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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JASON BROOKS,

Plaintiff,

v.

TARSADIA HOTELS, 5th ROCK, LLC,
MKP ONE, LLP, TUSHAR PATEL, B.U.
PATEL, GREGORY CASSERLY,
PLAYGROUND DESTINATION
PROPERTIES, INC. AND DOES 1-50,

Defendants.

Case No.: 18cv2290-GPC(KSC)

**ORDER DENYING PLAINTIFF’S
MOTION FOR
RECONSIDERATION AND
CLARIFICATION**

[Dkt. No. 110.]

Before the Court is Plaintiff Jason Brooks’ (“Mr. Brooks”) motion for reconsideration and clarification of the Court’s order adopting report and recommendation granting Defendants’ amended motion to enforce settlement agreement. (Dkt. No. 110.) Defendants Tarsadia Hotels, 5th Rock, LLC, MKP One, LLC and Gaslamp Holdings, LLC’s (“Tarsadia Defendants”) filed a response.¹ (Dkt. No. 112.)

¹ Defendants included Tarsadia Defendants and Playground Destination Properties, Inc. (“Playground”). In response to the motion for reconsideration only Tarsadia Defendants filed an opposition.

1 Plaintiff filed a reply. (Dkt. No. 113.) Based on the reasoning below, the Court
2 DENIES Plaintiff’s motion for reconsideration and clarification.

3 **Background**

4 On February 4, 2021, the Court adopted the Magistrate Judge’s report and
5 recommendation granting Defendants’ amended motion to enforce settlement agreement.
6 (Dkt. No. 104.) After a review of the record surrounding the settlement agreement,
7 which included the defense counsel’s declaration, the Magistrate Judge’s minute order
8 following the ENE, the Magistrate Judge’s recollection and recitation of facts in the R&R
9 and the May 21, 2020 status hearing transcript, the Court concluded that Mr. Brooks was
10 fully informed and orally agreed to the terms of the settlement before the Magistrate
11 Judge at the ENE. (*Id.* at 16.²) Per the terms of the settlement agreement, the Court also
12 directed that within one week “Tarsadia Defendants shall deposit \$75,000 with the Clerk
13 of the Court by check made payable to the ‘Clerk of Court, U.S. District Court, Southern
14 District of California,’ to be held in an interest-bearing account pending further order of
15 the Court.” (*Id.* at 16-17.) Further, the Court granted Plaintiff until April 15, 2021 “to
16 file his motion and briefing on how the Settlement Amount should be distributed based
17 on controlling law and the restitution order against him.” (*Id.*) On February 16, 2021,
18 Tarsadia Defendants filed a notice indicating they submitted the settlement check to the
19 Clerk of Court.³ (Dkt. No. 108.)

20 On March 2, 2021, Plaintiff filed a motion for reconsideration making numerous
21 arguments that the settlement agreement was procured by fraud by the Magistrate Judge.
22 (Dkt. No. 110.) It is not entirely clear but it appears that Plaintiff seeks to rescind the
23 settlement agreement arguing that there was never an agreement to settle because he
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26 ² Page numbers are based on the CM/ECF pagination.

27 ³ The Court granted Tarsadia Defendants’ request for extension of time to submit the settlement amount
28 to the Clerk of Court because they did not receive a copy of the unredacted order until February 12,
2021. (Dkt. Nos. 106, 107.) The deadline for submitting payment was redacted from the redacted
version publicly filed on February 5, 2021. (Dkt. No. 106.)

1 informed the Magistrate Judge he agreed to settle the case only if the settlement funds
2 would go to his sister or charity but not to pay the restitution against him in his
3 underlying conviction. (*Id.* at 6.) In response, Defendants argue there is no basis for
4 reconsideration as the Court already considered these same arguments that Plaintiff raises
5 in his reconsideration motion. (Dkt. No. 112.)

6 Discussion

7 A. Legal Standard on Motion for Reconsideration

8 Plaintiff does not provide the relevant legal standard for his motion for
9 reconsideration. In any event, a district court may reconsider a prior order under either
10 Federal Rule of Civil Procedure (“Rule”) 59(e) or Rule 60(b). *Sch. Dist. No. 1J,*
11 *Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). Under Rule
12 59(e), reconsideration is “appropriate if the district court (1) is presented with newly
13 discovered evidence; (2) committed clear error or the initial decision was manifestly
14 unjust, or (3) if there is an intervening change in controlling law.” *Id.* at 1263; *see also*
15 *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013). A court commits clear
16 error when “the reviewing court on the entire record is left with the definite and firm
17 conviction that a mistake has been committed.” *Smith*, 727 F.3d at 955 (quoting *United*
18 *States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

19 Rule 60(b) “provides for reconsideration only upon a showing of (1) mistake,
20 surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void
21 judgment; (5) a satisfied or discharged judgment; or (6) ‘extraordinary circumstances’
22 which would justify relief.” *Sch. Dist. No. 1J, Multnomah Cty., Or.*, 5 F.3d at 1263
23 (quoting *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991)).

24 A motion for reconsideration is an “extraordinary remedy, to be used sparingly in
25 the interests of finality and conservation of judicial resources.” *Kona Enters. v. Estate of*
26 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion for reconsideration cannot be used
27 to raise arguments or present evidence for the first time when they could reasonably have
28 been raised earlier in the litigation. *Id.*

1 In addition, Local Civil Rule 7.1(i)(1) provides that a motion for reconsideration
2 must include:

3 an affidavit or certified statement of a party or attorney setting forth the
4 material facts and circumstances surrounding each prior application,
5 including inter alia: (1) when and to what judge the application was made,
6 (2) what ruling or decision or order was made thereon, and (3) what new and
7 different facts and circumstances are claimed to exist which did not exist, or
8 were not shown upon such prior application.

9 Local Civ. R. 7.1(i)(1).⁴

10 **B. Analysis**

11 Plaintiff moves for reconsideration but identifies no new facts, no intervening
12 change in law, no extraordinary circumstances or showing that the Court committed clear
13 error in order to justify relief from the Court’s prior order. Instead, he disagrees with the
14 Court’s ruling and repeats arguments raised in his objections to the R&R that were
15 already considered by the Court.⁵

16 First, Mr. Brooks argues that the Court cited no precedent where a court enforced
17 an oral settlement agreement against a pro se plaintiff who vehemently protested the

18 ⁴ Tarsadia Defendants argue the Court should deny the reconsideration motion because Mr. Brooks
19 failed to comply with Local Civil Rule 7.1(i)(1). (Dkt. No. 112 at 4-5.) Mr. Brooks replies that he does
20 not have access to the local rules and when he asked for them from the Clerk’s office, he received a bill
21 to pay for them. (Dkt. No. 113 at 3.) Because Mr. Brooks claims he does not have access to the Local
22 Rules and has already provided the information required by the Local Rule in his motion, a declaration
23 is not necessary.

24 ⁵ Because the validity of the settlement agreement is based on the Magistrate Judge’s recollection of
25 events, in the motion for reconsideration, Mr. Brooks seeks to discredit, malign and challenge the
26 Magistrate Judge, but does not provide any evidentiary proof. Accordingly, the Court declines to
27 consider Plaintiff’s numerous allegations against the Magistrate Judge claiming she “lied, destroyed
28 evidence of her lies”, “conspire[d]”, “fabricated [her] ‘recollection’”, “plotted. . . her trap”, engaged in
“despicable conduct”, and was “unfair” as unsupported. Moreover, his reliance on another case where
the Magistrate Judge oversaw a settlement does not provide support she is biased against him. (Dkt. No.
113 at 3-4 (citing *Holt v. Macarthur*, 11cv1502-GPC(KSC), 2014 WL 940327 (S.D. Cal. Mar. 10,
2014).) In that case, the Court adopted the Magistrate Judge’s R&R granting the defendants’ motion to
enforce settlement agreement and there, the Court found there was no undue influence imposed on the
Defendant to settle the case. *Holt*, 2014 WL 940327, at *4. In this case, Plaintiff does not allege undue
influence on him by the Magistrate Judge to settle the case.

1 terms of the agreement and one that was not recorded or placed on the record. (Dkt. No.
2 110 at 3, 7.) As the Court explained in its order, in California, an oral settlement
3 agreement made before the court is enforceable even if not on the record as long as there
4 is substantial evidence that supports the existence and term of a settlement agreement.
5 (Dkt. No. 104 at 8-9 (citing *Karpinsky v. Smitty's Bar, Inc.*, 246 Cal. App. 4th 456, 461
6 (2016); *Kohn v. Jaymar-Ruby, Inc.*, 23 Cal. App. 4th 1530, 1533-34 (1994).) In
7 California “[w]hen parties orally agree upon all the terms and conditions of an agreement
8 with the mutual intention that it shall thereupon become binding, the mere fact that a
9 formal written agreement to the same effect is to be prepared and signed does not alter
10 the binding validity of the oral agreement.” *Kohn*, 23 Cal. App. at 1534 (citation
11 omitted). In this case, the Magistrate Judge facilitated the settlement agreement reached
12 at the early neutral evaluation conference and also presided over the motion to enforce
13 settlement agreement. Because the ENE conference was not recorded, the Magistrate
14 Judge was permitted and in fact relied on her recollection of events. Moreover, the
15 Magistrate Judge’s order following the ENE corroborates the Magistrate Judge’s
16 recitation of the terms of the settlement agreement. (Dkt. No. 72.) The order states that a
17 settlement had been reached at the ENE conference and provided the salient terms of the
18 settlement agreement which included drafting and the exchange of a written settlement
19 agreement, payment by Tarsadia Defendants of the settlement funds to the Clerk of Court
20 and the filing of a motion before the undersigned judge by Mr. Brooks “delineating how
21 plaintiff believes the settlement funds should be distributed based on applicable law and
22 in consideration of any restitution order entered against him in connection with his
23 conviction.” (*Id.* at 2.) Further, defense counsel’s declaration as well as the transcript of
24 the telephonic status hearing held on May 21, 2020 provide additional support for the
25 terms of the settlement agreement. (Dkt. No. 77-1, Moses Decl.; Dkt. No. 90, Trans.)
26 Based on this record, the Court concluded Mr. Brooks fully understood and orally agreed
27 to the terms of the settlement before the Magistrate Judge at the ENE conference and the
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1 parties entered into a legally binding settlement agreement. (Dkt. No. 104 at 16.)

2 Therefore, the Court’s ruling is supported by California caselaw.

3 Next, Mr. Brooks argues that the doctrine of “contra proferentem⁶” requires that
4 any ambiguities be resolved against the drafter. (Dkt. No. 110 at 11.) However, contra
5 proferentem applies to insurance contracts and Mr. Brooks has not demonstrated this
6 theory applies to this case. *See Kunin v. Benefit Trust Life Ins. Co.*, 910 F.2d 534, 539
7 (9th Cir. 1990); *Eley v. Boeing Co.*, 945 F.2d 276, 280 (1991) (“contra proferentem is
8 strictly applied in the interpretation of insurance contracts”). But, “a settlement
9 agreement is analyzed in the same manner as any contract, i.e., any ambiguities are
10 construed against the drafter.” *Erdman v. Cochise Cnty., Ariz.*, 926 F.2d 877, 880 (9 Cir.
11 1991).

12 Plaintiff argues there is ambiguity because Defendants were not even involved in
13 the oral settlement agreement and evidence was lost or intentionally concealed. (Dkt. No.
14 110 at 11.) Therefore, the Magistrate Judge’s recollection must yield to Plaintiff’s
15 reasonable interpretation. (*Id.*) Plaintiff does not identify an ambiguity as to any terms
16 of the settlement agreement. Instead, there is a disputed fact issue on whether Mr.
17 Brooks required that the settlement funds go to his sister, to charity or to pay his
18 restitution. Therefore, Mr. Brooks’ second argument is not persuasive.

19 Mr. Brooks next maintains that his due process rights were violated because the
20 Magistrate Judge failed to advise him at the ENE that the oral settlement agreement was
21 enforceable and because he is incarcerated in Colorado, he was unaware of the ENE
22 process. (Dkt. No. 110 at 10-11.) Tarsadia Defendants respond that Mr. Brooks was give
23 full notice as to the ENE. (Dkt. No. 112 at 6.) On February 26, 2020, the Magistrate
24 Judge issued an order and provided detailed information about the upcoming ENE
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27 ⁶ Contra proferentem is a principle of insurance contract construction “that when one party is
28 responsible for the drafting of an instrument, absent evidence indicating the intention of the parties, any
ambiguity will be resolved against the drafter.” *Kunin v. Benefit Trust Life Ins. Co.*, 910 F.2d 534, 539
(9th Cir. 1990).

1 conference and included a section about the purpose of the ENE Conference which is “to
2 permit an informal discussion between the attorneys, parties, and the Magistrate Judge of
3 every aspect of the lawsuit in an effort to achieve an early resolution of the case. All
4 ENE Conference discussions will be informal, off the record, privileged and
5 confidential.” (Dkt. No. 64 at 2.) Moreover, at the ENE conference, the Magistrate
6 Judge recited the terms of the settlement with all parties on the line and asked each party
7 and counsel to verbally confirm that the stated terms accurately represented the
8 settlement reached. (Dkt. No. 94 at 4.) Plaintiff confirmed the terms orally on the record
9 and did not express any objections to the terms. (*Id.*) Therefore, Plaintiff’s argument that
10 he did not understand the ENE process and that settlement agreements consummated at
11 the ENE conference would not be enforceable are without merit.

12 Next, Brooks argues that the Court did not consider his pro se status and liberally
13 construe his “reasonable understanding” of the settlement as well as his inability to
14 access the law library making his briefing “incomplete at best.” (Dkt. No. 110 at 9-10,
15 12-13.) During this case, the Court has been cognizant that Mr. Brooks is a pro per
16 litigant and his arguments have been liberally construed in a prior opposition brief to a
17 motion. (*See* Dkt. No. 37 at 36-37.) In addition, liberal construction applies to a pro se’s
18 arguments contained in pleadings and briefs and not the Court’s consideration of
19 evidence. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (courts are to construe the
20 “inartful pleading” of pro se litigants); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting
21 *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (“It is settled law that the allegations of [a
22 pro se litigant's complaint] ‘however inartfully pleaded’ are held ‘to less stringent
23 standards than formal pleadings drafted by lawyers . . .”)); *Davis v. Silva*, 511 F.3d 1005,
24 1009 n.4 (9th Cir. 2008) (“[T]he Court has held pro se pleadings to a less stringent
25 standard than briefs by counsel and reads pro se pleadings generously, ‘however
26 inartfully pleaded.’”); *see also Neitzke v. Williams*, 490 U.S. 319, 330 n. 9 (1989) (stating
27 that obligation of courts to liberally construe pro se pleading “applies only to a plaintiff’s
28 factual allegations”).

1 Mr. Brooks provides no legal authority that the Court must accept his version of
2 the facts that do not have any evidentiary support against substantial evidence that
3 supports the existence and terms of a settlement agreement.

4 Mr. Brooks' additional argument that he has not had access to the law library and
5 therefore his briefing is incomplete is not persuasive. As an initial matter, Mr. Brooks
6 has timely filed his briefs in this case without seeking leave for an extension of time.
7 Moreover, his briefs contain numerous arguments with numerous citations to caselaw.
8 Further, if Mr. Brooks had concerns about the completeness of his brief, he could have
9 filed a request to continue briefing deadlines but he did not.

10 Finally, he argues that Defendants breached the terms of the settlement agreement
11 by failing to deposit the settlement funds with the Court. (Dkt. No. 110 at 13-14.) This
12 was already addressed in the Court's order and Mr. Brooks provides no legal reasons why
13 the Court should reconsider this issue. (Dkt. No. 104 at 15 n.7.)

14 Therefore, because Plaintiff has not demonstrated any reasons that the Court
15 should reconsider its order, the Court DENIES Plaintiff's motion for reconsideration.

16 In addition to seeking reconsideration, Plaintiff seeks clarification of the motion he
17 is to file before this Court and also seeks an indefinite extension of time to file the motion
18 until he has access to the law library. (Dkt. No. 110 at 15.) Mr. Brooks asserts he is
19 unsure what he is to brief because the Magistrate Judge's order is conflicting. While the
20 R&R states that Plaintiff would brief the applicability of the PSLRA to determine the
21 appropriate recipient of the settlement funds, (Dkt. No. 93 at 3:8-12 (UNDER SEAL)),
22 the Magistrate Judge expanded that briefing to also include how plaintiff believes
23 settlement funds should be distributed based on applicable law and the restitution order
24 entered against him in his underlying conviction. (*Id.* at 11:2-5.) He also seeks
25 clarification as to whether federal or state law applies.

26 According to the terms of the Settlement Agreement, Plaintiff is to brief "the issue
27 of the proper recipient of the settlement funds" and "how the Settlement Amount would
28 be directed based on controlling law and a restitution order against him." (Dkt. No. 93 at

1 3-4 (UNDER SEAL); Dkt. No. 84-1, Moses Am Decl. ¶ 5 (UNDER SEAL).) That could
2 include applicability of the PSRA or any other legal basis. At this stage, the Court
3 declines to provide any further legal guidance or advisory opinions on the motion
4 Plaintiff will be filing concerning how the settlement funds are to be distributed. *See*
5 *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (“federal courts established pursuant to
6 Article III of the Constitution do not render advisory opinions.”). Accordingly, the Court
7 DENIES Plaintiff’s request for clarification.


8 The Court also DENIES Plaintiff’s request for an indefinite extension of time to
9 file his motion but will grant him an extension of time until **August 15, 2021**. In the
10 event Plaintiff needs additional time, he shall file a request for an extension of time
11 explaining the status of his access to the law library.

12 **Conclusion**

13 Based on the above, the Court DENIES Plaintiff’s motion for reconsideration and
14 clarification. Plaintiff is granted an extension of time until **August 15, 2021** “to file his
15 motion and briefing on how the Settlement Amount should be distributed based on
16 controlling law and the restitution order against him.” (Dkt. No. 104 at 17.) The hearing
17 set on May 14, 2021 shall be **vacated**.

18 IT IS SO ORDERED.

19 Dated: May 11, 2021



20 Hon. Gonzalo P. Curiel
21 United States District Judge