

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ALFREDO LAM, et al.,
4 Plaintiffs,

5 v.

6 CITY AND COUNTY OF SAN
7 FRANCISCO, et al.,
8 Defendants.

Case No. 08-cv-04702-PJH

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 257

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10 Before the court is pro se plaintiffs Alfred Lam and Paula Leiato's motion for
11 reconsideration. Having reviewed the papers, and good cause appearing, the court
12 hereby DENIES the motion as untimely and meritless.

13 This case has been closed since April 13, 2012. On that date, the court granted
14 summary judgment in favor of defendants and entered judgment against plaintiffs. Dkt.
15 236, 237. Plaintiffs appealed to the Ninth Circuit, which affirmed on March 23, 2014.
16 Dkt. 246. The Supreme Court declined to grant certiorari on June 22, 2015. Dkt. 255.

17 Plaintiffs motion for reconsideration is made pursuant to Federal Rules of Civil
18 Procedure 59(b), 59(e), 60(b) and 60(d)(3). Plaintiffs ask the court to reconsider and
19 vacate its April 2012 summary judgment order based on "newly discovered evidence"
20 and "overlooked grounds." The motion lists 22 grounds for reconsideration, the main
21 theme being that alleged newly discovered evidence—to wit, alleged "fraud" or "wrongful
22 statements" by various defense witnesses—justifies relief from the court's prior judgment.

23 It has been over four years since judgment was entered in this case. Rule 59
24 motions must be made 28 days after the entry of judgment. Fed. R. Civ. P. 59(b), (e). To
25 the extent that plaintiffs' motion is based on Rule 59, it is DENIED as untimely.

26 Rule 60 motions must be made "no more than a year after the entry of judgment"
27 or "within a reasonable time," depending on the alleged ground for relief. Fed. R. Civ. P.
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1 60(c)(1). This one-year time limit forecloses any claim for relief from the judgment
2 based on “mistake [or] inadvertence,” “newly discovered evidence,” or “fraud . . . by an
3 opposing party.” Fed. R. Civ. P. 60(b)(1)–(3); 60(c)(1). (Plaintiffs do not appear to rely
4 on Rule 60(b)(4)–(6), and in any event, their motion was not made “within a reasonable
5 time.”) Thus, to the extent that plaintiffs’ motion is based on Rule 60(b), it is DENIED as
6 untimely.

7 The only remaining ground for relief that is not expressly time-barred is Rule
8 60(d)(3), which reflects the court’s inherent power to “set aside a judgment for fraud on
9 the court.” Fed. R. Civ. P. 60(d)(3). However, this ground is to be distinguished from
10 simple fraud by an opposing party. See In re Levander, 180 F.3d 1114, 1119 (9th Cir.
11 1999) (“[N]ot all fraud is fraud on the court.”). True “fraud on the court” requires a
12 showing by clear and convincing evidence of egregious misconduct that “does or
13 attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that
14 the judicial machinery cannot perform in the usual manner its impartial task of adjudging
15 cases that are presented for adjudication.” In re Intermagnetics America, Inc., 926 F.2d
16 912, 916 (9th Cir.1991). “Mere nondisclosure of evidence is typically not enough to
17 constitute fraud on the court, and ‘perjury by a party or witness, by itself, is not normally
18 fraud on the court.’” United States v. Estate of Stonehill, 660 F.3d 415, 444 (9th Cir.
19 2011). The allegations in plaintiffs’ motion, even if proven, amount to (alleged) perjury by
20 a witness or nondisclosure of evidence by the defense. At most, this is ordinary fraud
21 subject to Rule 60(b) and its one-year time limit, not fraud on the court.

22 For the foregoing reasons, plaintiffs’ motion for reconsideration is DENIED.

23 **IT IS SO ORDERED.**

24 Dated: January 4, 2017



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27 PHYLLIS J. HAMILTON
United States District Judge

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