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MARC J. RANDAZZA, JENNIFER RANDAZZA, and NATALIA RANDAZZA

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARC J. RANDAZZA, an individual,)	Case No. 2:12-cv-2040-JAD-PAL
JENNIFER RANDAZZA, an individual, and)	
NATALIA RANDAZZA, a minor,)	EMERGENCY MOTION FOR
)	RECONSIDERATION OF ORDER
Plaintiffs,)	GRANTING IN PART COX’S MOTION
)	FOR RECONSIDERATION (ECF 162)
vs.)	
)	
CRYSTAL COX, an individual, and ELIOT)	
BERNSTEIN, an individual,)	
)	
Defendants.)	

EMERGENCY MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART COX’S MOTION FOR RECONSIDERATION (ECF 162)

Plaintiffs Marc J. Randazza (“Randazza”), Jennifer Randazza, and Natalia Randazza (collectively, the “Plaintiffs”) file this emergency motion for reconsideration of the Court’s order granting in part Cox’s motion for reconsideration (ECF 162), pursuant to Federal Rule of Civil Procedure 60 and on the grounds set forth in the following memorandum of law.

I. Emergency Reconsideration of The Court’s Order Is Needed.

On February 14, 2014, the Court granted Crystal Cox’s (“Cox[’s]”) motion for reconsideration and allowed Cox to file a counterclaim in this action. Upon review of the docket, Plaintiffs believe this decision was made manifestly in error, and contradicts the Court’s

1 subsequent rulings based on its striking of Cox's counterclaims – including the Court's order to
2 construe Cox's counterclaims as a separate action filed in this District (ECF 94). In that order,
3 Judge Navarro considered Cox's counterclaim and ordered the Court's Clerk to file it as a separate
4 action, which is currently pending. *Cox v. Randazza et al.*, Case No. 2:13-cv-00297-MMD-GLF
5 (D. Nev. Feb. 26, 2013). As set forth below, Cox now has not one, but *two* separate actions
6 pending against Randazza before this Court, even before the Court allowed Cox leave to file a
7 counterclaim in this case, which will be her third duplicative claim.

8 On February 22, 2013, the Court struck Cox's 166-page counterclaim without leave to
9 amend, as she had exhausted her only amendment of right under Federal Rule of Civil Procedure
10 15(a) (*id.* at 3-5). The Court advised Cox that she could pursue her counterclaims, which lacked a
11 common nucleus of fact with Plaintiffs' claims, as a separate action with the Court (*id.*). Cox then
12 filed what ostensibly was her second amended counterclaim on February 24, 2013 (ECF 91).
13 Plaintiffs moved to strike this filing as well, due to its length and procedural impropriety (ECF 92).
14 The Court ordered the Court's Clerk to treat Cox's new counterclaim as a new action, and to open
15 it as a new case, complete with case number and new judge assignment (ECF 94).

16 The Court then used Cox's counterclaim, filed in this action as docket entry 91, to open *Cox*
17 *v. Randazza et al.*, Case No. 2:13-cv-00297-MMD-GLF. This case is still pending, with Cox filing
18 an amended complaint in it on November 27, 2013, *id.* at Doc. # 26.¹ Cox appears to have been
19 pursuing her separate case against Randazza while ignoring Plaintiffs' efforts to conduct discovery
20 in this case (see ECF 157).

21 Federal Rule of Civil Procedure 60(b)(1) and (6) allow Plaintiffs to move for
22 reconsideration of any Court order based on "mistake, inadvertence, surprise, or excusable
23 neglect," or "any other reason that justifies relief." Plaintiffs respectfully believe that the Court has
24 erred in allowing Cox to bring a counterclaim when she has already filed that counterclaim as a

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26 ¹ This is not even Cox's only case pending against Randazza in this District. *Cox v. Carr et al.*,
27 Case No. 2:13-cv-00938-APG-GWF (D. Nev. May 14, 2017) names Randazza as a defendant,
28 asserts substantially the same claims as *Cox v. Randazza et al.*, and is still pending before this
Court after being transferred to this District by the United States District Court for the Southern
District of New York.

1 separate action pending before this Court (to say nothing of Cox's other action originally filed in
2 the Southern District of New York, which has been transferred to – and is still pending before –
3 this Court). The Court's order discusses in depth the prior order striking Cox's counterclaim (ECF
4 89), but does not mention the subsequent order (ECF 94) that converted Cox's third attempt at
5 asserting a counterclaim in this case (ECF 91) into a separate action before this Court, which the
6 Court itself created and directed the Court Clerk to open (ECF 94). *See Cox v. Randazza et al.*,
7 Case No. 2:13-cv-00297-MMD-GLF. The Court's recent order (ECF 162) made no mention of the
8 previous minute order creating a separate case out of Cox's counterclaim (ECF 94), and leads
9 Plaintiffs to respectfully bring this portion of the docket to the Court's attention. They do not
10 believe it was the Court's intention to allow Cox to simultaneously maintain three nearly identical
11 actions against Randazza. Plaintiffs will supply further briefing to the Court on this issue if it is
12 requested.

13 Plaintiffs have moved for reconsideration on an emergency basis in hopes of resolving this
14 issue before they are required to file a responsive pleading to Cox's counterclaim. In order to
15 preserve party resources, further the goal of judicial economy, and avoid multiple, possibly
16 conflicting conclusions among the three Judges before whom Cox is prosecuting her cases against
17 Randazza, Plaintiffs respectfully request the Court reconsider its February 14, 2014 decision and
18 deny Cox leave to file a counterclaim in this action.

19 Cox will suffer no prejudice if the Court grants the requested relief. The same claims are
20 pending in two other cases before the Court, which Cox has been pursuing. Cox's motion to
21 reconsider did not ask the Court to reverse its February 26, 2014 ruling (ECF 94). (*see* ECF 116
22 (Cox's motion for reconsideration makes no mention of ECF 94, and discusses only ECF 89 –
23 which pre-dates the counterclaim she filed at ECF 91, and which was filed by the Clerk as a
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1 separate action in this District)). However, allowing Cox to file a counterclaim in this action would
2 be prejudicial to Plaintiffs, as they will now have to defend a third, identical action by Cox.²

3
4 Dated: February 20, 2014

Respectfully submitted,

5 /s/ Ronald D. Green

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² Cox's counterclaims are all but certain to be impertinent, improper, and will likely have to be
27 stricken even if they were properly filed with the Court. However, as a matter of judicial economy,
28 Plaintiffs' arguments will be reserved for a motion to strike or dismiss Cox's counterclaim, if the
Court allows it to be filed.

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure 5(b), I hereby certify that the foregoing document was served to Defendant Crystal L. Cox via U.S. Mail at:

P.O. Box 2027
Port Townsend, WA 98368

Dated: February 20, 2014

Signed,

J. Malcolm DeVoy

Attorney

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