

1
2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 JUDY MAY,
8 Plaintiff,
9 v.
10 GOOGLE LLC, et al.,
11 Defendants.

Case No. [24-cv-01314-BLF](#)

**ORDER DENYING GOOGLE’S
MOTION FOR RECONSIDERATION
OF THE COURT’S JULY 17, 2024,
ORDER ON GOOGLE’S MOTION TO
STAY DISCOVERY AND VACATING
HEARING**

[Re: ECF No. 83-1]

12 Defendants Google LLC, Google Arizona LLC, and Google Payment Corp. (collectively,
13 “Google”)¹ filed the Motion for Reconsideration seeking reconsideration of the Court’s Order
14 granting in part and denying in part their motion to stay discovery. ECF 83-1. Plaintiff Judy May
15 (“May”) filed an opposition. ECF 89. The Court finds this motion appropriate for disposition
16 without oral argument. *See* Civil Local Rule 7-1(b). After considering the moving and responding
17 papers and the relevant record, the Court DENIES Google’s Motion for Reconsideration and
18 VACATES the hearing set for January 2, 2025.

19 **I. BACKGROUND**

20 In April 2021, May fell victim to a gift card scam involving Google Play gift cards. ECF 1,
21 ¶ 95. On March 5, 2024, May filed a complaint alleging violations of the California Unfair
22 Competition Law (“UCL”), Cal. Bus. Prof. Code § 17200 *et seq.*, the California Consumers Legal
23 Remedy Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.*, and Cal. Penal Code § 496 (“Section 496”),
24 and conversion against Google. ECF 1. On May 13, 2024, Google filed a motion to dismiss. ECF
25 39. On July 17, 2024, the Court granted in part and denied in part Google’s Motion to Stay Discovery
26

27
28 ¹ Plaintiff has dismissed without prejudice claims against Alphabet, Inc. subject to a tolling
agreement. *See* ECF 52.

1 Until Resolution of Motion to Dismiss. ECF 53. The Court ordered that “Plaintiff may seek
2 discovery for the class period consistent with the statute of limitations for that claim.” *Id.* at 5. On
3 September 26, 2024, the Court hosted a hearing on Google’s motion to dismiss. ECF 76. On
4 November 4, 2024, the Court granted in part and denied in part Google’s motion to dismiss. ECF
5 87. The Court dismissed May’s claim No. 5 for receiving, retaining, withholding, or concealing
6 stolen property in violation of Cal. Penal Code § 496 to the extent it seeks treble damages without
7 leave to amend, and dismissed May’s remaining claims with leave to amend. *See id.*

8 **II. LEGAL STANDARD**

9 Trial courts have inherent power to reconsider, set aside, or amend interlocutory orders at
10 any time prior to entry of a final judgment. Fed. R. Civ. P. 54(b). The substantive standard governing
11 reconsideration of an interlocutory order is the same as that which governs motions to alter or amend
12 judgment under Federal Rule of Civil Procedure 59(e). Motions for reconsideration are disfavored
13 and “should not be granted, absent highly unusual circumstances, unless the district court is
14 presented with newly discovered evidence, committed *clear error*, or if there is an intervening
15 change in the controlling law.” *McDowell v. Calderon*, 197 F.3d 1253, 1254 (9th Cir. 1999) (per
16 curiam) (internal quotation and citation omitted). Furthermore, “[a] motion for reconsideration
17 ‘may not be used to raise arguments or present evidence for the first time when they could
18 reasonably have been raised earlier in the litigation.’” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma*
19 *GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting *Kona Enters., Inc. v. Estate of Bishop*,
20 229 F.3d 877, 890 (9th Cir. 2000)).

21 The Northern District of California also has local rules governing motions for
22 reconsideration. A motion for reconsideration may be made on three grounds: (1) a material
23 difference in fact or law exists from that which was presented to the court, which, in the exercise of
24 reasonable diligence, the moving party did not know at the time of the order for which
25 reconsideration is sought; (2) the emergence of new material facts or a change of law; or (3) a
26 manifest failure by the court to consider material facts or dispositive legal arguments. Civ. L.R. 7-
27 9(b). The moving party may not reargue any written or oral argument previously asserted to the
28 court. Civ. L.R. 7-9(c).

1 **III. DISCUSSION**

2 Google argues that the Court and the parties “are aware of new facts that warrant
3 reconsideration” of the Court’s prior order because May “has not pled a cognizable legal theory,”
4 and “will be required to amend her Complaint.” ECF 83-1 at 2. In doing so, Google restates its
5 arguments in its motion to dismiss that its limitation of liability included in the gift card terms of
6 service may dispose all of May’s claims, that May has failed to identify any legal duty requiring
7 Google to investigate every scam claim, and that May has failed to adequately plead her Section
8 496, UCL, and conversion claims. *See id.* at 2-4. Google also argues that it is prejudiced because
9 May still insists on production for discovery even though she “must amend [her complaint] in order
10 to state a viable theory.” *See id.* at 4-5.

11 May opposes Google’s motion. ECF 89. May argues that there is no change in circumstances
12 because Google’s prior motion to dismiss was not dispositive and does not warrant a stay in
13 discovery. *Id.* at 1-2. May states that she will “amend the complaint to address the Court’s concerns.”
14 *Id.* at 2. May also argues that a stay in discovery may imperil the settlement process and other
15 deadlines set by the Court. *Id.* at 3-4. May further argues that Google would not be prejudiced to
16 comply with the discovery requests because her discovery requests are reasonable. *Id.* at 4-5.

17 Having considered the parties’ arguments, the Court DENIES Google’s Motion for
18 Reconsideration. The Court finds that there is no change in circumstances that warrants a stay of
19 discovery. First, Google assumes that even if the Court finds that May has failed to adequately plead
20 all her claims, the Court would not grant Plaintiff leave to amend. Here, the Court freely gave May
21 leave to amend nearly all her claims. ECF 87. Thus, Google’s prior motion to dismiss is not
22 dispositive, and Google has not shown that an amendment of the complaint would be futile. *See*
23 *Palantir Techs. Inc. v. Abramowitz*, No. 19-cv-6879-BLF, 2020 WL 13548687, at *3 (N.D. Cal.
24 Jan. 30, 2020) (denying motion to stay because the Court may give plaintiff leave to amend its
25 complaint); ECF 87. The Court notes that the amended complaint has not yet been filed, nor has a
26 new motion to dismiss been filed. Thus, the Court cannot find that a stay of discovery is warranted.

27 Second, Google has not demonstrated that a denial of the stay would be prejudicial or
28 burdensome. May correctly states that Google’s speculation that May cannot cure the deficiencies

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


is insufficient to support its assertion that it is prejudiced without a stay in discovery. ECF 89 at 4-5; *see* ECF 83-1 at 5; *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co., Ltd.*, No. 16-cv-6370, 2018 WL 1569811, at *2 (N.D. Cal. Feb. 16, 2018) (denying motion to stay discovery because “[d]efendants have not offered a particularized showing describing why discovery in this case is any more burdensome than it is on parties to other civil litigations”).

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

Google’s motion for reconsideration of the Court’s July 17, 2024, order on Google’s motion to stay discovery is DENIED; and the January 2, 2025 hearing is VACATED.

Dated: November 25, 2024



BETH LABSON FREEMAN
United States District Judge