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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT RAYA,
Plaintiff,

Case No.: 19-cv-2295-WQH-AHG

ORDER

v.

DAVID BARKA; NOORI BARKA;
EVELYN BARKA; CALBIOTECH,
INC.; CALBIOTECH, INC. 401(k)
PROFIT SHARING PLAN;
CALBIOTECH, INC. PENSION PLAN,
Defendants.

DAVID BARKA; NOORI BARKA;
EVELYN BARKA; CALBIOTECH,
INC.; CALBIOTECH, INC. 401(k)
PROFIT SHARING PLAN;
CALBIOTECH, INC. PENSION PLAN,
Counter Claimants,

v.

ROBERT RAYA,
Counter Defendant.

1 HAYES, Judge:

2 The matters before the Court are the Motion for Declaratory and Injunctive Relief
3 filed by Defendants David Barka, Noori Barka, Evelyn Barka, Calbiotech, Inc.
4 (“Calbiotech”), Calbiotech, Inc. 401(k) Profit Sharing Plan (the “401(k) Plan”), and
5 Calbiotech, Inc. Pension Plan (the “Pension Plan”), (ECF No. 130), and the third Motion
6 for Reconsideration filed by Plaintiff Robert Raya (ECF No. 135).

7 **I. BACKGROUND**

8 On December 2, 2019, Plaintiff Robert Raya, proceeding pro se, filed a Complaint
9 against Defendants. (ECF No. 1.) On December 9, 2020, Plaintiff filed a First Amended
10 Complaint (“FAC”). (ECF No. 39.) On June 17, 2021, Defendants filed an Answer to the
11 FAC and a counterclaim for breach of contract. (ECF No. 46.) On September 8, 2021,
12 Plaintiff filed the operative Second Amended Complaint (“SAC”). (ECF No. 64.) The SAC
13 alleges that Defendants engaged in illegal conduct relating to the administration of the
14 Pension Plan and 401(k) Plan and unlawfully terminated Plaintiff in retaliation for his
15 requests for plan documents. The SAC brings four claims against Defendants under the
16 Employee Retirement Income Security Act of 1974 (“ERISA”).

17 On March 28, 2022, the Court issued an Order (the “Summary Judgment Order”)
18 granting Defendants summary adjudication on “(1) the first claim in the SAC; (2) the
19 second and third claims in the SAC to the extent those claims assert ERISA violations
20 relating to the Pension Plan; and ([3]) the second and third claims in the SAC to the extent
21 those claims seek payment of benefits under the 401(k) Plan to Plaintiff.” (ECF No. 114 at
22 36.) The Order further dismissed the fourth claim in the SAC for ERISA interference
23 brought against Defendant Noori Barka.

24 On April 25, 2022, and June 15, 2022, Plaintiff filed successive Motions for
25 Reconsideration of the Summary Judgment Order. (ECF Nos. 116, 120.) On June 30, 2022,
26 the Court issued an Order denying the first Motion for Reconsideration. (ECF No. 123.)
27 On August 8, 2022, the Court issued an Order denying the second Motion for
28 Reconsideration (ECF No. 127.)

1 On September 8, 2022, Defendants filed the Motion for Declaratory and Injunctive
2 Relief. (ECF No. 130.) The motion requests that the Court issue a declaratory judgment
3 “that Plaintiff has no legal right to submit any additional claims under the Pension Plan”
4 and permanently enjoin Plaintiff “from submitting any further claims under the Pension
5 Plan” or “engaging in any further direct communications with
6 Defendants/Counterclaimants.” *Id.* at 5, 7.

7 On September 30, 2022, Plaintiff filed the third Motion for Reconsideration. (ECF
8 No. 135.) The motion requests that the Court grant reconsideration of the Summary
9 Judgment Order.

10 On October 3, 2022, Plaintiff filed a Response in opposition to the Motion for
11 Declaratory and Injunctive Relief. (ECF No. 136.) On October 11, 2022, Defendants filed
12 a Reply. (ECF No. 137.)

13 On October 24, 2022, Defendants filed a Response in opposition to the third Motion
14 for Reconsideration. (ECF No. 138.) On October 31, 2022, Plaintiff filed a Reply. (ECF
15 No. 140; *see also* Raya Decl. in Support of Reply, ECF No. 139.)

16 **II. MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

17 In their Motion for Declaratory and Injunctive Relief, Defendants contend that
18 Plaintiff has repeatedly engaged in direct communication with Defendants regarding
19 Plaintiff’s attempt to file a new “frivolous” claim for benefits under the Pension Plan. (ECF
20 No. 137 at 2.) Defendants contend that Plaintiff does not have the right to submit new
21 claims for benefits under the Pension Plan because the Court previously determined that
22 Plaintiff lacked standing to bring his legal claims related to the Pension Plan. Defendants
23 further contend that Plaintiffs’ communication with Defendants violates the California
24 Rules of Professional Conduct, which prohibit communication about the subject of the
25 representation with represented parties. Defendants request that the Court issue a
26 declaratory judgment “that Plaintiff has no legal right to submit any additional claims under
27 the Pension Plan” and permanently enjoin Plaintiff “from submitting any further claims
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1 under the Pension Plan” or “engaging in any further direct communications with
2 Defendants/Counterclaimants.” (ECF No. 130-1 at 5, 7.)

3 In support of their Motion for Declaratory and Injunctive Relief, Defendants present
4 a series of emails between Plaintiff, Defendants, and defense counsel. The evidence reflects
5 that on August 18, 2022, Plaintiff sent an email to Defendants David and Noori Barka
6 containing an attached letter requesting enrollment in the Pension Plan. (See ECF No. 130-
7 9.) The attached letter raises arguments in support of Plaintiff’s request that have been
8 previously addressed in this litigation. On August 26, 2022, defense counsel responded to
9 Plaintiff’s emails, requesting that any communication be sent to defense counsel and not
10 directly to Defendants. (See ECF No. 130-4.) On August 30, 2022, Plaintiff responded to
11 defense counsel, stating that ERISA requires “that all benefits requests be sent to the Plan
12 Administrator” and that Plaintiff intended to continue communicating directly with
13 Defendants “until a judge orders otherwise.” (ECF No. 130-6 at 2.) On September 1, 2022,
14 Plaintiff sent a further email to David and Noori Barka. (ECF No. 130-7.)

15 Plaintiff contends that granting Defendants’ requested relief “is not appropriate at
16 this stage” because there has been no final judgment in this case. (ECF No. 136 at 5-6.)
17 Plaintiff contends that the Court’s previous adjudication of Plaintiff’s claims relating to the
18 Pension Plan does not prohibit him from “bring[ing] new legitimate claims to the Plan
19 Administrator.” *Id.* at 5. Plaintiff contends that ERISA requires the direct communication
20 at issue. Plaintiff contends that he was not aware of the California Rule of Professional
21 Conduct cited by Defendants.

22 Declaratory and permanent injunctive relief are remedies that are only available to a
23 party that has prevailed on a claim that the party affirmatively asserted in its pleadings. *See*
24 28 U.S.C. § 2201 (authorizing declaratory relief “upon the filing of an appropriate
25 pleading”); *Kam-Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA)*
26 *Inc.*, 560 F.3d. 935, 943 (9th Cir. 2009) (“[A] party may not make a *motion* for declaratory
27 relief, but rather, the party must bring an *action* for a declaratory judgment.” (emphasis in
28 original) (quotation omitted)); *cf. Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810

1 F.3d 631, 636 (9th Cir. 2015) (“[T]here must be a relationship between the injury claimed
2 in the motion for [preliminary] injunctive relief and the conduct asserted in the underlying
3 complaint.”) However, in this case, Defendants have not prevailed on their sole claim for
4 breach of contract and the requested relief in the pending motion does not relate to that
5 claim. While the Court has granted summary adjudication in favor of Defendants on
6 Plaintiff’s Pension Plan claims, the rejection of Plaintiff’s claims does not entitle
7 Defendants to the affirmative remedies they request. Defendants’ request for declaratory
8 and injunctive relief is denied.

9 While Defendants are not entitled to declaratory or injunctive relief, the Court has
10 the power to ensure compliance with applicable rules. *See, e.g.*, CivLR 83.1. Defendants
11 contend that Plaintiff’s conduct violates Rule 4.2 of the California Rules of Professional
12 Conduct. Rule 4.2 states: “In representing a client, a lawyer shall not communicate directly
13 or indirectly about the subject of the representation with a person the lawyer knows to be
14 represented by another lawyer in the matter, unless the lawyer has the consent of the other
15 lawyer.” Cal. R. Prof’l Conduct 4.2(a). The evidence presented by Defendants
16 demonstrates that Defendants are represented parties, that defense counsel has not given
17 Plaintiff consent to communicate directly with Defendants, and that Plaintiff’s
18 communications concern the subject of this litigation.

19 However, Rule 4.2 does not explicitly apply to Plaintiff, who is a nonlawyer.
20 Comment 3 to Rule 4.2 further states:

21 This rule, however, does not prevent represented persons from
22 communicating directly with one another with respect to the subject of the
23 representation The rule also does not prohibit a lawyer who is a party to a
24 legal matter from communicating on his or her own behalf with a represented
person in that matter.

25 Comment 3 to Cal. R. Prof’l Conduct 4.2(a). Several courts have concluded that
26 California’s prohibition on communication with a represented party does not apply to a
27 nonlawyer party proceeding pro se. *See Ewing v. Flora*, No. 14cv2925 AJB (NLS), 2015
28 WL 5177772, at *3 (S.D. Cal. Aug. 26, 2015) (determining that Rule 2-100, the

1 predecessor to Rule 4.2, did not apply to the party at issue, who was “not a licensed attorney
2 and represent[ed] himself pro se”); *Zaffina v. Superior Court*, No. B220112, 2010 WL
3 654996, at *2 (Cal. Ct. App. Feb. 25, 2010) (unpublished) (same); *ING Bank, FSB v.*
4 *Fazah*, No. CIV S-09-1174 WBS EFB PS, 2009 WL 3824751, at *4 (E.D. Cal. Nov. 16,
5 2009) (same). The Court concludes that these decisions strike the appropriate balance
6 between preserving a party’s prerogative to resolve its own disputes and protecting the
7 opposing party’s attorney-client relationship from undue interference. The Court finds that
8 Plaintiff has not violated Rule 4.2.

9 **III. THIRD MOTION FOR RECONSIDERATION**

10 Plaintiff requests reconsideration of the Court’s determination in the Summary
11 Judgment Order that Defendants were entitled to partial summary adjudication on
12 Plaintiff’s first three claims. Plaintiff contends that the Court failed to consider the
13 following material facts in its Summary Judgment Order: (1) that the “2008 Amendment
14 does not exist in the original complete Pension Plan Documents that the Plan Administrator
15 sent to [Plaintiff] on September 19, 2018”; and (2) that the 2008 Amendment “contains the
16 name of an employee ... who was unknown to [Calbiotech] at the time the 2008
17 Amendment was purportedly executed. (ECF No. 135 at 10, 12.) Plaintiff contends that
18 Defendants failed to demonstrate that the 2008 Amendment was legally enforceable or
19 dispute that the 2008 Amendment did not exist in prior productions of Pension Plan
20 documents. Plaintiff contends that the Court “erred by applying internal claim deadlines to
21 ... claims in this action that were not part of [Plaintiff’s] 2018 internal claim for benefits.”
22 *Id.* at 14. Plaintiff contends that his motion is not untimely, he has exercised reasonable
23 diligence, Defendants will not suffer any prejudice if reconsideration is granted, and
24 reconsideration is necessary to avoid injustice and preserve judicial economy.

25 Defendants contend that Plaintiff’s motion is untimely. Defendants contend that the
26 Court has “extensively considered” the facts raised by Plaintiff. (ECF No. 138 at 8.)
27 Defendants contend that “Plaintiff continues to employ the same arguments which this
28 Court has previously acknowledged, disagreed with, and outright rejected on numerous

1 occasions in issuing its multitude of prior orders.” *Id.* at 9. Defendants contend that
2 “Plaintiff’s internal administrative claim and appeal addressed all 401(k) benefits that
3 Plaintiff is seeking by way of this lawsuit” and that even if that were not the case, Plaintiff
4 would be required to exhaust his administrative remedies as to claims for any additional
5 benefits. *Id.* at 11. Defendants further dispute Plaintiff’s contention that he engaged in due
6 diligence.¹

7 Rule 54(b) of the Federal Rules of Civil Procedure “explicitly grant courts the
8 authority to modify their interlocutory orders.” *Balla v. Idaho State Bd. Of Corr.*, 869 F.2d
9 461, 465 (9th Cir. 1989). To determine the merits of a request to reconsider an interlocutory
10 order, district courts in this circuit apply the standard for Rule 59(e) reconsideration
11 motions. *See, e.g., Cooney v. California*, No. 13-cv-01373-BAS (KSC), 2015 WL
12 3952184, at *1 (S.D. Cal. June 29, 2015); *Cincinnati Ins. Co. v. Harry Johnson Plumbing*
13 *& Excavating Co., Inc.*, No. 16cv5090-LRS, 2017 WL 5639944, at *1 (E.D. Wash. Oct.
14 23, 1997).

15 Reconsideration under Rule 59 is “an extraordinary remedy, to be used sparingly in
16 the interest of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate*
17 *of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quotation omitted). “Whether or not to grant
18 reconsideration is committed to the sound discretion of the court.” *Navajo Nation v.*
19 *Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir.
20 2003). “Reconsideration is appropriate if the district court (1) is presented with newly
21 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
22 or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. ACandS,*
23 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration “may *not* be used to
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26 ¹ Defendants request that the Court “take whatever action it deems appropriate against Plaintiff to prevent
27 further misconduct ... and this unnecessary relitigating and rehashing of matters which this Court has
28 previously and appropriately resolved.” (ECF No. 138 at 5.) As the Court previously stated, any request
for sanctions “must be made separately from any other motion and must describe the specific conduct” that is
allegedly sanctionable. Fed. R. Civ. P. 11(c)(2). The Court declines to impose sanctions sua sponte and will
consider the potential imposition of sanctions on any party when such a request is properly made and briefed.

1 raise arguments or present evidence for the first time when they could reasonably have
2 been raised earlier in the litigation.” *Kona Enters.*, 229 F.3d at 890 (emphasis in original).
3 A motion for reconsideration is likewise not a vehicle for relitigating issues that have been
4 previously adjudicated. *See Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001) (stating
5 that granting a party a “second bite at the apple” is “not the purpose of Rule 59”).

6 In issuing the Summary Judgment Order, the Court thoroughly considered the
7 evidence and arguments presented by Plaintiff at that time. The Court again considered
8 Plaintiff’s objections on the merits in issuing the Order denying the first Motion for
9 Reconsideration, despite finding that Plaintiff had failed to demonstrate the existence of
10 any newly discovered evidence. Plaintiff had a third opportunity to present additional
11 arguments and evidence in his second Motion for Reconsideration. To the extent that
12 Plaintiff now seeks to relitigate issues previously addressed by the Court, such as the
13 authenticity of the 2008 Amendment, the Court finds that Plaintiff’s arguments and
14 evidence fail to demonstrate the existence of any clear error or manifest injustice. To the
15 extent that Plaintiff raises additional arguments for the first time, such as his assertion that
16 certain claims were not part of the internal administrative claim, Plaintiff has advanced no
17 compelling reason why he was unable to raise these arguments previously.² Plaintiff’s third
18 Motion for Reconsideration is denied.

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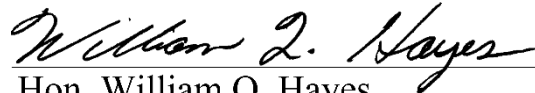
27 ² Further, Plaintiff’s arguments are facially unsound on the merits. For instance, even if Plaintiff was
28 correct that certain claims were not part of his internal administrative claim, Plaintiff does not address
why he would be able to bring such unexhausted claims in this action.

1 **IV. CONCLUSION**

2 IT IS HEREBY ORDERED that Defendants’ Motion for Declaratory and Injunctive
3 Relief (ECF No. 130) is denied.

4 IT IS FURTHER ORDERED that Plaintiff’s third Motion for Reconsideration (ECF
5 No. 135) is denied.

6 Dated: November 30, 2022



Hon. William Q. Hayes
United States District Court

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