UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 19-3440 FMO (FFMx)**	Date	**March 26, 2023**
Title	**Frank Capaci v. Sports Research Corporation**		

Present: The Honorable	Fernando M. Olguin, United States District Judge	
Gabriela Garcia	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorney Present for Plaintiffs:	Attorney Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Re: Pending Motions [142] [143]

Having reviewed and considered all the briefing filed with respect to Sports Research Corporation's ("defendant") Motion for Reconsideration of Order Re: Motion for Class Certification (Dkt. 142, "Motion for Reconsideration") and Cynthia Ford's ("plaintiff") Motion for Attorney's Fees, Costs, and Sanctions Pursuant to Rule 11 (Dkt. 143, "Motion for Sanctions"), the court finds that oral argument is not necessary to resolve the Motions, see Fed. R. Civ. P. 78(b); Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND[1]

Plaintiff, on behalf of herself and all others similarly situated, filed the operative Second Amended Complaint asserting claims for: (1) violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq.; (2) violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.; (3) violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq.; (4) breach of express warranties pursuant to Cal. Com. Code § 2313(1); (5) breach of implied warranties pursuant to Cal. Com. Code § 2314; and (6) negligent misrepresentation. (See Dkt. 139, Court's Order of April 14, 2022, ("Order Re: Class Certification"), at 1-2). Plaintiff alleges that defendant "markets 'Sports Research Cambogia' ([] the 'Product'), a dietary supplement that Defendant falsely claims is an effective aid in 'weight management' and 'appetite control,' despite the fact that the Product's only purportedly active ingredients, Hydroxycitric Acid . . . and extra virgin organic coconut oil, are

[1] Because the parties are familiar with the facts and allegations, the court will repeat them below only as necessary.

scientifically proven to be incapable of providing such weight loss benefits."[2] (Id. at 2).

On April 14, 2022, the court granted in part and denied in part plaintiff's Motion for Class Certification and certified classes pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure[3] with respect to plaintiff's claims under the CLRA, FAL, UCL, and for breach of express warranty and negligent misrepresentation. (Dkt. 139, Order Re: Class Certification at 35). On April 29, 2022, defendant filed a motion for reconsideration of the Court's Order Re: Class Certification. (See Dkt. 140, Motion for Reconsideration of Order Re: Motion for Class Certification). The court denied the motion for failure to comply with Local Rule 7-3, which requires the parties to engage in a meet-and-confer conference "at least seven (7) days prior to the filing of [a] motion." (See Dkt. 141, Court's Order of May 9, 2022) (denying the motion because it was filed on the same day that defendant stated that the Local Rule 7-3 conference took place). Defendant then filed the instant Motion for Reconsideration on May 20, 2022, and plaintiff subsequently filed the instant Motion for Sanctions on June 1, 2022.

LEGAL STANDARD

Under Local Rule 7-18, a motion for reconsideration may be made on only the following grounds:

> (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was entered, or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered.

C.D. Cal. Civ. L.R. 7-18; see In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig., 966 F.Supp.2d 1031, 1036 (C.D. Cal. 2013) (similar). A "motion for reconsideration should not be granted[] absent highly unusual circumstances[.]" Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotation marks omitted). "Whether to grant a motion for reconsideration under Local Rule 7-18 is a matter within the court's discretion." Daghlian v. DeVry Univ., Inc., 582 F.Supp.2d 1231, 1251 (C.D. Cal. 2007).

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[2] Capitalization, quotation and alteration marks, and emphasis in record citations may be altered without notation.

[3] Unless otherwise noted, all further "Rule" references are to the Federal Rules of Civil Procedure.

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DISCUSSION

I. MOTION FOR RECONSIDERATION.

Under Local Rule 7-18, "[n]o motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion." See also In re Benham, 2014 WL 12013442, *2 (C.D. Cal. 2014) ("[A] motion to reconsider . . . is not proper where it only asks the Court to rethink its prior decision, or presents a better or more compelling argument that the party could have presented in the original briefs on the matter.") (internal quotation marks omitted); cf. Carroll, 342 F.3d at 945 ("A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation."). In the instant Motion for Reconsideration, defendant improperly relies on the same facts and arguments it raised in opposition to the Motion for Class Certification and/or it presents arguments it could have raised prior to the court's ruling.

In particular, defendant frames its motion as a request for reconsideration pursuant to Local Rule 7-18(c), (see Dkt. 142, Motion at 2), which requires "a manifest showing of a failure to consider material facts[.]" But in reviewing defendant's assertions regarding the material facts that the court allegedly failed to consider, (see, generally, Dkt. 142-1, Memorandum of Points and Authorities in Support of Defendant['s] [] Motion for Reconsideration [] ("Memo. Reconsideration") at 12-25), it is apparent that "nearly all of these 'facts' are not facts, but legal arguments" that defendant previously asserted in its opposition to plaintiff's motion for class certification. Kaffaga v. Steinbeck, 2017 WL 11631527, *1 (C.D. Cal. 2017). In other words, defendant violated "Local Rule 7-18's clear admonishment that no motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion."[4] Id. (internal quotation marks omitted); see Haitayan v. 7-Eleven, Inc., 2020 WL 3213816, *2 (C.D. Cal. 2020) ("Despite framing its argument under Local Rule 7-18(c), it is clear that Defendant simply believes the Court got it wrong."). For example, defendant contends that because plaintiff "submitted no marketplace evidence" or "consumer survey[,]" she "failed to tie her theory of liability to marketplace realities and supply-side considerations[.]" (Dkt. 142-1, Memo. Reconsideration at 13). Similarly, defendant relies on Shanks v. Jarrow Formulas, Inc., 2019 WL 4398506 (C.D. Cal.

[4] Defendant purportedly quotes Pegasus Satellite Television, Inc. v. DirecTV, Inc., 318 F.Supp.2d 968 (C.D. Cal. 2004) ("Pegasus Satellite"), in asserting that "pursuant to L.R. 7-18(c), the Court should grant this motion for reconsideration as 'it has failed to fully address a party's arguments on an issue that is important to a decision.'" (Dkt. 142-1, Memo. Reconsideration at 6); (see id. at 11) (same). However, that quotation does not appear in the Pegasus Satellite decision. See, generally, 318 F.Supp.2d 968. In any event, defendant's assertions are inconsistent with Local Rule 7-18, which states that "[n]o motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion."

2019) in asserting that "the Court failed to consider that because [defendant] provided consumer and market data demonstrating lack of materiality, Plaintiff was required to submit evidence of class-wide materiality and failed to do so." (Dkt. 142-1, Memo. Reconsideration at 5).

Contrary to defendant's assertions, however, the court previously considered and rejected defendant's arguments. (See, e.g., Dkt. 139, Order Re: Class Certification at 20) ("According to defendant, plaintiff 'provides no evidence to support . . . a presumption [of reliance], such as consumer surveys or other market research showing classwide reliance based upon the materiality of the CLSs.' . . . Defendant's arguments are unavailing.") (internal citation omitted). The court also explained that "California courts have 'expressly rejected the view that a plaintiff must produce a consumer survey or similar extrinsic evidence to prevail on a claim that the public is likely to be misled by a representation.'" (Id.) (quoting Mullins v. Premier Nutrition Corp., 2016 WL 1535057, *5 (N.D. Cal. 2016) and Colgan v. Leatherman Tool Grp., Inc., 135 Cal.App.4th 663, 681 (2006)). And the court expressly acknowledged that "Defendant relies on Shanks . . . to support its argument that plaintiff has failed to show materiality[,]" (id. at 21), and distinguished that decision in addressing defendant's arguments regarding materiality. (See id. at 20-22).

As another example, defendant contends that plaintiff failed to show materiality in light of defendant's evidence "showing that consumers did not rely on [contested] label statements and purchased the product for reasons independent of the label statements[.]" (Dkt. 142, Memo. Reconsideration at 13). Again, the court already considered and addressed these contentions. (See, e.g., Dkt. 139, Order Re: Class Certification at 22) ("Defendant makes an additional argument against materiality, based on its expert's survey evidence and plaintiff's deposition testimony, that consumers buying defendant's product were influenced by factors other than the claims on the label. . . . However, as discussed [elsewhere in the Order Re: Class Certification], contested labeling claims that go to the efficacy of the product would nonetheless remain material."). Defendant may disagree with the court's reasoning and conclusions, but "[r]econsideration is not a second bite at the apple[,]" and "[a] party's mere disagreement with the court's application of law to facts is not a manifest showing of a failure to consider material facts by the court." Haitayan, 2020 WL 3213816, at *2.

Other than a contention that the court erred in citing an exhibit which plaintiff failed to authenticate, (Dkt. 142-1, Memo. Reconsideration at 9, 23), the other arguments raised by defendant in its Motion for Reconsideration will not be addressed because they are, like the arguments discussed above, a rehash of the same facts and arguments defendant raised in its opposition to the Motion for Class Certification. With respect to the exhibit that was not properly authenticated, the court will strike that exhibit and sentence from the Order Re: Class Certification.[5] See City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882,

[5] Contrary to defendant's assertions, the court's citation to the unauthenticated exhibit does not have "a ripple effect on the entire decision[,]" (Dkt. 142-1, Memo. Reconsideration at 23-24),

887 (9th Cir. 2001) (court may "correct mistakes" in an interlocutory order prior to entry of judgment). To be clear, however, neither this Order denying reconsideration nor the striking of the sentence and the subject exhibit from the Order Re: Class Certification "materially change[s] the original certification order" because "the same class definition controls, the same Plaintiffs make up the class, and the status quo remains unchanged." Walker v. Life Ins. Co. of the Sw., 953 F.3d 624, 636 (9th Cir. 2020); see id. at 637 ("Only where the district court certifies a class it previously declined to certify, decertifies an existing class, or changes the composition of an existing class – usually by increasing or decreasing its size – will a reconsideration order become appealable."). And with respect to Rule 23(f), "[t]he original [class certification] order became final after the court denied [defendant's] reconsideration motion (for failure to satisfy local meet-and-confer requirements), without prejudice[,]" id. at 635; (see Dkt. 141, Court's Order of May 9, 2022) (denying initial motion for reconsideration), and the instant Motion did not "restart the clock" for purposes of appeal.[6] Walker, 953 F.3d at 636.

Finally, defendant improperly asserts arguments that it could have raised earlier. See Kona Enterprises, Inc. v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (explaining that a motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation"). For example, defendant contends for the first time that the challenged Product, which is a dietary supplemental in the form of a softgel, (see Dkt. 139, Order Re: Class Certification at 2); (Dkt. 142-1, Memo. Reconsideration at 2 n. 2), is valuable as "a food product." (Dkt. 142-1, Memo. at 18-19); (see Dkt. 142, Motion at 3) (same); (see Dkt. 145, Memorandum of Points and Authorities in [] Opposition to Defendant's Motion for Reconsideration [] ("Opp. Reconsideration") at 13-14) ("Defendant now argues for the first time in a reconsideration motion that the Product is valuable because the coconut oil in the Product is considered by some adults to be a 'food' item.). Defendant concedes that it did

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as the court did not rely solely on Exhibit 2 in discussing the product's labeling. For example, the court cited defendant's expert report in explaining that "the evidence shows that defendant's product labels contained one or both of the CLS from the beginning of the Class Period on April 26, 2015, through at least February 2019." (Dkt. 139, Order Re: Class Certification at 9); (see id. at 13) (same); (id. at 22) ("[P]laintiff put forth evidence that shows that consumers were exposed to claims of either 'weight management' or 'appetite control' during the relevant time period."). The court also noted the fact that "defendant provide[d] no argument or evidence that retailers made any changes to the product's label." (Id. at 10).

[6] "A motion for reconsideration filed within fourteen days of a prior reconsideration order, as distinct from a certification order, is not 'timely' and therefore cannot restart the clock. . . . The practical and, we think, sensible effect of this rule is that litigants may not repeatedly extend Rule 23(f)'s stringent deadlines by re-noticing denied reconsideration motions." Walker, 953 F.3d at 636 (internal citation omitted).

not raise this argument earlier.[7] (See 147, Reply in Support of Defendant['s] [] Motion for Reconsideration [] ("Reply") at 16-17, 19).

In short, defendant has failed to make "a manifest showing of a failure to consider material facts presented to the Court before the Order was entered[,]" Local Rule 17-8(c), or provide any other ground for the court to reconsider its order granting class certification. (See, generally, Dkt. 142, Memo. Reconsideration); (Dkt. 147, Reply). Instead, "[i]t appears [defendant] simply want[s] another at-bat, something this Court will not permit." Mills v. Foremost Ins. Co., 2010 WL 4840050, *2 (M.D. Fla. 2010). Thus, plaintiff is not entitled to relief under Local Rule 7-18. See, e.g., Ross v. Morgan Stanley Smith Barney LLC, 2013 WL 12372144, *5 (C.D. Cal. 2013) ("Plaintiff has made no manifest showing that the Court failed to consider any material facts in making its decision, and thus Plaintiff has not met the narrow standard for reconsideration required by Local Rule 7-18(c).").

II. MOTION FOR SANCTIONS.

In relevant part, Rule 11 prohibits lawyers from filing papers with the court that are: (1) "presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation," or (2) not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law[.]" Fed. R. Civ. P. 11(b)(1)-(2). Although "the central purpose of Rule 11 is to deter baseless filings in district court[,]" Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393, 110 S.Ct. 2447, 2454 (1990), "our system of litigation is an adversary one" and courts "therefore should impose sanctions on lawyers for their mode of advocacy only in the most egregious situations, lest lawyers be deterred from vigorous

[7] Defendant seems to suggest that it could not have raised this argument earlier, asserting that it "was not given the opportunity to respond" to plaintiff's contention in a reply brief in support of her Motion for Class Certification that the Product is not a food item. (See Dkt. 147, Reply at 17) (citing Dkt. 81, Plaintiff['s] [] Memorandum of Points and Authorities in Support of Reply in Support of Motion for Class Certification [] ("Plf. Supp. Br.") at 7). However, plaintiff's contentions in her reply merely and briefly distinguished the food and beverage cases that defendant relied on in its opposition to the motion for class certification. (See Dkt. 59-1, Joint Brief Re: Plaintiff['s] Motion for Class Certification [] at 38-39); (Dkt. 81, Plf. Supp. Br. at 7) ("But these cases [defendant relies on] are food product cases where 'the products at issue were expressly for consumption, flavor, and hydration.'") (quoting Mullins v. Premier Nutrition Corp., 178 F.Supp.3d 867, 899 (N.D. Cal. 2016)). In any event, the court likewise distinguished defendant's authorities in granting class certification, (see Dkt. 139, Order Re: Class Certification at 30), and defendant's contentions in the instant Motion for Reconsideration do not alter the court's conclusions or merit reconsideration. See Haitayan, 2020 WL 3213816, at *2 ("A party's mere disagreement with the court's application of law to facts is not a manifest showing of a failure to consider material facts by the court.") (internal quotation marks omitted).

representation of their clients." United Nat. Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1115 (9th Cir. 2001) (emphasis omitted).

Plaintiff contends that "defendant and its counsel are subject to sanctions both on the grounds that (1) the Reconsideration Motion is manifestly frivolous and a relitigation of settled issues; and (2) the Reconsideration Motion was brought for the improper purpose of delay." (Dkt. 143-1, Memorandum of Points and Authorities in Support of Plaintiff's Motion for Attorneys' Fees Costs, and Sanctions [] ("Memo. Sanctions") at 4). As an initial matter, the court will assume, without deciding, that plaintiff complied with the 21 day safe-harbor period before filing the Motion for Sanctions. See Fed. R. Civ. P. 11(c)(2) (providing that a Rule 11 motion "must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service"); Radcliffe v. Rainbow Const. Co., 254 F.3d 772, 788 (9th Cir. 2001) ("Rule 11(c)[] provides strict procedural requirements for parties to follow when they move for sanctions under Rule 11. . . . Having not followed this procedure, [the defendant] was not entitled to obtain an award from the plaintiffs.").

Although the court ultimately agrees with plaintiff that defendant failed to satisfy the applicable Local Rule 7-18 standard for reconsideration, see supra at § I., the court is persuaded that defendant at least had "some plausible basis" for filing its Motion for Reconsideration. See United Nat. Ins. Co. v. R&D Latex Corp., 242 F.3d at 1117 (reversing imposition of Rule 11 sanctions because the sanctioned party's argument "had some plausible basis") (emphasis omitted). Accordingly, the court will deny plaintiff's Motion for Sanctions. The court likewise denies defendant's counter-request for sanctions, (see, generally, Dkt. 144, Memorandum of Points and Authorities in [] Opposition to Plaintiff's Motion for Attorneys' Fees, Costs, and Actions [] at 23-25), finding that defendant cannot show that plaintiff objectively lacked a good faith belief in the merit of her arguments in favor of sanctions, see Amwest Mortg. Corp. v. Grady, 925 F.2d 1162, 1164 (9th Cir. 1991) ("Rule 11 sanctions should be applied if a competent attorney, after reasonable inquiry, would not have a good faith belief in the merit of a legal argument."), especially in light of the court's denial of the Motion for Reconsideration.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Defendant's Motion for Reconsideration of Order Re: Motion for Class Certification (**Document No. 142**) is **denied**.

2. Plaintiff's Motion for Attorney's Fees, Costs, and Sanctions Pursuant to Rule 11 (**Document No. 143**) is **denied**.

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3. The sentence, "By contrast, plaintiff offers evidence that third-party retailers presented and sold the product with the CLS[]" and the subsequent citation set forth on Page 10, lines 4 through 6 of the Court's Order Re: Class Certification is hereby stricken nunc pro tunc.

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