

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Khoshini v. Ford Motor Company

No. 3:24-cv-00107-JLS-JLB (S.D. Cal. June 6, 2025) · No. 3:24-cv-00107-JLS-JLB · Decided June 6, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiff Reza Khoshini’s motion for reconsideration of the denial of her motion for attorneys’ fees, costs, and expenses. The court held that Plaintiff did not establish mistake, inadvertence, or excusable neglect under Federal Rule of Civil Procedure 60(b)(1), or extraordinary circumstances under Rule 60(b)(6), after filing the fee motion late and failing to address the deadline in prior briefing. The court also rejected reliance on California Code of Civil Procedure section 1008.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 6, 2025
DOCKET	3:24-cv-00107-JLS-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 60(b) and Southern District of California Civil Local Rule 7.1(i) for reconsideration of the court's order denying her motion for attorneys' fees, costs, and expenses as untimely. The district court denied reconsideration.
STANDARD OF REVIEW	Relief from judgment under Rule 60(b) requires satisfaction of one of the rule's specified grounds. Excusable neglect under Rule 60(b)(1) is evaluated under the four Pioneer factors: prejudice to the opposing party, length and impact of the delay, reason for the delay, and good faith. Reconsideration is not available to present arguments or facts that were available before entry of judgment.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Reza Khoshini v. Ford Motor Company, Kearny Mesa Ford, Does 1 through 10, inclusive

TOPICS

motion for reconsideration

attorney fees

consumer protection

civil procedure

waiver

PRACTICE AREAS

civil procedure

consumer protection

attorney fees

motions for reconsideration

remedies

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to reconsideration under Federal Rule of Civil Procedure 60(b)(1) based on mistake, inadvertence, or excusable neglect.
2. Whether plaintiff was entitled to relief under Federal Rule of Civil Procedure 60(b)(6) based on extraordinary circumstances.
3. Whether the court had an independent basis to reconsider its prior order under California Code of Civil Procedure section 1008.

HOLDINGS

1. Reconsideration was not warranted because plaintiff failed to establish mistake, inadvertence, or excusable neglect. The repeated failure to timely file the fee motion and to raise the known timeliness issue, together with prejudice and an inadequate explanation, weighed against relief.
2. A motion for reconsideration may not be used to present facts or arguments that were available before entry of the prior judgment or order.
3. Plaintiff did not demonstrate extraordinary circumstances justifying relief under Rule 60(b)(6).
4. California Code of Civil Procedure section 1008 did not provide an independent basis for reconsideration because the federal court was governed by Federal Rule of Civil Procedure 60(b) and Southern District of California Civil Local Rule 7.1(i) in assessing relief from judgment.

KEY QUOTATIONS

“a motion for reconsideration is “not a vehicle for a litigant to attempt a second bite at the apple by raising facts or arguments available prior to the entry of [the judgment].”” (at 4)

“As a general rule, parties are bound by the actions of their lawyers, and alleged attorney malpractice does not usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1).” (at 5)

“This is not a case of a ‘typo’ or even a missed filing deadline, which the court might readily categorize as ‘mistake’ or ‘excusable neglect,’ but rather a pattern of inattentiveness on the part of [Plaintiff’s] counsel.” (at 5)

FACTUAL BACKGROUND

Khoshini sued over a 2019 Ford Expedition, asserting fraud and violations of the Magnuson-Moss Warranty Act and California's Song-Beverly Consumer Warranty Act. She accepted Ford's Rule 68 offer for \$60,000 plus attorneys' fees, costs, and expenses, and judgment was entered on June 12, 2024. Her fee motion was filed on July 3, 2024, after the fourteen-day deadline, and neither the motion nor her reply addressed the untimeliness. On reconsideration, counsel attributed the delay and omissions to calendaring and attorney errors, but the court found repeated inattentiveness, prejudice, and an inadequate explanation.

PROCEDURAL HISTORY

Khoshini filed the action in California state court, and defendants removed it to the Southern District of California. After Khoshini accepted a Rule 68 offer and judgment was entered, she filed a motion for attorneys' fees, costs, and expenses after the fourteen-day deadline in Federal Rule of Civil Procedure 54(d)(2)(B)(i). The court denied the fee motion as untimely, and Khoshini then moved for reconsideration, asserting excusable neglect and other grounds for relief. The court denied that motion.

DISPOSITION

other

CASES CITED

- *Evanston Insurance Co. v. Venture Point, LLC*, No. 220CV01783KJDEJY, 2021 WL 5500486, at *1 (D. Nev. Nov. 23, 2021)
- *American Ironworks & Erectors, Inc. v. North American Construction Corp.*, 248 F.3d 892, 899 (9th Cir. 2001)
- *Port of Stockton v. West Bulk Carrier KS*, 371 F.3d 1119, 1122 (9th Cir. 2004)
- *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009)
- *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 393-94, 397 (1993)
- *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)
- *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004)
- *Bateman v. United States Postal Service*, 231 F.3d 1220, 1223-24 (9th Cir. 2000)
- *Lewis v. Paramo*, No. 3:22-CV00029-GPC-DEB, 2024 WL 4520346, at *5 (S.D. Cal. Oct. 17, 2024)
- *Rosenfeld v. U.S. Department of Justice*, 57 F.3d 803, 811 (9th Cir. 1995)
- *AmTrust Bank v. Lewis*, 687 F. App'x 667, 670 (9th Cir. 2017)
- *International Allied Printing Trades Ass'n v. American Lithographers, Inc.*, 233 F.R.D. 554, 556 (N.D. Cal. 2006)
- *Mendoza v. Garland*, No. 3:21-CV-01968-JES-MMP, 2023 WL 6050581, at *3 (S.D. Cal. Sept. 15, 2023)

OPINION

Khoshini v. Ford Motor Company

PER CURIAM.

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 REZA KHOSHINI, Case No.: 24-CV-107 JLS (JLB) 12 Plaintiff,

ORDER DENYING PLAINTIFF'S

13 v. MOTION FOR

RECONSIDERATION

14 FORD MOTOR COMPANY; KEARNY

MESA FORD; and DOES 1 through 10, 15 (ECF No. 30) inclusive, 16 Defendants. 17 18

Presently before the Court is Plaintiff Reza Khoshini's Motion for Reconsideration 19 of the Court's February 12, 2025 Order Denying Plaintiff's Motion for Attorneys' Fees, 20 Costs, and Expenses ("Mot.," ECF No. 30). The Court has also received Defendant Ford 21 Motor Company's Opposition ("Opp'n," ECF No. 31) and Plaintiff's Reply ("Reply," ECF

22 No. 32). The Court took the matter under submission without oral argument pursuant to

23 Civil Local Rule 7.1(d)(1). See ECF No. 34. Having considered the Parties' arguments 24 and the law, the Court DENIES Plaintiff's Reconsideration Motion for the reasons set forth 25 below.

26 BACKGROUND

27 On December 12, 2023, Plaintiff filed this lawsuit in state court, alleging various 28 causes of action—including fraud, and violations of the Magnuson-Moss Warranty Act 1 and Song-Beverly Consumer Warranty Act—relating to a 2019 Ford Expedition 2 manufactured and distributed by Defendant. See generally ECF No. 1-3 ("Compl."). The 3 matter was subsequently removed to this Court. See ECF No. 1 ("Notice of Removal"). 4 On June 7, 2024, Plaintiff accepted Defendant's first Rule 68 Offer to Compromise to settle 5 for \$60,000.00 cash plus attorneys' fees, costs, and expenses pursuant to California Civil 6 Code Section 1794(d). See Plaintiff's Request for Entry of Judgment, ECF No. 19. 7 Plaintiff then requested an entry of judgment, *id.*, which was entered by the Clerk on

8 June 12, 2024, see ECF No. 20. On July 3, 2024, Plaintiff filed a Motion for Attorneys'

9 Fees, Costs, and Expenses ("Fee Motion"). ECF No. 22. Defendant filed an Opposition 10 thereafter contending, among other things, that Plaintiff's Motion should be dismissed in 11 its entirety as untimely under Federal Rule of Civil Procedure 54(d)(2)(b)(i), which 12 provides that a motion "for attorney's fees and related nontaxable expenses" must "be filed 13 no later than 14 days after the entry of judgment." ECF No. 24 at 7–8 (citing Fed. R. Civ. 14 P. 54(d)(2)(b)(i)). Plaintiff did not respond to this argument in her Reply. See generally 15 ECF No. 27. 16 Subsequently, the Court denied Plaintiff's Fee Motion as untimely, and found 17 Plaintiff had not shown any reason, much less a compelling reason, for the delay. See ECF

18 No. 29 ("Order"). Specifically, the Court noted that Plaintiff's Fee Motion did not mention

19 the missed deadline, and after Defendant raised the issue in its Opposition, Plaintiff, in 20 Reply, again ignored the issue. *Id.* at 4. Thus, the Court found Plaintiff waived any claim 21 to attorneys' fees. *Id.* (citing *Port of Stockton v. W. Bulk Carrier KS*, 371 F.3d 1119, 1122 22 (9th Cir.

2004)). Further, Plaintiff had not moved to extend the time to file under Federal 23 Rule of Civil Procedure 6(b), nor shown the requisite excusable neglect to merit relief 24 under that rule, seeing as she provided “no justification whatsoever for failing to file the 25 Motion within the time limits of Rule 54, even after expressly raised and argued by 26 Defendant[.]” Id. Plaintiff subsequently filed the instant Motion for Reconsideration 27 pursuant to Federal Rule of Civil procedure 60(b) and Local Rule 7.1(i). See Mot. 28 / / /

1 LEGAL STANDARD

2 In the Southern District of California, a party may apply for reconsideration 3 “[w]henver any motion or any application or petition for any order or other relief has been 4 made to any judge and has been refused in whole or in part.” S.D. Cal. CivLR 7.1(i)(1). 5 The moving party must provide an affidavit setting forth, inter alia, “what new or different 6 facts and circumstances are claimed to exist which did not exist, or were not shown, upon 7 such prior application.” Id. “In resolving motions for reconsideration, courts often look to 8 the standard for relief from final judgment set forth in Federal Rules of Civil Procedure 9 59(e) and 60(b), which apply to motions for reconsideration of final appealable orders and 10 relief from judgment.” *Evanston Ins. Co. v. Venture Point, LLC*,

11 No. 220CV01783KJDEJY, 2021 WL 5500486, at *1 (D. Nev. Nov. 23, 2021).

12 “The moving party under Rule 60(b) is entitled to relief from judgment for the 13 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly 14 discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; 15 (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or 16 (6) any other reason justifying relief from the operation of the judgment.” *Am. Ironworks 17 & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001) (citing Fed. R. 18 Civ. P. 60(b)).

19 ANALYSIS

20 Plaintiff argues she is entitled to reconsideration because her failure to timely file 21 the underlying Fee Motion, subsequent failure to address the missed deadline in said 22 Motion, and then additional failure to respond to Defendant’s argument that her Fee Motion 23 was untimely, all result from “mistake, inadvertence, or excusable neglect” within the 24 meaning of the Federal Rules of Civil Procedure 60. Mot. at 2–6. 25 Plaintiff explains that due to a calendaring error, Plaintiff’s counsel discovered the 26 deadline for the underlying Fee Motion the same day it was due, June 26, 2024. Id. at 1. 27 She represents that her counsel then attempted to stipulate to an extension with defense 28 counsel to no avail. See Declaration of Angel M. Baker in Support of Plaintiff’s Motion 1 (“Baker Decl.”), ECF No. 30-2 ¶ 5 & Exh. 2. Having received no response to her requests 2 for an extension of time, Plaintiff filed the Motion a week later on July 3, 2024, and the 3 lead in charge of the Fee Motion department, Dhara Chandy, “instructed the previous lead 4 handling attorney to file the Fee Motion and advise the Court of Plaintiff’s efforts to extend 5 the deadline.” Declaration of Dhara Chandy in Support of Plaintiff’s Motion (“Chandy 6 Decl.”), ECF No. 30-1 ¶ 6. No such information was included in the Fee Motion. Upon 7 review of Defendant’s

Opposition to the Fee Motion, which raised the timeliness issue, 8 Chandy “[i]mmediately . . . instructed the previous lead handling attorney to prepare a Rule 9 60 Declaration and advise the court of the attempts to stipulate to extend time to file the 10 underling [sic] motion and to address the delayed calendaring issue.” Chandy Decl. ¶ 7. 11 However, these actions were apparently not taken, and by way of explanation, Plaintiff 12 relies on Chandy’s statement that she has “since learned that the previous lead handling 13 attorney inadvertently failed to prepare a Rule 60 Declaration, failed to advise the Court of 14 Plaintiff’s efforts to extend time to file the underlying fee motion, and failed to address the 15 timeliness issue on Reply.” Id. ¶ 8. Plaintiff does not provide any declaration from the 16 unnamed previous lead attorney explaining his or her reason for the omissions, as such 17 attorney is purportedly no longer with Plaintiff’s counsel’s firm, Strategic Legal Practices 18 (“SLP”). Id. ¶ 9. 19 To determine when neglect is excusable, the court examines four factors: (1) the 20 danger of prejudice to the opposing party; (2) the length of the delay and its potential impact 21 on the proceedings; (3) the reason for the delay; and (4) whether the movants acted in good 22 faith. *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (citing *Pioneer Inv. 23 Servs. Co. v. Brunswick Assocs. Ltd. P’ship.*, 507 U.S. 380, 394 (1993) (analyzing 24 excusable neglect under Federal Rules of Bankruptcy Procedure)); cf. *Briones v. Riviera 25 Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (extending Pioneer standard of 26 excusable neglect to Federal Rule of Civil Procedure 60(b)(1)). 27 “As a general rule, parties are bound by the actions of their lawyers, and alleged 28 attorney malpractice does not usually provide a basis to set aside a judgment pursuant to

1 Rule 60(b)(1).” *Casey v. Albertsons’s Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (citing 2 *Pioneer Inv. Servs. Co.*, 507 U.S. at 397). However, attorney error may constitute 3 excusable neglect if the Pioneer-Briones factors are met. *Bateman v. U.S. Postal Serv.*, 4 231 F.3d 1220, 1223–24 (9th Cir. 2000). 5 Preliminarily, Plaintiff acknowledges that she failed to argue or provide evidence of 6 the purported excusable neglect that caused the late filing despite her awareness of the error 7 and two previous opportunities to raise this argument. Nevertheless, she seeks to raise the 8 argument now for the first time. But a motion for reconsideration is “not a vehicle for a 9 litigant to attempt a second bite at the apple by raising facts or arguments available prior 10 to the entry of [the judgment].” *Lewis v. Paramo*, No. 3:22-CV00029-GPC-DEB, 11 2024 WL 4520346, at *5 (S.D. Cal. Oct. 17, 2024) (citing *Rosenfeld v. U.S. Dep’t of Just.*, 12 57 F.3d 803, 811 (9th Cir. 1995)); *AmTrust Bank v. Lewis*, 687 F. App’x 667, 670 (9th Cir. 13 2017) (“Because [the plaintiff] could have made his arguments to the district court before 14 entry of final judgment, he did not establish ‘mistake, inadvertence, surprise, or excusable 15 neglect’ necessary for relief under Rule 60(b)(1)”). Rather, the fact that Plaintiff knew 16 of the mistake and could have made the argument before the entry of final judgment 17 “weighs strongly against finding mistake, inadvertence, or excusable neglect necessary for 18 relief under Rule 60(b)(1).” *Lee v. Ecclesia LLC*, No. 2:19-cv-01691-ODW (JPRx), 19 2020 WL 4596950, at *3 (C.D. Cal. Aug. 11, 2020) (citation omitted). 20 Further, Court is not swayed by Plaintiff’s explanation for her repeated

failure to 21 address the missed deadline, as she attempts to pin the blame on an unnamed lead attorney 22 who is apparently no longer with Plaintiff's counsel's firm, SLP, and is unable to submit a 23 declaration to this Court explaining the reasons for the omissions. Chandy's statement that 24 she "learned" all the errors made by such previous lead attorney were inadvertent, does not 25 provide the Court with much clarity. Moreover, "[t]his is not a case of a 'typo' or even a 26 missed filing deadline, which the court might readily categorize as 'mistake' or 'excusable 27 neglect,' but rather a pattern of inattentiveness on the part of [Plaintiff's] counsel." Int'l 28 Allied Printing Trades Ass'n. v. Am. Lithographers, Inc., 233 F.R.D. 554, 556 (N.D. Cal. 1 2006). 2 Additionally, the Court is persuaded by Defendant that it will be prejudiced by 3 reconsideration of a fee motion that was already decided in its favor in the time permitted, 4 and will incur, and has incurred, additional fees and costs associated with opposing and 5 appearing for Plaintiff's fee motion again. See Opp'n at 8. The Court likewise agrees that 6 Plaintiff's delay in filing her Fee Motion, though only a week after the motion deadline, is 7 extensive in light of Plaintiff's awareness of the fee motion deadline, and the purported 8 total of 6.5 hours her counsel spent drafting the Motion. See Declaration of Payam Shahian, 9 ECF No. 22-2, Exh. 18 at 3. And Plaintiff's failure to raise her excusable neglect argument 10 in her belated July 2024 Motion or subsequent Reply has resulted in judicial proceedings 11 extending now to May 2025. 12 Moreover, Plaintiff's reasons both for the initial delay in filing her Fee Motion, and 13 subsequent delay in raising excusable neglect arguments for the original error, weigh 14 against finding excusable neglect. For instance, as discussed above, Plaintiff's explanation 15 for her failure to raise her timeliness arguments in her Fee Motion and Reply is effectively 16 a single statement by one attorney that someone else acted "inadvertently." See Chandy 17 Decl. ¶ 8. Further, the errors are too numerous to constitute excusable neglect. See 18 Mendoza v. Garland, No. 3:21-CV-01968-JES-MMP, 2023 WL 6050581, at *3 (S.D. Cal.

19 Sept. 15, 2023) ("Taken individually, these negligent acts may constitute excusable 20 neglect, but taken together they do not."). While the Court does not go so far as to find 21 evidence of bad faith, it need not do so, as the factors taken together in the context of this 22 case, weigh against finding excusable neglect. Plaintiff thus has not shown relief is 23 warranted under Federal Rule of Civil Procedure 60(b)(1). Nor has she demonstrated what 24 "extraordinary circumstances," entitle her to relief under Rule 60(b)(6). See Pioneer Inv. 25 Servs. Co., 507 U.S. at 393. 26 Finally, Plaintiff argues the Court separately has inherent constitutional authority to 27 reconsider its Order under California Code of Civil Procedure § 1008. Mot. at 6. However, 28 this Court is governed by Federal Rule 60(b) and Local Civil Rule 7.1(i) in assessing 1 || entitlement to relief from judgments. And in any event, the Court finds reconsideration is 2 ||not warranted here.

3 CONCLUSION

4 Accordingly, the Court DENIES Plaintiffs Motion for Reconsideration (ECF 5 || No. 30). 6 IT IS SO ORDERED. 7 ||Dated: June 6, 2025 jae L. Lo memeaite- g on. Janis L. Sammartino 9 United States District Judge 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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