

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SAVETSKY, individually and)	Case No. 14-03514 SC
on behalf of all others similarly)	
situated,)	ORDER DENYING MOTION TO
)	<u>STRIKE</u>
Plaintiff,)	
)	
v.)	
)	
PRE-PAID LEGAL SERVICES, INC.)	
d/b/a LegalShield,)	
)	
Defendant.)	
)	
)	
)	
)	

Now before the Court is Plaintiff Michael Savetsky's motion to strike Defendant LegalShield's¹ motion for reconsideration. ECF Nos. 34 ("Recons. Mot."), 45 ("Mot. to Strike"). The motion is fully briefed, ECF Nos. 50 ("Opp'n"), 52 ("Reply"), and because it is appropriate for consideration without oral argument under Civil Local Rule 7-1(b), the hearing currently set for May 15, 2015 is VACATED. For the reasons set forth below, the motion is DENIED.

¹ Defendant is actually named Pre-Paid Legal Services, Inc., but does business as LegalShield. For simplicity the Court will refer to Defendant as LegalShield.

1 The Court previously denied LegalShield's motion to compel
2 arbitration, ECF No. 33 ("Prior Order"), concluding that Savetsky
3 had not assented to the arbitration provision contained in
4 LegalShield's membership contract. LegalShield sought
5 reconsideration partly on the basis of newly discovered facts, and
6 the Court denied the motion. ECF No. 48 ("Recons. Order"). Now,
7 Savetsky argues the Court should strike LegalShield's motion for
8 reconsideration and supporting declaration and exhibits as they are
9 "an improper attempt to lard the record for an eventual
10 appeal . . ." and contain documents and arguments "which
11 LegalShield should not be permitted to embed into an appellate
12 record." Mot. at 2.

13 Setting aside the parties' jurisdictional arguments, the Ninth
14 Circuit has clearly held that it is impermissible to grant a
15 Federal Rule of Civil Procedure 12(f) motion to strike a motion for
16 reconsideration "to keep [the movant] from improperly augmenting
17 the record for appeal" See Sidney-Vinsein v. A.H. Robins
18 Co., 697 F.2d 880, 885 (9th Cir. 1983). As the Ninth Circuit
19 pointed out, a party has a right to appeal orders denying
20 reconsideration. See id. (citing Stephenson v. Calpine Conifers
21 II, Ltd., 652 F.2d 808, 811 (9th Cir. 1981)) (additional citations
22 omitted). Yet appellate review of an order denying reconsideration
23 could be thwarted if a district court were permitted to deny the
24 motion and then, by granting a motion to strike, delete the motion
25 or supporting documents from the record. Id.

26 Savetsky attempts to distinguish Sidney-Vinsein by pointing
27 out that (1) unlike the movant in Sidney-Vinsein, he is not
28 relying on Rule 12(f) (which is expressly limited to striking

1 materials from "pleadings"), (2) courts routinely strike materials
2 outside pleadings including briefs and declarations without relying
3 on Rule 12(f), and, (3) in any event, the materials he seeks to
4 strike were "immaterial" to the Court's decision on the motion for
5 reconsideration. Reply at 5 n.1 (citing, among others, NGV Gaming,
6 Ltd. v. Harrah's Operating Co., No. 04-3955 SC, 2009 WL 2487990, at
7 *3 (N.D. Cal. Aug. 13, 2009); Frye v. The Wine Library, Inc., No.
8 06-5399 SC, 2007 WL 4208289, at *1 (N.D. Cal. Nov. 27, 2007)).
9 However, none of the cases Savetsky cites suggests that striking
10 submissions to insulate them from appellate review is permissible
11 under sources of authority other than Rule 12(f), even if the
12 stricken materials are immaterial to the denial of the motion for
13 reconsideration. On the contrary, the Ninth Circuit's concerns
14 about insulating matters from appellate review apply with equal
15 force to materials the Court considered irrelevant in denying
16 reconsideration because the Ninth Circuit may well have a different
17 view of what is relevant when it reviews the Court's orders.

18 As a result, the motion is DENIED.

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20 IT IS SO ORDERED.

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22 Dated: April 28, 2015


UNITED STATES DISTRICT JUDGE

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