

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

3
4 YANTING ZHANG,

No. C 12-1430 CW

5 Plaintiff,

ORDER DENYING

6 v.

MOTION FOR

RECONSIDERAION AND

MOTION FOR LEAVE

TO FILE MOTION FOR

RECONSIDERATION

(Docket Nos. 40,

41)

7 SAFECO INS. CO. OF AMERICA, INC.
8 and LEONARD BAINES,

9 Defendants.

10
11 Plaintiff Yanting Zhang moves for reconsideration of the
12 Court's May 2013 order granting summary judgment to Defendant
13 Safeco Insurance Company of America, Inc. She also moves under
14 Civil Local Rule 7-9 for leave to file the motion for
15 reconsideration. Defendant has not filed an opposition to either
16 motion. After considering Plaintiff's submissions, the Court
17 denies both motions.

18 BACKGROUND

19 Plaintiff brought this action against Safeco in February
20 2012. In her complaint, she alleged that the company had breached
21 its contract to provide insurance coverage for a property that she
22 owned in Richmond, California. Specifically, Plaintiff alleged
23 that Safeco failed to compensate her adequately for damage caused
24 to the property by a series of vandalism incidents between June
25 2009 and January 2010.

26 In May 2013, this Court granted Safeco's motion for summary
27 judgment. Docket No. 37, Order Granting Defendant's Motion for
28 Summary Judgment, at 12. The Court found that Plaintiff had not

1 presented any evidence to dispute Safeco's estimate of the
2 property damage and failed to produce a timely damage estimate of
3 her own.¹ Id. at 8-11. The Court also found that Plaintiff
4 failed to present any evidence that she continued to possess an
5 insurable interest in the property after the first vandalism
6 occurred in June 2009; in fact, Plaintiff openly admitted that she
7 sold the property the week that the first vandalism occurred,
8 thereby terminating Safeco's contractual obligations to provide
9 coverage for any of the damage resulting from subsequent incidents
10 of vandalism. Id. Based on these undisputed facts, the Court
11 granted summary judgment to Safeco on all claims. Id. at 12.
12 Judgment was entered on May 1, 2013.

13 Four weeks later, on May 29, Plaintiff filed a motion for
14 reconsideration of the summary judgment order. Docket No. 40. In
15 her motion, she asserted that she had recently obtained a damage
16 estimate from a licensed contractor whom she had hired to inspect
17 the property in July 2009, a month after the initial vandalism.
18 She argues that this "newly-discovered evidence warrants
19 reconsideration of the ruling." Id. at 3.

20 On July 3, 2013, five weeks after filing the motion for
21 reconsideration, Plaintiff moved for leave to file a motion for
22 reconsideration. Docket No. 41. The motion reiterated the same
23 grounds for seeking reconsideration as her prior motion,
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26 ¹ Although Plaintiff submitted a damage estimate dated August 12,
27 2010, this estimate was based on an inspection that took place more than
28 a year after Safeco produced its initial damage estimate. During the
interim period, Plaintiff sold the property and the property was
vandalized several more times. Accordingly, the August 2010 estimate
was not sufficient to raise a dispute of material fact.

1 highlighting the recently obtained damage assessment from July
2 2009.

3 DISCUSSION

4 I. Motion for Leave to File a Motion for Reconsideration

5 Plaintiff seeks leave to file a motion for reconsideration
6 under Civil Local Rule 7-9. That rule permits a party to move for
7 reconsideration only after obtaining leave of the court to do so.
8 Civil L.R. 7-9(a). However, the rule also makes clear that such a
9 request may be made only if the court has not yet entered a final
10 judgment. Id. ("Before the entry of a judgment adjudicating all
11 of the claims and the rights and liabilities of all the parties in
12 a case, any party may make a motion before a Judge requesting that
13 the Judge grant the party leave to file a motion for
14 reconsideration of any interlocutory order made by that Judge."
15 (emphasis added)).

16 As noted above, Plaintiff sought leave to file a motion for
17 reconsideration in July 2013, more than two months after the Court
18 entered its final judgment in this case. Accordingly, Plaintiff's
19 request for leave to file a motion for reconsideration must be
20 denied.

21 II. Motion for Reconsideration

22 Because Plaintiff failed to obtain leave of the Court to file
23 a motion for reconsideration under Civil Local Rule 7-9, she may
24 not seek reconsideration under that rule. She may, however, seek
25 reconsideration under Federal Rules of Civil Procedure 59(e) and
26 60(b), both of which allow a party to seek relief from a final
27 order or judgment. Although Plaintiff fails to cite either of
28 these rules in her motion, the Court nevertheless construes her

1 request for reconsideration as arising under these rules. See
2 Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991)
3 ("Although the [plaintiffs] never indicated which Federal Rule of
4 Civil Procedure governed their motion, a motion for
5 reconsideration of summary judgment is appropriately brought under
6 either Rule 59(e) or Rule 60(b).").

7 Under Rule 59(e), a party may move "to alter or amend a
8 judgment" within twenty-eight days of the entry of judgment.²
9 Fed. R. Civ. P. 59(e). "A Rule 59(e) motion is appropriate 'if
10 the district court: (1) is presented with newly discovered
11 evidence, (2) committed clear error or the initial decision was
12 manifestly unjust, or (3) if there is an intervening change in
13 controlling law.'" Circuit City Stores, Inc. v. Mantor, 417 F.3d
14 1060, 1064 n.1 (9th Cir. 2005) (citing Sch. Dist. No. 1J,
15 Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.
16 1993)). Rule 60(b) similarly allows a party to seek
17 reconsideration of a "final judgment, order, or proceeding" when
18 one of the following is shown: "(1) mistake, inadvertence,
19 surprise or excusable neglect; (2) newly discovered evidence that,
20 with reasonable diligence, could not have been discovered in time
21 to move for a new trial under Rule 59(b); (3) fraud (whether
22 previously called intrinsic or extrinsic), misrepresentation, or
23 misconduct by an opposing party; (4) the judgment is void; (5) the
24 judgment has been satisfied, released or discharged . . .; or
25 (6) any other reason justifying relief." Fed. R. Civ. P. 60(b).

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² Plaintiff satisfied the twenty-eight day requirement here.

1 Here, Plaintiff seeks reconsideration solely on the basis of
2 "newly discovered evidence" -- specifically, the recently obtained
3 July 2009 damage estimate which, she contends, contradicts
4 Safeco's damage estimate. Although Rule 59(e) and Rule 60(b) each
5 recognize "newly discovered evidence" as a basis for seeking
6 reconsideration, the same standard applies under either rule. See
7 11 Wright, Miller & Kane, Fed. Prac. & Proc. § 2808 (3d ed. 2013)
8 ("The same standard applies for establishing this ground for
9 relief, whether the motion is under Rule 59 or 60(b)(2)."). Under
10 that standard, the party seeking reconsideration must show that he
11 or she "exercised 'due diligence' to discover [the newly
12 discovered] evidence" and that the evidence is "of such magnitude
13 that production of it earlier would have been likely to change the
14 disposition of the case." Coastal Transfer Co. v. Toyota Motor
15 Sales, U.S.A., 833 F.2d 208, 211 (9th Cir. 1987). Plaintiff has
16 not met either of these requirements in this case.

17 First, Plaintiff has not established that she exercised "due
18 diligence" in trying to obtain the July 2009 damage estimate
19 before filing her summary judgment brief. Although she asserts
20 that the contractor she hired to produce the damage estimate
21 relocated to a different part of the state without sending her a
22 copy of the estimate, Zhang Decl. ¶¶ 4-7, she does not explain why
23 she was unable to locate him until this year, nearly four years
24 after she hired him and more than a year after she initiated this
25 action. Further, the means by which she ultimately found the
26 contractor -- namely, entering his name into Google and finding
27 his business's website, id. ¶ 9 -- suggests that she could have
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1 found him much sooner with minimal effort.³ Thus, Plaintiff's
2 failure to obtain the damage estimate until after the entry of
3 judgment reveals a lack of reasonable diligence and precludes
4 reconsideration under Rules 59(e) and 60(b). Coastal Transfer,
5 833 F.2d at 212 ("Evidence is not 'newly discovered' under the
6 Federal Rules if it was in the moving party's possession at the
7 time of trial or could have been discovered with reasonable
8 diligence.").

9 Second, even if Plaintiff had exercised reasonable diligence
10 in trying to obtain the 2009 damage estimate, it would not have
11 changed the outcome of this case. Plaintiff has already admitted
12 that she never provided Safeco with a copy of her contractor's
13 damage estimate in 2009, as she was obliged to do if she wanted to
14 dispute Safeco's original estimate. See Docket No. 37, at 9
15 ("[Plaintiff] also admitted that she never formally disputed
16 Safeco's repair estimate by submitting a conflicting estimate from
17 a licensed contractor, despite Safeco's invitation to do so."
18 (citing Plaintiff's deposition)). Her recent assertion that she

19 _____
20 ³ The Court notes that Plaintiff's account of her efforts to obtain
21 the 2009 damage estimate contains various inconsistencies. For
22 instance, Plaintiff never explains why she stopped trying to obtain the
23 damage estimate from the contractor in 2009 after she hired him
24 specifically to produce the estimate. Nor does she explain why she
25 declined to hire another contractor to repair the property after she
26 lost contact with the first contractor. Nor does she explain why she
27 failed to mention the July 2009 damage estimate to Safeco until after
28 she commenced this litigation. Nor does she explain why she told Safeco
in December 2009 that it would cost \$60,000 to repair the damage from
the first two vandalisms if she had a July 2009 estimate stating that it
would cost \$119,000 to repair the damage from the first vandalism alone.
See Docket No. 26-2, Ives Decl. ¶ 8, Ex. 5. Nor does she explain how
she was able to remember the contractor's name this year when she
previously testified at her deposition that she "couldn't recall his
name" and "couldn't recognize his name now." Zhang Decl., Ex. 1, Zhang
Depo. 55:1-:10. Nevertheless, despite these inconsistencies, the Court
accepts her assertions as true for the purposes of this motion.

1 did not receive a copy of the estimate until this year merely
2 confirms that she failed to provide the estimate to Safeco
3 immediately after the vandalism.

4 What's more, the damage estimate Plaintiff now seeks to
5 submit is dated July 23, 2009 -- two weeks after she called Safeco
6 to contest its damage estimate. Calderon Decl., Ex. 1, at 2. As
7 explained in the summary judgment order, Plaintiff called Safeco
8 on July 10, 2009 and "complained that her contractors thought
9 [Safeco]'s estimate was too low." Docket No. 37, at 2-3. This is
10 the only communication between Safeco and Plaintiff in the record
11 where Plaintiff ever mentioned hiring her own contractors to
12 assess the damage from the first vandalism. Thus, because this
13 call occurred before the contractor had produced his damage
14 estimate -- and, it appears, before he had even inspected
15 Plaintiff's property⁴ -- Plaintiff could not have been referring
16 to this estimate during the call.

17 In sum, there is no evidence in the record to suggest that
18 Plaintiff discussed the July 2009 damage estimate with Safeco, let
19 alone provided Safeco with a copy of the estimate, prior to her
20 filing this lawsuit. Thus, even if Plaintiff had submitted the
21 estimate earlier, it would not have been enough to support an
22 inference that Safeco ignored contrary evidence in producing its
23 damage estimate or otherwise breached its policy. Accordingly,
24 this "newly discovered evidence" does not provide grounds for
25 reconsideration of the Court's May 2013 summary judgment order.

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28 ⁴ The July 2009 estimate identifies July 15, 2009 as the date when
the contractor entered the property. Calderon Decl., Ex. 1, at 2.

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CONCLUSION

For the reasons set forth above, Plaintiff's motion for reconsideration (Docket No. 40) and motion for leave to file a motion for reconsideration (Docket No. 41) are DENIED.

IT IS SO ORDERED.

Dated: 11/14/2013



CLAUDIA WILKEN
United States District Judge