington N. Santa Fe R.R., 338 F.3d
15 1058, 1063 (9th Cir. 2003).

16 In order to succeed, a party making a motion for reconsideration pursuant to
17 Rule 59(e) must “set forth facts or law of a strongly convincing nature to induce the court
18 to reverse its prior decision.” Pritchen v. McEwen, No. 1:10-cv-02008-JLT HC, 2011 WL
19 2115647, at *1 (E.D. Cal. May 27, 2011) (citing Kern-Tulare Water Dist. v. City of
20 Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986), aff’d in part and rev’d in part on
21 other grounds, 828 F.2d 514 (9th Cir. 1987)). A motion for reconsideration should not be
22 used to raise arguments or present evidence for the first time when the arguments or
23 evidence could reasonably have been raised earlier in the litigation. 389 Orange St.
24 Partners, 179 F.3d at 665.

25 Furthermore, “courts avoid considering Rule 59(e) motions where the grounds for
26 amendment are restricted to either repetitive contentions of matters which were before
27 the court on its prior consideration or contentions which might have been raised prior to
28 the challenged judgment.” Costello v. United States, 765 F. Supp. 1003, 1009 (C.D. Cal.

1 1991); see also Taylor, 871 F.2d at 805. This position stems from the district courts’
2 “concerns for preserving dwindling resources and promoting judicial efficiency.”
3 Costello, 765 F. Supp. at 1009. Rule 59(e) and motions for reconsideration are
4 therefore not intended to “give an unhappy litigant one additional chance to sway the
5 judge.” Frito-Lay of P.R., Inc. v. Canas, 92 F.R.D. 384, 390 (D.P.R. 1981) (quoting
6 Durkin v. Taylor, 444 F. Supp. 226, 233 (N.D. Ohio 1967)).

7 **B. Sanctions**

8 Section 1927 of Title 28 of the U.S. Code prescribes:

9 Any attorney or other person admitted to conduct cases in
10 any court of the United States or any Territory thereof who so
11 multiplies the proceedings in any case unreasonably and
12 vexatiously may be required by the court to satisfy personally
the excess costs, expenses, and attorneys’ fees reasonably
incurred because of such conduct.

13 To impose sanctions under § 1927, a court must find that counsel acted either recklessly
14 or in bad faith to multiply the proceedings. B.K.B. v. Maui Police Dep’t, 276 F.3d 1091,
15 1107 (9th Cir. 2002); see also Fink v. Gomez, 239 F.3d 989, 993 (9th Cir. 2001)
16 (“[R]ecklessness suffices for § 1927 . . .”).

17 Additionally, “[c]ourts of justice are universally acknowledged to be vested, by
18 their very creation, with power to impose silence, respect, and decorum, in their
19 presence, and submission to their lawful mandates.” B.K.B., 276 F.3d at 1107–08
20 (alteration in original) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)).

21 Under this inherent judicial power, “sanctions are available if the court specifically finds
22 bad faith or conduct tantamount to bad faith . . . for a variety of types of willful actions”
23 when a party acts for an improper purpose. Fink, 239 F.3d at 994.

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1 Plaintiff also claims that “the Court considered evidence Defendant purposefully
2 suppressed.” Id. at 14. Plaintiff identifies a termination of garnishment request sent to
3 the Sheriff’s Office; a fax sent to Defendant by the Sheriff’s Office on April 20, 2016; and
4 a letter from the Sheriff’s Office to Defendant dated June 3, 2016. Id. at 9. However,
5 Defendant provided the relevant facts those documents evince on May 19, 2016, see
6 Decl. of Mitchell L. Wong, ECF No. 9-2, Ex. 12, which is almost a full month before
7 Plaintiff filed suit. Furthermore, the relevant information in those documents is related to
8 when Defendant notified the Sheriff’s Office that the garnishment of Plaintiff’s wages
9 should cease. Regardless of whether those documents were “suppressed” by
10 Defendant, Plaintiff’s counsel provides no evidence that he conducted any research into
11 whether and when the Sheriff’s Office was told to terminate the garnishment. That is,
12 Plaintiff’s argument on reconsideration does not undercut the Court’s prior statement
13 that Plaintiff only “conclusorily state[d] that she filed her complaint ‘[a]fter reasonable
14 research and investigation in[to] Plaintiff’s claims against Defendant.’” Mem.& Order, at
15 8 (second alteration in original).

16 In sum, Plaintiff’s counsel does not address the bases for sanctions outlined in the
17 Memorandum and Order imposing them, and accordingly has not shown that the
18 imposition of sanctions was clearly erroneous. Accordingly, Plaintiff’s Amended Motion
19 for Reconsideration is DENIED.

20 **B. Sanctions**

21 Defendant moves for additional sanctions under 28 U.S.C. § 1927 and the Court’s
22 inherent authority. Defendant claims sanctions are warranted because Plaintiff’s motion
23 for reconsideration “simply reiterates the same arguments that the Court already
24 rejected,” and because the motion “contains numerous false statements.” Def.’s Mot. for
25 Sanctions, at 1. Specifically, Defendant contends that the following statements made by
26 Plaintiff in her motion are false: (1) that Defendant’s only argument in support of its prior
27 motion for sanctions was that Plaintiff’s claims were barred by Guerrero; (2) that the
28 letter from the Sheriff’s Office to Defendant dated June 3, 2016, was not produced

1 before Defendant filed its prior motion for sanctions; and (3) that the recording of an
2 April 15, 2016, call was not attached to the Defendant's motion for summary judgment.
3 Id.

4 The Court finds that Plaintiff's motion for reconsideration is recklessly frivolous, so
5 as to warrant sanctions under the Court's inherent authority. See Fink, 239 F.3d at 994
6 ("Sanctions are available for a variety of types of willful actions, including recklessness
7 when combined with an additional factor such as frivolousness . . ."). Plaintiff's counsel
8 misstates the record when he claims sanctions were imposed solely because Plaintiff's
9 claims were barred by Guerrero. Indeed, even Defendant's motion for summary
10 judgment was not granted solely on that basis; the Court only noted that Plaintiff's claims
11 "fail[ed] as a matter of law under Guerrero" merely "to the extent Plaintiff's claims are
12 premised on communications with her attorney." Mem. & Order, at 7. On that same
13 page, the Court acknowledged that "Plaintiff contends that her claims are 'not based on
14 communications between counsel,'" and then addressed Plaintiff's other arguments. Id.
15 Accordingly, sanctions were imposed not because of Guerrero, but on the bases
16 outlined above.

17 Plaintiff's counsel does not contest that he misrepresented that the letter from the
18 Sheriff's Office to Defendant dated June 3, 2016, was not produced before Defendant
19 filed its prior motion for sanctions. Plaintiff's counsel does not admit the
20 misrepresentation either. Instead, in his opposition to the motion for sanctions, he now
21 simply omits the letter from a paragraph listing documents Plaintiff's counsel complains
22 were not produced. See Pl.'s Opp'n to Def.'s Mot. for Sanctions, ECF No. 29, at 4.
23 Aside from the omission of the letter, the paragraph is identical to a paragraph in the
24 motion for reconsideration, which includes it. See Am. Mot. for Recons., at 9. Plaintiff's
25 counsel also sub silentio admits that the April 15, 2016, call recording was produced
26 along with the Defendant's motion for summary judgment by shifting his complaint to
27 Defendant providing the recording "for the very first time as exhibits to the . . . motion for
28 summary judgment." Pl.'s Opp'n to Def.'s Mot. for Sanctions, at 5 (emphasis removed).

1 He then oddly backtracks two paragraphs later, stating “Defendant fails to attach the
2 April 15, 2016 recording to its motions.” Id. (emphasis removed).

3 All of these misstatements are at least reckless. Furthermore, Plaintiff’s reliance
4 on these misstatements renders Plaintiff’s motion for reconsideration frivolous, providing
5 the “additional factor” required for the Court to impose sanction under its inherent
6 authority when a party acts recklessly. Fink, 239 F.3d at 994. The Court, in its
7 discretion, imposes a sanction of \$500.

8 Defendant requests, however, \$11,555.50 in sanctions, as the attorney’s fees
9 incurred by Plaintiff’s frivolous motion. Def.’s Reply, ECF No. 30, at 5. While § 1927
10 gives this court the power to impose sanctions to “satisfy . . . the costs, expenses, and
11 attorneys’ fees reasonably incurred because” an “attorney . . . multiplies the proceedings
12 in [a] case unreasonably and vexatiously,” 28 U.S.C. § 1927, the Court declines to do
13 so. See Fink, 239 F.3d at 994 (“It is well settled . . . that the district court may, in its
14 informed discretion, rely on inherent power rather than . . . § 1927.”). Instead, especially
15 given the earlier imposition of sanctions under Rule 11, the Court finds \$500 in sanctions
16 sufficient to deter Plaintiff’s counsel’s conduct, making an award under § 1927
17 redundant. See ADO Fin., AG v. McDonnell Douglas Corp., 938 F. Supp. 590, 595
18 (C.D. Cal. 1996) (“The purpose of an attorney’s fee award is to deter undesirable
19 conduct.”). Thus, Defendant’s Motion for Sanctions is GRANTED IN PART, imposing
20 sanctions in the amount of \$500.

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CONCLUSION

For the reasons provided above, Plaintiff's Amended Motion for Reconsideration, ECF No. 22, is DENIED, and Defendant's Motion for Sanctions, ECF No. 24, is GRANTED IN PART. Plaintiff's counsel is sanctioned in the amount of \$500.

IT IS SO ORDERED.

Dated: September 12, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE