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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAJMP, INC.; JOAN M. POLITTE;
MERRILL LYNCH BUSINESS
FINANCIAL SERVICES, INC.;
CHICAGO TITLE COMPANY; TBC
CORPORATION; SC TELECOM, LLC;
WELLS FARGO BANK, N.A.; PACIFIC
WESTERN BANK; OUTFRONT
MEDIA, INC.; HALLE PROPERTIES,
L.L.C.; POFACO, INC.; COUNTY OF
SAN DIEGO; MIDAS REALTY
CORPORATION; KELLY M. POLITTE
as the Personal Representative of the
ESTATE OF ROBERT A. POLITTE;
TED R. POLITTE as the Personal
Representative of the ESTATE OF
ROBERT A. POLITTE,

Defendants.

Case No.: 17-cv-00515-AJB-WVG

**ORDER DENYING DEFENDANT
JOAN M. POLITTE'S MOTION TO
RECONSIDER ORDER (DKT. #172)
PURSUANT TO FED. R. CIV. P. 54(b)**

(Doc. No. 182)

1 Pending before the Court is Defendant Joan M. Politte’s motion to reconsider order
2 (Dkt. #172) pursuant to Fed. R. Civ. P. 54(b). (Doc. No. 174.) As will be explained in
3 greater detail below, the Court **DENIES** Joan M. Politte’s motion to reconsider.

4 **BACKGROUND**

5 This action is brought by the United States to (1) reduce to judgment certain
6 outstanding federal tax assessments against Defendant RAJMP; (2) collect RAJMP’s
7 federal tax liabilities from property of Defendants the Estate of Robert A. Politte and Joan
8 M. Politte as RAJMP’s past and/or present alter egos; (3) adjudicate that POFACO is
9 Robert A. Politte and/or Joan M. Politte’s nominee; and (4) foreclose federal tax liens on
10 several real properties at issue. (Doc. No. 79 ¶ 1.) The United States alleges that RAJMP
11 has failed to pay federal employment taxes for 29 consecutive tax periods and has failed to
12 pay federal unemployment taxes since 1998. (*Id.* ¶ 69.)

13 On or about May 23 and May 24, 2007, the Internal Revenue Service (“IRS”)
14 recorded Notices of Federal Tax Lien identifying Robert A. Politte and Joan M. Politte as
15 alter egos of RAJMP with respect to RAJMP’s unpaid federal tax liabilities. (Doc. No. 122
16 at 7.) Thereafter, the Polittes sold two residential condominiums to which the tax liens
17 applied and, accordingly, the net proceeds of the sales were paid to the IRS. (*Id.*) On
18 October 4, 2007, the Polittes filed a complaint with this Court against the United States
19 requesting a refund for the net proceeds of the sales of the condominiums. (*Id.*) The United
20 States did not assert a claim or counterclaim in the Polittes’ action. (Doc. No. 115-1 at 9.)
21 This Court held in favor of the United States and determined that the Polittes were alter
22 egos of RAJMP. (Doc. No. 122 at 8.) The Polittes appealed this Court’s decision. (Doc.
23 No. 119-1 at 6.) The Ninth Circuit affirmed this Court’s decision in full. (*Id.*) The Supreme
24 Court denied certiorari. (Doc. No. 125 at 29.)

25 On March 15, 2017, the United States filed a complaint against Defendants. (*See*
26 *generally* Doc. No. 1.) Thereafter, several joint motions to dismiss parties were filed and
27 granted. (Doc. Nos. 24, 50, 58, 61, 63, 64, 75.) On August 9, 2017, the United States filed
28 an amended complaint against Defendants. (*See generally* Doc. No. 79.) Mrs. Politte filed

1 an answer to the amended complaint on August 30, 2017. (Doc. No. 86.) RAJMP filed an
2 answer to the amended complaint on August 31, 2017. (Doc. No. 89.) Thereafter, several
3 motions for summary judgment were filed on February 28, 2018. (Doc. Nos. 115, 116,
4 119.) The Court denied Defendants Mrs. Politte’s and RAJMP’s motions for summary
5 judgment and granted Plaintiff’s partial motion for summary judgment. (Doc. No. 142.)
6 Defendants then filed an ex parte motion for reconsideration. (Doc. No. 144.) The Court
7 granted in part and denied in part Defendants’ motion for reconsideration and issued an
8 amended order denying Defendants’ motions for summary judgment and granting
9 Plaintiff’s motion for partial summary judgment. (Doc. Nos. 145, 146.) The Court then
10 denied Mrs. Politte’s motion to certify the order denying Mrs. Politte’s motion for summary
11 judgment for interlocutory review. (Doc. No. 172.) Now Mrs. Politte has filed the instant
12 motion to reconsider the order denying Mrs. Politte’s motion to certify the order for
13 interlocutory appeal. (Doc. No. 174.)

14 **LEGAL STANDARD**

15 District courts have the inherent authority to entertain motions for reconsideration
16 of interlocutory orders. *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir. 1996)
17 (“[I]nterlocutory orders ... are subject to modification by the district judge at any time prior
18 to final judgment.”); *see also* Fed. R. Civ. P. 54(b); *Balla v. Idaho State Bd. of Corr.*, 869
19 F.2d 461, 465 (9th Cir. 1989). Absent highly unusual circumstances, “[r]econsideration is
20 appropriate if the district court (1) is presented with newly discovered evidence, (2)
21 committed clear error or the initial decision was manifestly unjust, or (3) if there is an
22 intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS,*
23 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also Beal v. Royal Oak Bar*, No. 13-cv-04911-
24 LB, 2016 WL 3230887, at * 1–2 (N.D. Cal. June 13, 2016); *In re: Incretin Mimetics Prods.*
25 *Liab. Litig.*, No. 13md2452 AJB (MDD), 2014 WL 12539702, at *1 (S.D. Cal. Dec. 9,
26 2014); *Verinata Health, Inc. v. Sequenom, Inc.*, No. C 12-00865 SI, 2014 WL 4076319, at
27 *2 (N.D. Cal. Aug. 18, 2014); *Hydranautics v. FilmTec Corp.*, 306 F. Supp. 2d 958, 968
28 (S.D. Cal. 2003).

1 this Court’s Order denying her motion for summary judgment. As the Court has previously
2 outlined in its Order denying the motion to certify an order for interlocutory appeal, the
3 Court must find that “such order involves a controlling question of law as to which there
4 is substantial ground for difference of opinion and that an immediate appeal from the order
5 may materially advance the ultimate termination of litigation.” 28 U.S.C. § 1292(b); *In re*
6 *Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 2002). While the Court appreciates
7 the cost of litigation, the expenses Mrs. Politte may incur is not a persuasive factor to certify
8 an order for interlocutory appeal.

9 Second, Mrs. Politte reiterates her same argument stating Federal Rule Civil
10 Procedure Rule 13(a) is a separate and distinct issue from other claims and defenses raised
11 in this litigation. Whether or not that is true, that argument does not change the Court’s
12 finding that immediate appeal would not materially advance the litigation’s end nor is there
13 substantial ground for difference of opinion on the question of whether the Government’s
14 claims were compulsory counterclaims in the previous litigation.

15 Third, Mrs. Politte advances the same argument she has now presented in her motion
16 for summary judgment, her motion for reconsideration of the order denying her summary
17 judgment motion, and her motion to certify the order for interlocutory appeal. For the
18 fourth time, the Court finds Mrs. Politte’s case law unpersuasive and finds again that there
19 is not substantial ground for a difference of opinion on the question of whether the
20 Government’s claims against Mrs. Politte were compulsory counterclaims. Mrs. Politte
21 asserts that the Court did not consider *Aronson* in its order denying to certify the order for
22 interlocutory appeal, that *Aronson* establishes a circuit split, and thus, a difference of
23 opinion exists among jurists. (Doc. No. 174 at 8.) While the Court did not address *Aronson*
24 in its Order denying to certify the order for interlocutory appeal, this case does not prove
25 there is a circuit split or a difference of opinion. *See U.S. v. Aronson*, 617 F.2d 119, 121
26 (5th Cir. 1980). Furthermore, the Fifth Circuit Court of Appeals directly stated that it was
27 not necessary for them to decide whether Congress intended that Rule 13(a) apply to claims
28 by the Government for taxes. *Id.* Further, the Fifth Circuit reversed the district court’s

1 holding that the Government’s claim should have been asserted as a counterclaim in the
2 refund suit. *Id.* The Fifth Circuit’s conclusion is, therefore, the opposite of the outcome
3 Mrs. Politte is seeking in this litigation. This Court did not make a mistake of law by stating
4 that there is not substantial ground for a difference of opinion of whether the Government’s
5 claim against Mrs. Politte were compulsory counterclaims in the previous action.

6 Further, Mrs. Politte argues that she does not have to prove a circuit split, but rather
7 she may prove that fair-minded jurists might reach differing conclusions. In *Reese v. BP*
8 *Exploration (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011), the Ninth Circuit held that
9 “when novel legal issues are presented, on which fair-minded jurists might reach
10 contradictory conclusions, a novel issue may be certified for interlocutory appeal without
11 first awaiting development of contradictory precedent.” Mrs. Politte also filed a notice of
12 supplemental authority in which she argues that *United States v. Widtfeldt*, 124 A.F.T.R.
13 2d 2019-5936, 2019 WL 4450693 (D. Nebr. Sept. 17, 2019) supports her position that res
14 judicata applies in federal tax litigation, and thus again establishes that there is an issue
15 present in which jurists might reach contradictory conclusions. In *Widtfeldt*, the United
16 States argued that res judicata applied after the tax court had rendered a final judgment on
17 the merits. *Id.* at *2. The Court in *Widtfedlt* relies upon *Baptiste v. Comm’r of Internal*
18 *Revenue*, 29 F.3d 433, 436 (8th Cir. 1994) in holding that res judicata applies to the field
19 of federal taxation. *Id.* However, both *Baptiste* and *United States v. International Bldg.*
20 *Co.*, 345 U.S. 502 (1953), which the Eighth Circuit cites to in *Baptiste*, involved previous
21 decisions by the tax court. Here, that is simply not the case. A tax court has not decided
22 any of these issues rather Mrs. Politte seeks to utilize res judicata to prevent the
23 Government from asserting the current claims as they were allegedly compulsory
24 counterclaims in the previous litigation. Accordingly, the Court finds the Nebraska District
25 Court case unpersuasive in establishing that fair-minded jurists differ regarding the issue
26 presented in this case and inapplicable to the current issue.

27 Furthermore, other district courts in the Ninth Circuit have reached the same
28 conclusion as this Court. *See United States v. Gonzales for Estates of Gonzales*, No. 17-


1 01523 SBA, 2018 WL 3054886, at *5 n.3 (N.D. Cal. June 20, 2018); *Sequoia Prop. &*
2 *Equip. Ltd. P'ship v. United States*, No. CV-F-97-5044-LJO, 2000 WL 1728117, at *9
3 (E.D. Cal. Oct. 4, 2000). Mrs. Politte has failed to establish that a novel legal issue in which
4 fair-minded jurists might reach contradictory conclusions has been established in this
5 litigation. Therefore, the Court affirms its previous Order that there is no substantial ground
6 for difference of opinion on the question of whether the Government's claims were
7 compulsory counterclaims in the previous litigation.

8 **CONCLUSION**

9 Based on the foregoing, the Court **DENIES** Defendant Joan M. Politte's motion to
10 reconsider its order denying to certify its order granting in part and denying in part motions
11 for summary judgment for interlocutory review.

12
13 **IT IS SO ORDERED.**

14 Dated: November 19, 2019

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16 Hon. Anthony J. Battaglia
17 United States District Judge
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