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10 Attorneys for Defendant PEPPERDINE UNIVERSITY

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 HALEY VIDECKIS and LAYANA  
16 WHITE, individuals,

17 Plaintiffs,

18 vs.

19 PEPPERDINE UNIVERSITY, a  
20 corporation doing business in  
California,

21 Defendant.

Case No. 2:15-cv-00298-DDP (JCx)

**REPLY TO PLAINTIFF'S  
OPPOSITION TO DEFENDANT  
PEPPERDINE UNIVERSITY'S  
MOTION TO AMEND  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES AND  
DECLARATION OF ATTORNEY  
IN SUPPORT THEREOF**

Date: October 30, 2017  
Time: 8:30 a.m.  
Crtrm.: 9C

22  
23  
24 COMES NOW Defendant Pepperdine University briefing the issues in reply  
25 to Plaintiffs Haley Videckis and Layana White's opposition to Defendant  
26 Pepperdine University's motion to amend judgment or in the alternative reconsider,  
27 as follows:

28 ///

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1 **1. INTRODUCTION**

2 This is a motion to amend the judgment or in the alternative to reconsider. It  
3 is not simply a motion to reconsider. Even if it were, however, the requirements are  
4 met since Defendant Pepperdine University never had the opportunity to address the  
5 issues that were *sua sponte* ruled upon by the Court. A party should not be denied  
6 the opportunity to address the issues before the Court and to make a record on  
7 appeal for a potential appeal. With great respect to this Court, Defendant  
8 Pepperdine disagrees with its ruling and should be given the opportunity to set out  
9 the reasons for that disagreement. Defendant Pepperdine therefore utilized the only  
10 vehicle available to it, a rule 59(e) motion, or in the alternative, motion to  
11 reconsider.<sup>1</sup> Pepperdine asserts, as argued in its moving papers, that the criteria  
12 justifying a denial of prevailing party costs to Pepperdine simply are not met.  
13 Pepperdine, therefore, requests the Court to amend its judgment to allow for the  
14 recovery of costs in this matter.

15 **2. DISCUSSION**

16 A motion to amend the judgment under Federal Rules of Civil Procedure  
17 (“FRCP”) Rule 59(e) is committed to the sound discretion of the trial court.  
18 (*Mincey v. Head*, 206 F.3d 1106 (11<sup>th</sup> Cir., cert. denied (U.S. March 19, 2001);  
19 *McNair v. Campbell*, 315 F.Supp.2d 1179 (M.D. Ala., 2004).) In fact, it is an abuse  
20 of discretion for a trial court to deny a moving party the opportunity to present all of  
21 the legal theories by refusing to consider on the merits of the motion to alter  
22 judgment. (*Friend v. Aetna Finance Co.*, 622 F.2d 1217 (5<sup>th</sup> Cir., 1980).) Rule  
23 59(e) is an efficient mechanism by which the trial judge can correct an otherwise  
24

25 <sup>1</sup> Plaintiffs’ counsel argue in a footnote that the meet and confer requirements of  
26 Rule 7-3 were not met, but their own declaration demonstrates that the parties did  
27 indeed meet and confer and Defendant Pepperdine attempted to resolve all issues  
28 related to the case and avoid filing the motion to begin with.

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1 erroneous judgment without implicating the appellate process as he sees fit.  
2 (*Clipper Express v. Rocky Mt. Motor Tariff Bureau*, 674 F.2d 1252 (9<sup>th</sup> Cir., 1982)  
3 cert. denied (1983) 459 U.S. 1277, overruled in part on other grounds by *Mayle v.*  
4 *Felix*, \_\_\_\_ U.S. \_\_\_\_, 125 S.Ct. 2562, 162 L.Ed.2d 582.)

5 A motion to amend is proper here relying upon the grounds stated by the  
6 Ninth Circuit for motions to reconsider. As stated by the Ninth Circuit in *Dixon v.*  
7 *Wallowa County*, 336 F.3d 1031 (9<sup>th</sup> Cir., 2003), at p. 1022 of its decision,

8 Rule 59(e) amendments are appropriate if the District  
9 Court “(1) is presented with newly discovered evidence,  
10 (2) committed clear error or the initial decision was  
manifestly unjust, or (3) there is an intervening change in  
controlling law.” [Citation omitted.]

11 In this circumstance it is unjust to enter a decision denying a prevailing party costs  
12 without giving the prevailing party the opportunity to brief the issues. Thus the  
13 criteria are met.

14 Moreover, to grant the motion *sua sponte* without requiring Plaintiffs to carry  
15 their burden of proof is also unjust. (*See also, School District No. 1J v. AC&S, Inc.*,  
16 5 F.3d 1255 (9<sup>th</sup> Cir., 1993).) A motion to reconsider would be appropriate under  
17 Local Rule 7-18. 7-18 provides

18 A motion for reconsideration of the decision on any  
19 motion may be made only on the grounds of (a) a material  
20 difference in fact or law from that percentage of the court  
21 before such decision that in the exercise of reasonable  
22 diligence could not have been known to the party moving  
23 for reconsideration at the time of such decision, or (b) the  
24 emergence of new material facts or change of law  
occurring after the time of such decision, or (c) a manifest  
showing of a failure to consider material facts presented to  
the court before such decision. 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.

25 Assuming this local rule is even applicable since there was no motion originally  
26 decided and there was no oral or written argument made against the court’s *sua*  
27 *sponte* ruling, subdivision (c) presents the basis for which Defendant Pepperdine can  
28 make this motion. It provides a motion is available upon a “manifest showing of a

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1 failure to consider material facts presented to the court before such decision.”  
2 Pepperdine was never given the opportunity to present material facts. Moreover,  
3 since the party seeking to deny the prevailing party costs has the burden to prove  
4 that such a denial is warranted, there is a manifest injustice to Defendant Pepperdine  
5 to not allow it to address the Court’s *sua sponte* order.

6 For all of the above reasons, it is appropriate to hear Pepperdine’s motion to  
7 amend the judgment or in the alternative to reconsider its *sua sponte* ruling.

8 **3. THE FACTS DO NOT SUPPORT A DENIAL OF PREVAILING**  
9 **PARTY COSTS OF PEPPERDINE**

10 Plaintiffs’ opposition to Pepperdine’s motion to amend the judgment  
11 demonstrates their lack of affirmative evidence to establish their case. They argue  
12 credibility issues that are soundly within the jury’s purview. The jury spoke loud  
13 and clear. They rendered a decision against the Plaintiffs within four hours of  
14 having the case submitted to it. This decision by the jury is a clear vindication of  
15 Pepperdine and a clear statement of the frivolous nature of this litigation.

16 Moreover, Plaintiffs argue that they did not have resources comparable to  
17 Pepperdine so that a judgment of costs would be inappropriate. Plaintiffs offer no  
18 evidence of that position. Moreover, the evidence is to the contrary. Plaintiffs  
19 testified that they earned more than \$100,000 in the year intervening their choice to  
20 withdraw from Pepperdine and their entry into USC. Moreover, Haley Videckis  
21 testified that she has her own personal trust account after the death of her father.  
22 Thus Plaintiff’s protestations to the contrary, they do not establish that there is a  
23 sufficient disparity in economic wealth to justify denying Pepperdine its prevailing  
24 party costs.

25 **4. PLAINTIFFS’ REQUEST FOR SANCTIONS SHOULD BE DENIED**

26 Defendant Pepperdine University has a right to advocate its position in this  
27 litigation. While Plaintiffs purport to be convinced of the merits of their case,  
28 clearly the evidence and the deliberations of the jury establish to the contrary.

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1 Moreover, to assert that Pepperdine cannot seek to address the *sua sponte* order of  
2 this Court and create a record on appeal is to deny Pepperdine due process. The  
3 case law cited by the Plaintiffs simply does not support that sanctions should be  
4 granted where a party seeks to have the merits of an issue addressed by the court  
5 through an appropriate adversarial process.

6 For these reasons, the request for sanctions by the Plaintiffs should be denied.

7 **5. CONCLUSION**

8 For the reasons stated above, and in Defendant Pepperdine University's  
9 moving papers, Pepperdine prays this Court grant its motion to amend the judgment  
10 or in the alternative reconsider its denial of costs and reverse its position.

11  
12 DATED: October 16, 2017

Respectfully submitted,

ANDERSON, MCPHARLIN & CONNERS LLP

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15  
16 By: /s/ David R. Hunt

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19 Attorneys for Defendant PEPPERDINE  
20 UNIVERSITY