

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10
11 JANICE HENNESSEY,

12 Plaintiff,

13 v.

14 AMERICREDIT FINANCIAL SERVICES
INC et al.,

15 Defendants.

CASE NO. 3:24-cv-05145-DGE

ORDER DENYING MOTION FOR
RELIEF FROM JUDGMENT (DKT.
NO. 54) AND RELATED
MOTIONS (DKT. NOS. 58, 66, 69)

16
17 **I INTRODUCTION**

18 Before the Court is Plaintiff's Motion for Relief from Order and Judgment and Request
19 for Indicative Ruling Under Rule 62.1(A) (Dkt. No. 54) ("Motion for Relief from Judgment"),
20 her Motion for Judicial Notice in support of the Motion for Relief from Judgment (Dkt. No. 58),
21 a Motion for Leave to File a Supplemental Motion for Relief Under Rule 15(d) and Rule
22 60(b)(2) (Dkt. No. 66), and finally, a Motion for a Protective Order and Preliminary Injunctive
23 Relief arising from the same facts (Dkt. No. 69). This case concerns a contract for the sale of an
24 automobile and financing for that vehicle. (*See* Dkt. No. 1.) Previously, the Court granted a

1 Motion to Dismiss against Defendants Americredit Financial Services (d/b/a GM Financial) and
2 Hoblit Automotive, Inc. on all claims and dismissed the case with prejudice and without leave to
3 amend. (Dkt. Nos. 43, 44.) The basis for the Motion for Relief from Judgment is claimed newly
4 discovered evidence, particularly an electronic Retail Instalment Sales Contract (“RISC”) dated
5 October 30, 2021, which differs in some respects from the RISC dated October 27, 2021 that was
6 the subject of Plaintiff’s initial complaint. (See Dkt. No. 54 at 1.) Plaintiff alleges the later dated
7 RISC was “forged.” (*Id.*)

8 Because the October 30 RISC would not have made any difference to the disposition of
9 Plaintiff’s claims had it been known at the time Plaintiff’s case was dismissed, the Motion for
10 Relief from Judgment (Dkt. No. 54) is DENIED. The Motion for Judicial Notice (Dkt. No. 58)
11 is DENIED because the proffered documents do not meet the requirements of Federal Rule of
12 Evidence 201. The Motion for Leave to File a Supplemental Motion (Dkt. No. 66) is DENIED
13 as moot and needlessly duplicative. Finally, the Motion for a Protective Order and Preliminary
14 Injunction is DENIED because Plaintiff has no likelihood of success on the merits.

15 II BACKGROUND

16 a. Initial Complaint and Dismissal

17 In October 2021, Plaintiff purchased a 2018 Chevrolet Tahoe from Hoblit Automotive
18 Inc., a California-based car dealer, with financing provided by GM Financial. (See Dkt. No. 1 at
19 2.) The financing was in the amount of \$30,661.96. (*Id.*) However, Plaintiff claims that “the
20 alleged loan provided to her was not in fact loaned to her at all by the Defendants” because she
21 “has never received funds from the Defendants Hoblit or GM in the form of a check, ACH, wire
22 transfer or other which is considered a breach of contract by non-performance.” (*Id.* at 2–3.)
23 This claim apparently relates to Plaintiff’s broader views of the banking system, as she “has
24

1 come to learn that banks do not loan money and pursuant to 12 U.S.C. § 1431 they only have the
2 power to borrow, give security, and pay interest” on obligations. (*Id.* at 2.) Plaintiff claimed that
3 Defendants were liable for breach of contract, and violations of the Washington Unfair Business
4 Practices Act (Wash. Rev. Code 19.86 et seq.), the Truth in Lending Act (15 U.S.C. § 1601 et
5 seq.) (“TILA”), and the Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.)
6 (“FDCPA”) (*See id.* at 4–6.) Plaintiff further sought injunctive relief. (*Id.* at 6–7.) Plaintiff
7 attached to her complaint a copy of the October 27, 2021 RISC, which states that the total sale
8 price was \$63,631.44, of which \$30,661.96 was financed—and it includes Plaintiff’s handwritten
9 signature. (Dkt. No. 1-2 at 46–51.)

10 Defendant responded that Plaintiff’s complaint was a frivolous “debt-avoidance scheme”
11 with a goal to “obtain the Vehicle free and clear of GM Financial’s lien, without having to fulfill
12 her payment obligations under the Contract.” (*See* Dkt. No. 8 at 7–9.) Nothing under the
13 contract required Defendants to pay Plaintiff the amount of the auto financing by “check, wire
14 transfer, ACH” or other, when she took possession of the vehicle on credit. (*Id.* at 9.) As such,
15 there was no breach of contract, and no unfair business practice. (*Id.* at 9–10.) Plaintiff’s TILA
16 claim was time-barred by a one-year statute of limitations, since the auto sale agreement was
17 entered into on October 27, 2021 and this litigation commenced on February 21, 2024; in any
18 event the claim would fail on the merits because the RISC contains all the information required
19 by TILA. (*Id.* at 11.) Likewise, other things Plaintiff complained of could not constitute TILA
20 violations, e.g. she complained that the RISC’s “finance charge” did not include the cost of
21 buying car insurance from a third party, and alleged that the practice of requiring a downpayment
22 for the car violated the law. (*See id.* at 12–13.) Finally, Plaintiff had no claim under the FDCPA
23 because GM Financial, as originator of the debt, was not a “debt collector” under the statute. (*Id.*

1 at 14–15.) Because she could not show any likelihood of success on the merits, Plaintiff was not
2 entitled to injunctive relief. (*Id.* at 15.) Defendants made no mention of a second RISC dated
3 October 30.

4 On June 5, 2024, the Court (Bryan, J.), granted Defendants’ Motion to Dismiss for
5 Failure to State a Claim and Improper Venue. (Dkt. No. 43.) The Court agreed with Defendants
6 that Plaintiff had identified no breach of contract and no unfair business practice, that her TILA
7 claim was time-barred and otherwise unmerited, and that neither Defendant was a “debt
8 collector” under the FDCPA. (Dkt. No. 44 at 2–3.) For these reasons, Plaintiff was not entitled
9 to injunctive relief, because she could not show likelihood of success on the merits under any
10 standard. (*Id.* at 3.) The Court agreed with Defendants’ assessment that Plaintiff’s case was a
11 “debt avoidance scheme” to “secure her vehicle free and clear of any liens.” (*Id.* at 4.) Despite
12 Plaintiff’s status as a *pro se* litigant, the Court found that any opportunity to amend the complaint
13 would be futile and dismissed the case with prejudice and without leave to amend. (*Id.* at 4–5.)
14 Following that dismissal, Plaintiff filed a Notice of Appeal to the Ninth Circuit. (Dkt. No. 46.)

15 b. Motion for Relief from Judgment and Motion for Judicial Notice

16 Subsequently, Plaintiff reopened proceedings in this Court, seeking an indicative ruling
17 under Federal Rule of Civil Procedure 62.1 while her case is on appeal, and relief from judgment
18 under Rule 60. (Dkt. No. 54.)¹ The basis of her motion is a new RISC dated October 30, 2021
19 (“October 30 RISC”) that she obtained, of which she claims she had “no knowledge” and “did
20 not sign.” (*Id.* at 3.) She lists several differences between the October 27 and October 30
21 documents, including: her signature (which appears eight times, each one signed electronically
22

23 ¹ The Court of Appeals granted an unopposed motion to stay proceedings in that court pending
24 resolution of the motion for an indicative ruling in this Court. (Dkt. No. 55.)

1 rather than in wet ink, and each one “forged”), the dealer number, the contract number, the name
2 of the seller-creditor, differences in fees (including transport and registration fees), payment term
3 (from 72 to 71 months), make and model, and other discrepancies. (*Id.* at 4–5.) In addition to
4 the RISC, Plaintiff claims that “newly discovered evidence” includes the Ninth Circuit’s decision
5 in *Hoang v. Bank of America, N.A.*, 910 F.3d 1096 (9th Cir. 2018), and a federal regulation, 12
6 CFR 1006.2(i)(1). (*Id.* at 8, 16.) She seeks relief under Federal Rule of Civil Procedure 60(b)(1)
7 (“mistake, inadvertence, surprise, or excusable neglect), 60(b)(2) (newly discovered evidence),
8 60(b)(3) (fraud), 60(b)(6) (catch-all provision) and 60(d)(3) (fraud upon the court). (*Id.* at 14–
9 18, 26.)²

10 In support of her Motion for Relief from Judgment, Plaintiff asks this Court to take
11 judicial notice of four documents: the Affidavit of Walker F. Todd filed in *Bank One v.*
12 *Harshavardhan*, Case No. 03-047448-CZ (Oakland Cty. Cir. Ct., Mich. 2003); the testimony of
13 Walker F. Todd for defendants in *United States v. Wahler*, No. 1:08-cr-00055-RLV-DCK, Dkt.
14 No. 186, (W.D.N.C. 2008); a Bill of Indictment in the same case (*Wahler* Dkt. No. 1); and a jury
15 verdict in *Wahler* acquitting defendant (*Wahler* Dkt. No. 166).

16 Defendants ask this Court to deny the Motion for Relief from Judgment, essentially
17 because the October 30 RISC is immaterial to the outcome of the case. (*See* Dkt. No. 60.) At
18 the outset, the Court notes that Defendants fail to offer any explanation as to why two RISCs
19

20 ² The Court notes that Plaintiff’s briefs in this matter have been significantly overlength. Her
21 Motion for Relief from Judgment was 8,193 words, with Plaintiff relying on the limit of 8,400
22 words in LCR 7(e)(3) (*see* Dkt. No. 54 at 30), but her motion should have been noted under LCR
23 7(d)(3) and subject to the 4,200 word limit of 7(e)(4). (*See* Dkt. No. 60 at 5, n.1.) Plaintiff’s
24 reply brief was 4,047 words, which is nearly double the 2,100 word limit of 7(e)(4). (*See* Dkt.
No. 67 at 19.) While the Court understands that Plaintiff is proceeding *pro se*, the same
procedural rules apply to all litigants. The Court warns Plaintiff that it has the authority under
LCR 7(e)(6) to disregard any text in excess of the word limit, and may do so at its discretion.

1 exist and why there is a 3-day discrepancy in date between them. Defendants do however argue
2 that the essential terms of the two documents are the same, including the description of the
3 vehicle purchased, sale price, annual percentage rate and finance charge, total of payments, and
4 most pertinently, the amount to be financed: \$30,661.96. (*Id.* at 4.) They argue Plaintiff could
5 have accessed the October 30 RISC “at any time,” since she obtained it not through discovery,
6 but through a June 22, 2024 letter to GM Financial. (*Id.* at 3.) As to Rule 60(b)(1), Defendants
7 argue that Plaintiff has not identified any mistake or excusable neglect. (*Id.* at 6.) As to “newly
8 discovered evidence” under Rule 60(b)(2), Plaintiff fails to explain how the new evidence is
9 material to her claims, or what steps she took to obtain it before the dismissal. (*Id.* at 9.)
10 Moreover, Plaintiff’s citations to legal authorities are not evidence. (*Id.* at 8.) As to fraud and
11 Rule 60(b)(3), Defendants say they did not mislead Plaintiff or the Court and “merely relied on
12 the RISC that was an exhibit to the Complaint, as required on a motion to dismiss.” (*Id.* at 11.)
13 Again, Defendants reiterate that “[n]one of Plaintiff’s allegations in the initial Complaint were
14 based on any of the immaterial differences between the RISC and the Electronic RISC that
15 Plaintiff identifies.” (*Id.* at 12.) For that reason, reliance on the catch-all provision, Rule
16 60(b)(6), is also inappropriate. (*Id.*)

17 As to the Motion for Judicial Notice, Defendants argue that the documents Plaintiff
18 submitted do not meet the requirements of Federal Rule of Evidence 201, which allows the Court
19 to take notice of “an adjudicative fact” that “is not subject to reasonable dispute.” (Dkt. No. 61
20 at 2.) Here, the Court cannot take notice of the documents for the truth of the facts they assert,
21 because those would be subject to dispute, and can only note the existence of the documents.
22 (*Id.*, citing *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001)). Further, the Court
23 should not take notice of irrelevant documents. (*Id.*) The Todd affidavit and testimony
24

1 transcript offer “history and theories of banking” without context or a resume to establish Todd’s
2 qualifications as an expert and are irrelevant to this case. (*Id.* at 4, 6.) Defendants warn that the
3 affidavit of Walker Todd is of dubious validity but frequently cited by individuals challenging
4 “problematic or unpaid loans,” and for that reason other courts have refused to accept it.³ (*Id.* at
5 4.) Similarly, the criminal indictment and acquittal from an unrelated case are irrelevant. (*Id.* at
6 6–7.)

7 c. Motion for Protective Order and Preliminary Injunction

8 Plaintiff additionally seeks a temporary restraining order (“TRO”) and preliminary
9 injunctive relief (“PI”). (Dkt. No. 69.) She asks the Court to prohibit Defendants from
10 collecting payments on either the October 27 or October 30 RISC despite her “lawful
11 withholding of payments during the dispute over the fraudulent contract.” (*Id.* at 2.) She further
12 asks the Court to prevent adverse credit reporting, despite the nonpayment, and to prevent
13 repossession of the vehicle. (*Id.*) She accuses Defendants of harassment and “retaliatory and
14 intimidating actions.” (*Id.*) According to Plaintiff, Defendants have placed the car in late

15 _____
16 ³ Defendants cite and characterize the following rulings rejecting the Todd Affidavit:

17 *See e.g., United States v. Maclin*, No. 21- CR-113, 2021 WL 6197893, at *1 (E.D. Wis.
18 Dec. 30, 2021) (explaining that the Affidavit “appears to be circulated on the internet and
19 used by litigants to promote a discredited theory regarding the enforceability of
20 promissory notes”); *Lopez v. I.R.S.*, No. 3:17-cv-771(AWT), 2018 WL 4926489, at *5
21 (D. Conn. Aug. 27, 2018) (“As one magistrate judge has recognized, ‘this supposed
22 affidavit is widely circulated on the Internet; however, Walker Todd has advised the U.S.
23 Department of Justice that the affidavit is fraudulent. . . . In addition, the theories
24 propounded in the purported affidavit have been uniformly rejected by the courts.’”
(citations omitted)); *McGregor v. Wells Fargo Bank*, No. 2:10-CV-0136-RWS-SSC,
2011 WL 679435, at *3 n.3 (N.D. Ga. Jan. 26, 2011) (“Plaintiff attaches to his complaint,
among other things, the unsigned ‘Affidavit of Walker F. Todd, Expert Witness for
Defendants,’ purportedly filed in a Michigan state court . . . where the *pro se* defendants
offered the same affidavit, and the court noted that ‘the Todd Affidavit manifests itself
throughout internet web sites offering advice about problematic or unpaid loans.’”)

(Dkt. No. 61 at 4–5.)

1 payment status and she has received notice of adverse credit reporting. (*Id.* at 5.) She states that
2 Defendant Hoblit has contacted her despite the ongoing litigation, and she considers both this
3 contact and the credit reporting to be intimidation. (*Id.* at 5–6.) As to likelihood of success on
4 the merits, Plaintiff’s arguments track those in her Rule 60 motion; she reiterates that the October
5 30 RISC was forged. (*Id.* at 7.) She states that the adverse credit reporting is an irreparable
6 harm due to its negative financial and emotional effects, and vehicle repossession would be an
7 irreparable harm because it would prevent her from traveling to medical appointments, work, and
8 other necessities. (*Id.* at 8–9.) As to equitable factors, Plaintiff argues that Defendants would
9 not be harmed by pausing collection activities during the pendency of litigation, and the public
10 benefits from enforcement of consumer protection laws. (*Id.* at 10–11.) The Court notes that as
11 an exhibit to her TRO application, Plaintiff again attached a copy of the October 30 RISC, this
12 time a timestamp is visible at the bottom of the page stating “THIS CUSTOMER CREATED
13 COPY WAS CREATED ON 10/30/2021 5:13:06 PM GMT.” (Dkt. No. 69-3 at 10–16.)

14 In their opposition, Defendants argue that the TRO/PI should be denied because Plaintiff
15 has no likelihood of success on the merits, in light of this Court’s prior rulings and the lack of
16 merit to the Rule 60 motion. (*See* Dkt. No. 71 at 5–6.) Neither adverse credit reporting nor
17 vehicle repossession are irreparable harms, where both have alternative legal remedies. (*Id.* at
18 8.) As to the charge of harassment or intimidation, Defendant Hoblit states that a sales
19 representative unwittingly contacted Plaintiff because she recently purchased a car, but that staff
20 will be instructed not to contact her going forward, and they note that Plaintiff has recently sent
21 correspondence about this matter directly to Hoblit, rather than its counsel. (*Id.* at 9, Dkt. No.
22 72-1.) Finally, the equities do not favor Plaintiff, because she “has ceased making payments,
23
24

1 while maintaining possession of the Vehicle *for free*” and GM Financial has only engaged in
2 lawful collection activities. (Dkt. No. 71 at 10–12.)

3 III DISCUSSION

4 Federal Rule of Civil Procedure 60(b) includes several prongs, each of which could
5 provide a basis for granting relief from judgment. Rule 60(d)(3) likewise provides for relief
6 from judgment where there has been a “fraud on the court.” For ease of reference, the Court
7 provides the appropriate legal standard for each of the claimed grounds for relief and then
8 analyzes the facts of this case under that standard on a claim-by-claim basis:

9 a. Rule 60(b)(1)

10 i. Legal Standard

11 Rule 60(b)(1) covers cases of “mistake, inadvertence, surprise, or excusable neglect.”
12 The “excusable neglect” aspect includes “negligence on the part of counsel.” *Bateman v. U.S.*
13 *Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000). Excusable neglect in this context is
14 “understood to encompass situations in which the failure to comply with a filing deadline is
15 attributable to negligence.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S.
16 380, 394 (1993).⁴ There are four equitable factors for the court to consider in applying the Rule:
17 “(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential
18 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in
19 good faith.” *Bateman*, 231 F.3d at 1223–1224, (citing *Pioneer*, 507 U.S. at 395).

20
21
22

⁴ *Pioneer* construed an analogous provision of the Federal Rules of Bankruptcy Procedure,
23 9006(b)(1), but the Ninth Circuit has recognized that the same test applies to Federal Rule of
24 Civil Procedure 60(b)(1). *Bateman*, 231 F.3d at 1222 (citing *Briones v. Rivera Hotel & Casino*,
116 F.3d 279, 381 (9th Cir. 1997)).

1 ii. Analysis

2 Rule 60(b)(1) is not properly invoked here. Although the text of the rule is broad and
3 could conceivably cover the inadvertent omission of the October 30 RISC prior to the motion to
4 dismiss, appellate decisions construing the Rule indicate that its use is to relieve a party that
5 missed a deadline of adverse judgment, which is inapplicable here. Plaintiff is the movant here
6 and complains of prejudice by an omission from Defendants, but in applying Rule 60(b)(1), the
7 Court would have to consider the “danger of prejudice to the opposing party”—i.e., Defendants.
8 *Bateman*, 231 F.3d at 1223. In *Bateman*, counsel for an employment discrimination plaintiff
9 missed a deadline to respond to a motion for summary judgment and the motion was granted as
10 unopposed; plaintiff moved to have judgment reversed under Rule 60(b)(1) due to excusable
11 neglect, and the Ninth Circuit ultimately granted that relief, finding minimal prejudice to the
12 defendant from the delay. *Id.* at 1223–1225. The facts here are inapposite. If anything,
13 Defendant would be prejudiced by having to re-litigate the claims in this case after having them
14 dismissed with prejudice on the merits. Therefore, Plaintiff is not entitled to relief under Rule
15 60(b)(1), and the Court proceeds to consider the next ground for relief.

16 **b. Rule 60(b)(2)**

17 i. Legal Standard

18 Rule 60(b)(2) covers “newly discovered evidence that, with reasonable diligence, could
19 not have been discovered in time to move for a new trial under Rule 59(b).”⁵ Following the
20 plain text, the rule “require[s] reasonable diligence, without exceptions.” *Marroquin v. City of*
21 *Los Angeles*, 112 F.4th 1204, 1215 (9th Cir. 2024). Relief under Rule 60(b)(2) “is warranted if
22

23 ⁵ For reference, Rule 59(b) allows a motion for new trial “no later than 28 days after the entry of
24 judgment.” Neither party briefed whether this aspect of Rule 60(b)(2) is satisfied.

1 (1) the moving party can show the evidence relied on in fact constitutes ‘newly discovered
2 evidence’ within the meaning of Rule 60(b); (2) the moving party exercised due diligence to
3 discover this evidence; and (3) the newly discovered evidence must be of ‘such magnitude that
4 production of it earlier would have been likely to change the disposition of the case.’” *Feature*
5 *Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003) (quoting *Coastal Transfer*
6 *Co. v. Toyota Motor Sales, U.S.A., Inc.*, 833 F.2d 208, 211 (9th Cir.1987)). Further, “[e]vidence
7 is not ‘newly discovered’ under the Federal Rules if it was in the moving party's possession at
8 the time of trial or could have been discovered with reasonable diligence.” *Coastal Transfer*,
9 833 F.2d at 212.

10 ii. Analysis

11 Plaintiff cannot prevail under Rule 60(b)(2) because the newly discovered evidence
12 would not “have been likely to change the disposition of the case.” *Feature Realty*, 331 F.3d at
13 1093. The Court limits its discussion of newly discovered evidence to the October 30 RISC,⁶
14 since, as Defendant correctly notes (Dkt. No. 60 at 8), legal citations are not evidence—
15 regardless of when Plaintiff’s research uncovered the authorities cited.⁷

18 ⁶ Neither party briefed the question of whether the RISCs would be *admissible* evidence. The
19 Court assumes for purposes of this motion that they are. *See e.g.*, Fed. R. Ev. 803(6)(B) (hearsay
20 exception for records of a regularly conducted business activity). Defendants did not contest the
21 legitimacy of the October 30 RISC, either.

22 ⁷ Plaintiff also discusses an “Unrebutted Affidavit by Janice Hennessey” as new evidence. (Dkt.
23 No. 54 at 17). This is apparently a reference to a letter Plaintiff sent GM Financial, dated August
24 24, 2024, concerning GM Financial’s failure to “return the negotiable instruments Plaintiff
mailed as extra payments,” GM Financial’s denial that these instruments were valid forms of
payment, and GM Financial’s failure to contest the accuracy of Plaintiff’s claims in her
“Affidavit of Truth.” (*See id.*; *see* Dkt. No. 54-16 at 2). The Court will not consider this “newly
discovered evidence” as it is a) not in the form of a sworn affidavit, and b) created after the
Court’s grant of Defendant’s Motion to Dismiss on June 5, 2024.

1 The October 30 RISC is “new” in that it was not part of the record at the motion to
2 dismiss stage, but a comparison of the October 27 and October 30 RISC reveals that the
3 differences between them are not legally relevant to Plaintiff’s claims. Holding the documents
4 side-by-side, the Court observes that the essential terms of the contracts are the same: both are
5 contracts between seller-creditor Hoblit Automotive and buyer Janice Hennessey for sale of a
6 used 2018 Chevrolet Tahoe with odometer reading of 35682 and VIN 1GN5CBKC7JR205516.
7 (*Compare* Dkt. No. 1-2 at 46 *with* Dkt. No. 54-2 at 2; *see also* Dkt. No. 54-8 at 2 (October 27
8 RISC without redactions.)) Both documents have a TILA disclosure box that specifies a rate of
9 interest of 9.95% on the loan, a finance charge of \$10,181.48, a financing amount of \$30,661.96,
10 a total of payments (e.g., principal plus interest) of \$40,843.44, a downpayment of \$22,788.00, a
11 total principal amount of \$63,631.44, and a late payment penalty rate of 5% of the late amount.
12 (*Compare* Dkt. No. 1-2 at 46 *with* Dkt. No. 54-2 at 2). The October 27 RISC specifies 71
13 monthly payments beginning on 11/26/21 while the October 30 RISC specifies 72 monthly
14 payments beginning on 11/29/21, but both have a monthly payment amount of \$567.27; the
15 October 27 RISC alone includes a final payment in the same amount due on 10/26/27,
16 accounting for the difference. (*Ibid.*) On the second page of the contract containing a schedule
17 of fees, the October 27 RISC includes a \$360 “transportation fee” and a total fees amount of
18 \$697.00, while the October 30 RISC does not have a line item for a transportation fee, but has a
19 total fees amount of \$1,057.00. (*Compare* Dkt. No. 1-2 at 47 *with* Dkt. No. 54-2 at 3.) As
20 Plaintiff indicates, her signature appears handwritten on the October 27 RISC and in electronic
21 typeface on the October 30 RISC, and the date on the signature line is different (10/27/2021 and
22 10/30/2021, respectively). (*Compare* Dkt. No. 1-2 at 46–51 *with* Dkt. No. 54-2 at 2–8.) The
23 dealer number and contract number on the top right corner of the first page are different between
24

1 the two documents (*Compare* Dkt. No. 54-4 at 2 *with* Dkt. No. 54-8 at 2), but Plaintiff’s
2 assertion that there is a discrepancy in “Make and Model” (Dkt. No. 54 at 4) appears
3 unsupported.

4 From the information provided in the record by the parties, the Court cannot know for
5 sure why Defendant Hoblit would generate two sales contracts for a vehicle or why there are any
6 discrepancies between them. However, the Court notes that in Plaintiff’s complaint to the
7 Federal Trade Commission, which she attached to her motion as an exhibit, she stated: “I signed
8 the purchased documents partly online electronically with my signature and part in person with
9 my wet inked signature all on October 27, 2021.” (Dkt. No. 54-23 at 2.) Taking that as true, it
10 would explain why there is one document with an electronic signature and one with a
11 handwritten signature, though it would not explain the date discrepancy.

12 Regardless, the Court concludes that Plaintiff is not entitled to relief under Rule 60(b)(2)
13 because the new evidence is not of “such magnitude that production of it earlier would have been
14 likely to change the disposition of the case.” *Coastal Transfer*, 833 F.2d at 212. The Court
15 granted Defendant’s Motion to Dismiss because Plaintiff’s theory, that there was some
16 obligation for the dealer to pay her the financing amount in cash or check despite the fact that she
17 took possession of the vehicle on credit, did not establish a breach of contract nor an unfair
18 business practice. (*See* Dkt. No. 44 at 2–3.) The conclusion that her TILA claim is time-barred
19 (*see id.* at 3) is in no way affected by the 3-day discrepancy between the RISCs. Either way, she
20 purchased the car in October 2021 and initiated litigation in February 2024, when the limitations
21 period is one year “from the date of the occurrence of the violation,” and she claims the
22 violations occurred from the outset of the contract. 15 USC § 1640(e); (*see* Dkt. No. 1 at 5).
23 Likewise, nothing about the discrepancies between the two documents would change the Court’s
24

1 conclusion that “Plaintiff fails to allege specific violations” of TILA. (Dkt. No. 44 at 3.)
2 Finally, the differences in RISCs do not change the fact that Defendants are not “debt collectors”
3 under the FDCPA. (*See id.*)

4 While Defendants additionally argue that Plaintiff failed to exercise due diligence and
5 could have discovered the new evidence sooner, the Court finds it unnecessary to reach that
6 argument. Further, while Plaintiff’s new legal citations are not evidence, the Court nonetheless
7 considers them and finds that they do not change the analysis, either. *Hoang v. Bank of America,*
8 *N.A.*, 910 F.3d 1096, 1100–1102 (9th Cir. 2018) explains that when a borrower exercises their
9 right to rescission of a loan under 15 U.S.C. § 1635(a), state law dictates the statute of limitations
10 to initiate litigation, which in Washington is six years.⁸ Here, although Plaintiff cites § 1653(a)
11 in her complaint (among other TILA sections), the Court does not understand her TILA claim as
12 one for rescission, since her prayer for relief demands a “Check payable to Plaintiff in the
13 amount of \$30,661.96” and an injunction to prevent repossession of the vehicle. (*See* Dkt. No. 1
14 at 6–7.) In other words, she seeks not to rescind the loan, but rather to be paid its principal
15 amount *and* keep possession of the financed vehicle. And even if Plaintiff’s TILA claim were
16 timely, it would not change the Court’s determination that she failed to state a TILA violation.
17 (Dkt. No. 44 at 3.) Likewise, while 12 C.F.R. § 1006.2(i)(1) includes in the definition of debt
18 collector “any creditor that, in the process of collecting its own debts, uses any name other than
19 its own that would indicate that a third person is collecting or attempting to collect such debts,”
20 Plaintiff provides no evidence that Defendants are attempting to collect on their debt under a
21 name different from their own.

22
23 ⁸ The borrower typically has just three days to inform the lender of their intent to rescind, unless
24 the lender has failed to make its required disclosures under TILA, in which case the borrower has
three years to rescind. *Hoang*, 910 F.3d at 1100; 15 U.S.C. § 1635(f).

1 In sum, because nothing material about the case has changed as a result of the new
2 evidence, relief under Rule 60(b)(2) is unwarranted.

3 **c. Rule 60(b)(3)**

4 i. Legal Standard

5 Rule 60(b)(3) covers “fraud (whether previously called intrinsic or extrinsic),
6 misrepresentation, or misconduct by an opposing party.” To obtain relief under the Rule, “the
7 moving party must prove by clear and convincing evidence that the verdict was obtained through
8 fraud, misrepresentation, or other misconduct and the conduct complained of prevented the
9 losing party from fully and fairly presenting the defense.” *De Saracho v. Custom Food Mach.,*
10 *Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). Further, “Rule 60(b)(3) ‘is aimed at judgments which
11 were unfairly obtained, not at those which are factually incorrect.’” *Id.* (quoting *In re M/V*
12 *Peacock*, 809 F.2d 1403, 1405 (9th Cir.1987)). Application of Rule 60(b)(3) is committed to the
13 district court’s discretion. *See id.*⁹

14 ii. Analysis

15 As a preliminary matter, despite her many uses of the word “forged,” Plaintiff has offered
16 no proof that her electronic signature or the October 30 RISC were forged. Indeed, she admitted
17 to signing some sales documents electronically in her FTC complaint. (Dkt. No. 54-23 at 2.)
18 More importantly though, Plaintiff is not entitled to relief under Rule 60(b)(3) because she has
19 not proven by clear and convincing evidence that dismissal of her complaint was obtained
20 through fraud. *De Saracho*, 206 F.3d at 890. Plaintiff only included the October 27 RISC in her
21 complaint, and has not established that Defendants had an obligation to produce the October 30

22
23 ⁹ Under Rule 60(c), a motion under Rule 60(b) (1), (2), or (3) must be made “no more than a year
24 after the entry of judgment or order or date of the proceeding.” That requirement is satisfied
here.

1 RISC before the Motion to Dismiss was decided. Rather, Defendants correctly note that in filing
2 their Motion to Dismiss, they could not have introduced new evidence into the record outside of
3 the complaint, otherwise that would have converted the motion into one for summary judgement,
4 which would have been premature as discovery had not taken place. *See* Fed. R. Civ. Pro. 12(d);
5 (*See* Dkt. No. 39, staying discovery pending the Court’s ruling on the Motion to Dismiss.)
6 Moreover, in light of the analysis above that the differences between the RISCs are immaterial to
7 Plaintiff’s case, she cannot demonstrate that “the conduct complained of prevented the losing
8 party from fully and fairly presenting the defense.” *De Saracho*, 206 F.3d at 890. Relief under
9 Rule 60(b)(3) is therefore denied.

10 **d. Rule 60(b)(6)**

11 Rule 60(b)(6) is referred to as the “catch-all” provision of Rule 60(b) because it covers
12 “any other reason that justifies relief.” This provision “does not apply to situations ‘covered by
13 any of the other reasons set forth in Rule 60.’” *Marroquin*, 112 F.4th at 1217 (quoting *Delay v.*
14 *Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007)). The Ninth Circuit has stated that:

15 Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest
16 injustice and is to be utilized only where extraordinary circumstances prevented a
17 party from taking timely action to prevent or correct an erroneous judgment. A
18 party seeking to re-open a case under Rule 60(b)(6) must demonstrate both injury
and circumstances beyond his control that prevented him from proceeding with
the prosecution or defense of the action in a proper fashion.

19 *Delay*, 475 F.3d at 1044 (internal citations and quotations omitted).

20 Because of the Ninth Circuit’s admonition that Rule 60(b)(6) should not be used in
21 situations where the other prongs of Rule 60(b) are applicable, and the Court’s analysis of this
22 matter under Rules 60(b)(2) and (b)(3), the Court will not apply Rule 60(b)(6) here. For the
23 same reasons stated above, this motion does not present an “extraordinary circumstance” where a
24

1 party was prevented from correcting an erroneous judgment, nor was Plaintiff prevented by
2 omission of the October 30 RISC from prosecuting her case in a “proper fashion.” Relief under
3 this rule is denied.

4 **e. Rule 60(d)(3)**

5 Finally, the Court considers Rule 60(d)(3), under which a judgment may be set aside “for
6 fraud on the court.” Appellate courts set out a very high bar for application of this rule:

7 A court's power to grant relief from judgment for fraud on the court stems from a
8 rule of equity to the effect that under certain circumstances, one of which is after-
9 discovered fraud, relief will be granted against judgments regardless of the term
10 of their entry. However, the Supreme Court has noted that out of deference to the
11 deep-rooted policy in favor of the repose of judgments, courts of equity have been
cautious in exercising this power. Thus, relief from judgment for fraud on the
12 court is available only to prevent a grave miscarriage of justice.

13 Our own cases, similarly, have emphasized that not all fraud is fraud on the court.
14 In determining whether fraud constitutes fraud on the court, the relevant inquiry is
15 not whether fraudulent conduct prejudiced the opposing party, but whether it
16 harmed the integrity of the judicial process. Fraud on the court must be an
17 intentional, material misrepresentation. Thus, fraud on the court must involve an
18 unconscionable plan or scheme which is designed to improperly influence the
19 court in its decision.

20 In addition, the relevant misrepresentations must go to the central issue in the
21 case, and must affect the outcome of the case. In other words, the newly
22 discovered misrepresentations must significantly change the picture already
23 drawn by previously available evidence. In that vein, mere nondisclosure of
24 evidence is typically not enough to constitute fraud on the court, and perjury by a
party or witness, by itself, is not normally fraud on the court unless it is so
fundamental that it undermined the workings of the adversary process itself.

21 *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1167–1168 (9th Cir. 2017) (cleaned up).

22 Here, as stated above, Plaintiff has failed to prove fraud at all, let alone fraud that
23 “harmed the integrity of the judicial process” or “involve[d] an unconscionable plan or scheme”
24 to “improperly influence the court in its decision.” Plaintiff has not proven that non-disclosure

1 of the October 30 RISC was intentional or a material misrepresentation that goes to a “central
2 issue in the case” or is outcome-determinative. For the same reasons, relief under Rule 60(d)(3)
3 is inappropriate.

4 **f. Motion for Judicial Notice (Dkt. No. 58)**

5 The Motion for Judicial Notice is DENIED. The Court agrees with Defendants that the
6 proffered documents fail to satisfy the requirements of Federal Rule of Evidence 201 because
7 they contain factual assertions that are “subject to reasonable dispute” and are not “generally
8 known” in the judicial district. Moreover, at least for the Todd Affidavit, their accuracy may
9 “reasonably be questioned” in light of the concerns Defendant has raised. (Dkt. No. 61 at 4–5.)
10 But most importantly, the documents are not relevant and would not change the Court’s
11 disposition of this motion in any way. The affidavit and testimony from Mr. Todd expound on
12 the history of banking and theories of the financial system (*see generally*, Dkt. Nos. 58-1, 58-2)
13 and their truth or falsity has no bearing on the validity of Plaintiff’s auto loan specifically.
14 Likewise, an indictment and acquittal in a criminal case more than a decade old, involving
15 individuals with no connection to this case (*see* Dkt. Nos. 58-3, 58-4) are similarly irrelevant to
16 Plaintiff’s claims and the Court’s consideration of them.

17 **g. Motion for Leave to File a Supplemental Motion for Relief Based on Newly
18 Discovered Evidence Under Rule 15(d) and Rule 60(b)(2) (Dkt. No. 66)**

19 Plaintiff’s Motion for Leave to file a Supplemental Motion for Relief is duplicative of the
20 instant motion and is mooted by the above rulings. Additional motions and briefing on this issue
21 would waste judicial resources and would not aid the Court in its determination of the merits.
22 The Motion for Leave is therefore DENIED.

23 **h. Motion for a Protective Order and Preliminary Injunction (Dkt. No. 69.)**

1 Plaintiff's Motion for a Protective Order and Preliminary Injunction is DENIED because
2 she has no likelihood of success on the merits, and the equities do not favor her. Both TROs and
3 preliminary injunctions are governed by Federal Rule of Civil Procedure 65. To obtain either
4 form of relief, a Plaintiff "must establish that he is likely to succeed on the merits, that he is
5 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
6 tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def.*
7 *Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit also employs a "sliding scale" variant of
8 the *Winter* test, under which "if a plaintiff can only show that there are 'serious questions going
9 to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary
10 injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the
11 other two *Winter* factors are satisfied." *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217
12 (9th Cir. 2017) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir.
13 2013)).


14 When Plaintiff last moved for a preliminary injunction in this case, this Court previously
15 held that "Plaintiff fails to make a showing on any of the required elements for either test." (Dkt.
16 No. 44 at 4.) Nothing has changed to alter that assessment. In light of the Court's analysis of the
17 Rule 60 motion above, Plaintiff cannot demonstrate either likelihood of success on the merits or
18 a serious question going to the merits. There is *no* likelihood of success on the merits where the
19 Court has already analyzed and rejected the claims on the merits, twice. Further, the equities
20 strongly disfavor Plaintiff. Granting Plaintiff the injunctive relief she seeks would amount to a
21 windfall: it would grant her the right to maintain possession of her vehicle without paying for it
22 and without any credit reporting consequences. Such an outcome would amount to the "debt
23 avoidance scheme" the Court previously rejected. (*Id.*) Further, Plaintiff's claims of harassment
24

1 and intimidation are unsubstantiated. Because the Court finds that Plaintiff cannot carry her
2 burden either on likelihood of success or on balance of the equities, it need not decide whether
3 vehicle repossession can constitute an irreparable harm, but the Court agrees with Defendants
4 that an injunction on these facts would not serve the public interest.

5 IV CONCLUSION

6 For the reasons stated herein, Plaintiff's Motion for Relief from Judgment (Dkt. No. 54)
7 is DENIED because the new evidence would not have changed the outcome of this case at the
8 motion to dismiss stage. The Motion for Judicial Notice (Dkt. No. 58) is DENIED because the
9 proffered documents do not meet the requirements of Federal Rule of Evidence 201 and are not
10 relevant. The Motion for Leave to File a Supplemental Motion (Dkt. No. 66) is DENIED as
11 moot and needlessly duplicative. Finally, the Motion for a Protective Order and Preliminary
12 Injunction (Dkt. No. 69) is DENIED because Plaintiff has no likelihood of success on the merits
13 and the balance of equities does not weigh in her favor. Any hearing scheduled on the Motion
14 for Protective Order and Preliminary Injunction is STRICKEN.

15
16 Dated this 25th day of November, 2024.

17
18 
19 _____
20 David G. Estudillo
21 United States District Judge
22
23
24