UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 19 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JANE DOE,

Plaintiff-Appellant,

v.

CITY OF BATON ROUGE; et al.,

Defendants-Appellees.

No. 22-35572

D.C. No. 6:21-cv-00314-AA
District of Oregon,
Eugene

ORDER

Before: SILVERMAN, IKUTA, and MILLER, Circuit Judges.

Upon a review of the record, appellant's motion for summary reversal, and the responses thereto, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 9), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

No further filings will be considered in this closed case.

DISMISSED.

at/MOATT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

JANE DOE,

Plaintiff,

v.

THE CITY OF BATON ROUGE, et al.,

Defendants.

Civ. No. 6:21-cv-00314-AA

OPINION & ORDER

AIKEN, District Judge.

This case comes before the Court on Motions to Dismiss filed by numerous Defendants. ECF Nos. 181, 185, 193, 199, 211, 213, 215, 221, 223, 251, 254, 257, 264, 267, 269, 274, 279, 286, 288, 293, 311, 321, 342. The Court concludes that this matter is proper for resolution without oral argument. LR 7-1(d)(1). For the reasons discussed below, this case is DISMISSED.

LEGAL STANDARDS

Parties may move to dismiss an action for improper venue under Federal Rule of Civil Procedure 12(b)(3). 28 U.S.C. § 1406(a) provides that a "district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1391(b) defines when venue is proper and allows a plaintiff to bring a civil action in:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or
>
> (3) if there is no judicial district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

Courts should look to the categories of § 1391(b) to determine if venue that has been challenged is proper. *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 55-56 (2013). If the case falls into one of the three categories of § 1391(b), venue is proper. *Id.* at 56. If the case does not fall into one of the three categories, "venue is improper, and the case must be dismissed or transferred under § 1406(a)." *Id.*

DISCUSSION

The allegations of the voluminous and disjointed First Amended Complaint ("FAC"), ECF No. 115, will not be reproduced here except as necessary.

Several of the moving Defendants have challenged the propriety of the District of Oregon as the venue for this action by filing motions under Rule 12(b)(3). None of the Defendants are residents of Oregon and venue is not proper under § 1391(b)(1). Under § 1391(b)(2), venue is proper if a substantial part of the events or omissions giving rise to the claims occurred in the district. Despite Plaintiff's arguments to the contrary in her over-long response briefs, essentially every complained-of act occurred in Louisiana. The only connection this case has to Oregon is that Plaintiff moved

here and alleges that she is still subject to the conspiracy among the Defendants. Venue is not proper in Oregon under § 1392(b)(2).

And finally, under § 1391(b)(3), if no district exists in which an action may be brought, venue is proper in any judicial district in which any defendant is subject to the court's personal jurisdiction. In this case, venue would be proper in the United States District Court for the Middle District of Louisiana under § 1392(b)(2) and so the Court need not reach the question of personal jurisdiction over the various Defendants or the other defects in the FAC.

Plaintiff did, in fact, litigate her claims in the Middle District of Louisiana and the case was dismissed on the merits shortly before Plaintiff filed this action in the District of Oregon. *Doe v. City of Baton Rouge*, CIVIL ACTION NO. 20-CV-514-JWD-EWD, 2021 WL 304392 (M.D. La. Jan. 29, 2021). Dismissal, rather than transfer, is the proper remedy when a plaintiff seeks to bring her action in the wrong forum after losing an action on similar claims in the proper forum. *King v. Russell*, 963 F.2d 1301, 1304-05 (9th Cir. 1992); *see also Wood v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1523 (9th Cir. 1983) ("Justice would not be served by transferring Wood's claims back to a jurisdiction that he purposefully sought to avoid through blatant forum shopping.").

The Court concludes that venue is not proper in this action. Because Plaintiff's claims were resolved on the merits in a prior action in the Middle District of Louisiana, the Court concludes that it would not be in the interests of justice to transfer this case to that District and concludes dismissal is the appropriate remedy.

CONCLUSION

For the reasons set forth above, the Court GRANTS Defendants' motions to dismiss for improper venue and this case is DISMISSED. All other pending motions are denied as moot. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 18th day of March 2022.

/s/Ann Aiken
ANN AIKEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

JANE DOE,

Plaintiff,

v.

THE CITY OF BATON ROUGE, et al.,

Defendants.

Civ. No. 6:21-cv-00314-AA

JUDGMENT

AIKEN, District Judge.

For the reasons set forth in the accompanying Order, this case is DISMISSED without prejudice.

It is so ORDERED and DATED this 18th day of March 2022.

/s/Ann Aiken
ANN AIKEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

JANE DOE,

Plaintiff,

v.

THE CITY OF BATON ROUGE, et al.,

Defendants.

Civ. No. 6:21-cv-00314-AA

OPINION & ORDER

AIKEN, District Judge.

This case comes before the Court on Plaintiff's Rule 60(b) and Rule 59(e) Motion for Relief from Judgment and Leave to Amend the Complaint. ECF No. 429. The Court concludes that this matter is proper for resolution without oral argument. LR 7-1(d)(1). For the reasons discussed below, Plaintiff's Motion is DENIED.

DISCUSSION

Plaintiff seeks to set aside the Court's Order of Dismissal and Judgment, ECF Nos. 422, 423, pursuant to Rule 60(b) and Rule 59(e) and seeks to file an amended complaint in this action.

Under Rule 59(e), a party may move "to alter or amend a judgment" within 28 days of its entry. Fed. R. Civ. P. 59(e). A motion for reconsideration under Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d

877, 890 (9th Cir. 2000) (internal quotation marks and citations omitted). A district court may grant a Rule 59(e) if it is presented with "newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). This standard presents a "high hurdle" for a litigant seeking reconsideration under Rule 59(e). *Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001).

Federal Rule of Civil Procedure 60(b) provides that a court "may relieve a party or its legal representative from a final judgment, order, or proceeding" based on (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b). "A motion for reconsideration is not a vehicle to reargue the motion or to present evidence which should have been raised before." *United States v. Westlands Water Dist.*, 134 F. Supp.2d 1111, 1131 (E.D. Cal. 2001) (internal quotation marks and citation omitted). "To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Id.*

Here, Plaintiff asserts that there is newly discovered evidence that "strongly affects jurisdictional considerations including venue based on which the Plaintiff's legal action has been dismissed." Pl. Mot. 2. Plaintiff contends that "most" of the evidence "has become known and apparent to Plaintiff in March 2022." *Id.* at 4.

Plaintiff does not identify this newly discovered evidence, other than vague allusions to being "attacked by the chemical weapons and toxins," and being unable to access an unidentified medical procedure. Doe Decls. ECF Nos. 430, 443. Plaintiffs asserts that she discovered this information in March 2022, although Plaintiff offers only her own conclusory statement to support this claim.

As noted, Rule 59(e) represents an extraordinary remedy which is to be granted only sparingly. Plaintiff's conclusory motion and declarations fall well short of meeting the "high hurdle" she must clear to achieve relief under Rule 59(e). With respect to Rule 60(b)(2), the moving party must show "that the evidence (i) is newly discovered; (ii) could not have been discovered through due diligence; and (iii) is of such a material and controlling nature as will probably change the outcome." *United States v. Tanoue*, 165 F.R.D. 96, 97 (D. Haw. 1995). Plaintiff's motion and declarations describe the "newly discovered evidence" in the vaguest terms, without showing that it could not have been discovered earlier or that the evidence of a material or controlling nature. The Court concludes that Plaintiff has failed to meet her burden under Rule 60(b)(2). Plaintiff's motion does not address any of the other grounds for reconsideration or relief from judgment and the Court finds that Plaintiff does not meet the requirements of those sections.

To the extent that Plaintiff seeks leave to amend, Plaintiff has not supplied the Court with a proposed amended complaint. LR 15-1(d)(1). Nor does Plaintiff describe the proposed amendments. LR 15-1(c). Without such information, the Court is unable to assess the propriety of allowing the proposed amendments, even if Plaintiff

had met the requirements for reconsideration or the setting aside of the judgment under Rules 59(e) or 60(b). *See Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996) (holding "a motion to amend the complaint can only be entertained if the judgment is first reopened under a motion brought under Rule 59 or 60.").

CONCLUSION

For the reasons set forth above, Plaintiff's Motion, ECF No. 429, is DENIED. Defendant Liggett Vector Brands, LLC's Motion for Joinder in Responses from Defendants Oppositions to Plaintiff's Motion for Relief from Judgment, ECF No. 435, is GRANTED.

It is so ORDERED and DATED this 22nd day of June 2022.

/s/Ann Aiken
ANN AIKEN
United States District Judge