

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KEITH HUNTER, an individual, and  
ELAINE HUNTER, an individual

Plaintiffs,

v.

BANK OF AMERICA, N.A., et al.,

Defendants.

No. 2:16-cv-01718-RAJ

ORDER

**I. INTRODUCTION**

THIS MATTER comes before the Court on Defendant Bank of America N.A.’s Motion for Reconsideration, Dkt. 113, and Motion for Leave to File Supplemental Brief in Support of Motion for Reconsideration, Dkt. 131. Having reviewed the motions, record, and relevant law, the Court **DENIES** both motions.

**II. BACKGROUND**

On March 11, 2021, the Court issued an order on four motions: (1) Plaintiffs Elaine and Keith Hunter’s (“Plaintiffs”) motion for partial summary judgment against Defendants Bank of America N.A. (“BANA”), Nationstar Mortgage LLC (“Nationstar”),

1 and HSBC Bank USA N.A. as Trustee for Merrill Lynch Mortgage Investors, Inc.,  
2 Mortgage Pass-Through Certificates, MANA Serious 2007-OAR2 (“HSBC”), Dkt. 76;  
3 (2) BANA’s motion for summary judgment, Dkt. 90; (3) Nationstar’s cross-motion for  
4 summary judgment, Dkt. 91; and (4) HSBC’s cross-motion for summary judgment, Dkt.  
5 93.

6 On March 25, 2021, BANA timely filed a motion for reconsideration of the  
7 Court’s March 11, 2021 order, specifically in denying BANA’s motion for summary  
8 judgment and granting in part and denying in part Plaintiffs’ motion for partial summary  
9 judgment on liability. Dkt. 113. Almost nine months later, on December 23, 2021,  
10 BANA filed a motion for leave to file a supplemental brief in support of the motion for  
11 reconsideration. Dkt. 131. BANA proffered a recorded conversation between BANA  
12 employee Paul Mills and Plaintiffs as new evidence warranting a supplemental brief. *Id.*  
13 The Court addresses each motion in turn, beginning with the latter.

### 14 III. DISCUSSION

15 Motions for reconsideration are governed by Local Rule 7(h), which provides the  
16 following:

17 Motions for reconsideration are disfavored. The court will ordinarily deny such  
18 motions in the absence of a showing of manifest error in the prior ruling or a  
19 showing of new facts or legal authority which could not have been brought to its  
20 attention earlier with reasonable diligence.

21 Local Rules W.D. Wash. LCR 7(h)(1). A motion for reconsideration must be filed within  
22 fourteen days after the order to which it relates is filed. W.D. Wash. LCR 7(h)(2).

#### 23 A. Motion for Leave to File Supplemental Brief in Support of Motion for 24 Reconsideration

25 BANA filed timely filed its motion for reconsideration within the fourteen-day  
26 window imposed by LCR 7(h). BANA filed its motion for leave supplement the motion,  
27 however, almost nine months past the deadline. BANA argues that good cause exists to

1 grant such a request based on newly discovered evidence. Dkt. 131 at 2. BANA is  
2 correct that one of the purposes of a motion for reconsideration is to allow the Court to  
3 consider new facts which could not have been brought to its attention earlier with  
4 reasonable diligence. However, local rules require that such a motion be filed within  
5 fourteen days of the order to which it relates. The Court therefore denies BANA's  
6 motion for leave to file a supplemental brief in support of the motion for reconsideration,  
7 Dkt. 131, as untimely.

8 Even if the Court were to consider the alleged newly discovered evidence  
9 discussed in BANA's motion for leave to supplement, the Court finds that BANA's  
10 motion fails to establish a basis for reconsideration. BANA claims that newly discovered  
11 evidence, in the form of a tape recording and transcript of a conversation between  
12 Plaintiffs and former BANA employee Paul Mills that occurred in February 2012,  
13 establishes that (1) Plaintiffs understood their payment obligations and (2) BANA  
14 informed Plaintiffs about those obligations and the negative amortization of their loan.  
15 *Id.* Dkt. 131-1 at 3. The Court finds that this conversation does not constitute evidence  
16 that would change the Court's prior conclusions.

17 In its prior order, the Court documented BANA's inconsistent and inaccurate  
18 representations regarding the amount due. Dkt. 111 at 10-13. BANA does not dispute  
19 this. Instead, BANA argues that its own inconsistent representations were not, in fact, the  
20 cause of Plaintiffs' confusion regarding the amount due—rather, Plaintiffs' confusion  
21 regarding the negative amortization and the change in payment “stemmed from [Plaintiff  
22 Keith Hunter's] incorrect reading of the loan terms.” Dkt. 131-1 at 4. BANA claims that  
23 in the recorded conversation with Mr. Mills, the Hunters “admitted that they were  
24 informed of the payment change and chose not to comply because they believed it was  
25 based on BANA making a mistake,” and that they were not making the requested  
26 payments “because they disagreed on what was owed.” *Id.* at 6. BANA argues that such  
27 admissions contrast with Mr. Hunter's Declaration regarding Plaintiffs' confusion and

1 lack of “clear instruction” from BANA, resulting from being “told to pay different  
2 amounts at different times by different people.” *Id.* (citing Dkt. 79 at 2, ¶ 4).

3         However, a review of the transcript reveals no such contrast. Indeed, Mr. Hunter  
4 told Mr. Mills that after Plaintiffs were notified that the loan had matured, Mrs. Hunter  
5 called BANA to find out the new payment amount. Dkt. 132-2 at 27; 9-11. Mr. Hunter  
6 explained that Mrs. Hunter “got ahold of about 20 different people and got 20 different  
7 answers.” *Id.* at 27:11-12. Finally, he explained, Mrs. Hunter was informed by a BANA  
8 representative to pay a certain amount, which she did. *Id.* at 27;14-19. When the check  
9 was returned to them, Mr. Hunter told Mrs. Hunter to “hold on a second, don’t do  
10 anything until we figure this out . . . [s]omething’s wrong and we need to get it  
11 straightened out.” *Id.* at 27:25-28:4. The Court finds no substantial conflict between Mr.  
12 Hunter’s Declaration and his statements in the recorded conversation with Mr. Mills, and  
13 certainly none that would render the Court’s prior judgment on the related issues  
14 incorrect. This newly produced conversation in no way reveals any dispute of fact that  
15 precludes summary judgment with respect to Plaintiffs’ CPA claim, or Plaintiff’s Breach  
16 of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing claims with  
17 respect to BANA’s failure to provide proper notice of payment changes. BANA’s  
18 request to file a supplemental brief in support of its motion for reconsideration based on  
19 this recorded conversation is DENIED.

## 20 **B. Motion for Reconsideration**

21         In BANA’s timely filed motion for reconsideration, Dkt. 113, BANA argues that  
22 “genuine issues of material fact are in dispute which preclude summary judgment in  
23 favor of Plaintiffs on the claims in this litigation,” and that the deposition of Plaintiff  
24 Keith Hunter, which was not completed until after the dispositive motions were filed,  
25 should be reviewed and considered now. Dkt. 113 at 2.

26         With respect to its alleged issues of material fact, BANA first argues that the  
27 Court erred in ruling that Plaintiffs’ CPA claim was timely. *Id.* at 4. The Court has

1 already ruled on this matter twice, *see* Dkt. 27, 111, and declines to reiterate its reasoning  
2 a third time given BANA’s failure to present new facts or legal authority compelling a  
3 different result. BANA argues that testimony by Mr. Mills regarding the loan  
4 modification process contrasts with Plaintiffs’ claims and is an issue of fact that  
5 precludes summary judgment. Dkt. 113 at 4, 9-10. This issue was already raised by  
6 BANA and considered by the Court in its prior ruling. *See* Dkt. 89 at 8 (“At no point in  
7 time did BANA employee Paul D. Mills promise a loan modification to Plaintiffs”). A  
8 motion for reconsideration is not an opportunity for parties to relitigate issues with the  
9 same arguments and facts raised in prior motions. Reconsideration of the timeliness of  
10 the CPA claim is unwarranted, and the motion to reconsider this issue is denied.

11 BANA next argues that genuine issues of fact regarding the causation of Plaintiffs’  
12 injuries preclude summary judgment on the CPA claim. Dkt. 113 at 5-6. The Court  
13 again finds no basis for reconsideration of its ruling on this element as BANA fails to set  
14 forth any new facts or legal authority which could not have been brought to its attention  
15 earlier. While BANA may disagree with the Court’s ruling, it has failed to demonstrate  
16 manifest error in the prior ruling. Similarly, the Court finds that BANA’s disagreements  
17 with the Court’s rulings on the breach of contract claim, *id.* at 10-12, and the breach of  
18 the implied covenant of good faith and fair dealing claim, *id.* at 13, fail to demonstrate  
19 manifest error or present new facts or legal authority that could not have been presented  
20 earlier with reasonable diligence.

21 BANA’s claim that summary judgment is precluded because Plaintiffs have not  
22 established damages as a matter of law is also unavailing. *Id.* at 12. BANA argues that  
23 no damages have been established in the breach of contract claim because “[t]here is no  
24 evidence that exists that Plaintiffs ever attempted to pay the listed amounts.” *Id.* The  
25 Court need not address this argument as it is yet another improper effort to relitigate an  
26 issue. Nonetheless, the Court reiterates its prior conclusion that damages have been  
27 established “in the form of accumulated interest and late charges at minimum” for

1 purposes of summary judgment. Dkt. 111 at 17. The amount of damages has not been  
2 decided by the Court, but rather reserved for the factfinder. BANA makes no showing of  
3 manifest error with respect to this ruling.

4 Finally, the Court concludes that Mr. Hunter's deposition does not compel a  
5 reversal of the Court's prior rulings. The Court finds that BANA's allegations that Mr.  
6 Hunter's testimony reveals disputed material fact related to timeliness, causation, and  
7 injury are baseless. *See* Dkt. 113 at 2, n. 1. The Court's prior rulings are not contingent  
8 on any of the alleged disputes of material fact in his testimony, and BANA has  
9 demonstrated no manifest error in any of the Court's conclusions of law. BANA's  
10 motion for reconsideration, Dkt. 113, is therefore DENIED.

11 **IV. CONCLUSION**

12 For the reasons stated above, the Court **DENIES** BANA's Motion for  
13 Reconsideration, Dkt. 113, and **DENIES** BANA's Motion for Leave to File  
14 Supplemental Brief in Support of Motion for Reconsideration, Dkt. 131.

15  
16 DATED this 6th day of January, 2022.

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20 The Honorable Richard A. Jones  
21 United States District Judge