# APPENDIX

# APPENDIX

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**APPENDIX A**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**No. 21-35992**
**D.C. No. 3:10-cv-01285-AC**

**[Filed December 15, 2023]**

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| LOREDANA RANZA,<br>Plaintiff-Appellant,<br><br>v.<br><br>NIKE, INC., an Oregon corporation,<br>Defendant-Appellee. | ) |

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted December 6, 2023[**]
Portland, Oregon

Before: BERZON, NGUYEN, and MILLER, Circuit Judges.

After more than a decade of litigation on both sides of the Atlantic, Loredana Ranza appeals from the district court's denial of two motions for relief from this court's final judgment in *Ranza v. Nike, Inc.*, 793 F.3d 1059 (9th Cir. 2015). She also appeals an order partially denying her motion for judicial notice. For the reasons below, we affirm the challenged orders.

1. The district court did not abuse its discretion by denying Ranza's Rule 60(b)(6) motion as untimely. *See Bynoe v. Baca*, 966 F.3d 972, 979 (9th Cir. 2020); Fed. R. Civ. P. 60(c)(1) (requiring motions "be made within a reasonable time"). We assess timeliness based on "the party's ability to learn earlier of the grounds relied upon, the reason for the delay, the parties' interests in the finality of the judgment, and any prejudice caused to parties by the delay." *Bynoe*, 966 F.3d at 980. These factors weigh against Ranza.

Both parties—as well as the district court and magistrate judge—mistakenly assess timeliness based on the resolution of Ranza's 2016 lawsuit in Dutch courts. But our 2015 decision, which affirmed the dismissal of Ranza's claims against Nike on *forum non conveniens* grounds, expressly held that the relevant

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[**] Nike, Inc.'s unopposed motion to update the docket by removing Nike European Operations Netherlands, B.V. as a listed appellee is granted, as the caption above reflects.

alternative forum was the Dutch Equal Treatment Commission, which had issued a 2010 decision on Ranza's claims.[1]

First, Ranza relies on the absence of a Dutch forum. But that alleged lack of an adequate Dutch forum was clear at the latest in 2016, when, after we identified the alternative forum as the Dutch Equal Treatment Commission—where Ranza had *already* litigated her claims and received an adverse finding in 2010—the Supreme Court denied Ranza's petition for certiorari seeking review of this court's *forum non conveniens* ruling. *See Ranza v. Nike, Inc.*, 577 U.S. 1104 (2016).

Second, Ranza's "reason for delay" rests on her pursuit of claims in Dutch courts between 2016 and 2019. But our 2015 *forum non conveniens* analysis nowhere contemplated a future Dutch legal challenge. So, while our 2015 judgment remains in place, the viability of a new action in Dutch courts has no

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[1] We "affirm[ed] the dismissal of [Ranza's] claims against Nike under the doctrine of *forum non conveniens* because the Netherlands provides a more convenient forum than Oregon to hear Ranza's claims, the Dutch Equal Treatment Commission is an adequate alternative forum and it has already considered and rejected Ranza's claims." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1065 (9th Cir. 2015). Having affirmed "the adequacy of the [Commission] as an alternative forum," we concluded that "the Netherlands provided an adequate and more convenient alternative forum in which to litigate Ranza's claims, thus justifying Nike's dismissal under the *forum non conveniens* doctrine." *Id.* at 1079. "This [wa]s especially true because Ranza herself chose to litigate her discrimination claims before the [Commission], which thoroughly reviewed [her] claims." *Id.* at 1077.

relevance to whether there is an adequate alternative forum nor whether that 2015 judgment could be revisited under Rule 60(b)(6). Ranza has failed to explain why our 2015 judgment could not have been challenged much earlier.

Third, Ranza offers no persuasive reason to discount Nike's reliance interest in the finality of our 2015 decision. Again, as the procedures in the adequate forum identified in that decision had concluded, Nike had no expectation of further litigation, or of reopening the existing judgment because a different Dutch forum later proved inadequate.

Fourth, the district court adopted the magistrate judge's conclusion that allowing Ranza to revive her claims would prejudice Nike. Ranza argues that Nike should have anticipated further litigation if the Netherlands "proved to be an unavailable forum." But, yet again, our 2015 decision did not rest on the availability of a *prospective* adequate forum. Nike had no reason to expect that Ranza would attempt to revive her Oregon case years later on forum-related grounds after exhausting her claims in a Dutch tribunal, the adequacy of which had no relevance to whether our 2015 *forum non conveniens* judgment should be revisited.

Ranza's 2020 motion challenging our 2015 decision was not reasonably timely under the *Bynoe* factors. The district court did not abuse its discretion in denying that motion.

2. Nor did the district court abuse its discretion by denying Ranza's Rule 60(d)(3) motion. *See United*

*States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166–67 (9th Cir. 2017). As the "party seeking to establish fraud on the court," Ranza "must meet a high standard." *Trendsettah USA, Inc. v. Swisher Int'l, Inc.*, 31 F.4th 1124, 1132 (9th Cir. 2022). "We exercise the power to vacate judgments for fraud on the court with restraint and discretion, and only when the fraud is established by clear and convincing evidence." *United States v. Est. of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011) (internal quotation marks omitted). To constitute fraud on the court, the conduct at issue must "harm[] the integrity of the judicial process" through an "unconscionable plan" that "go[es] to the central issue in the case." *Sierra Pac.*, 862 F.3d. at 1168 (internal quotation marks omitted).

Ranza has not shown any misrepresentation by Nike that meets that high bar. Nike's statements about Dutch law were legal arguments, not factual assertions, and so do not constitute "intentional, material misrepresentation[s]," *Sierra Pac.*, 862 F.3d at 1168 (internal quotation marks omitted); *cf. Abatti v. Comm'r*, 859 F.2d 115, 118 (9th Cir. 1988). Any misrepresentation during the earlier litigation about the availability of trans-Atlantic travel records did not affect the case's outcome, as Ranza received those materials in discovery. And Ranza fails to identify a misrepresentation about witnesses. Nike's Dutch subsidiary told Dutch courts that "the witnesses . . . do not all live in the Netherlands," which is compatible with both Nike and its subsidiary's 2013 statement to the district court that they would need to "bring[] witnesses to Oregon to testify" and our 2015 conclusion

that "relevant documents and witnesses are mostly located abroad," *Ranza*, 793 F.3d at 1078.

3. Ranza also appeals from the district court's denial of her request for judicial notice of a 2018 lawsuit in Oregon district court. *See Cahill v. Nike, Inc.*, No. 3:18-cv-01477 (D. Or.). Because we hold for reasons unconnected to the merits of our 2015 judgment that the district court correctly denied Ranza's motions under Rules 60(b)(6) and 60(d)(3), the judicial notice issue is moot.

**AFFIRMED.**

## APPENDIX B

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF OREGON**

**Case No. 3:10-cv-1285-AC**

**[Filed February 3, 2021]**

| | |
|---|---|
| LOREDANA RANZA, Plaintiff, | ) |
| v. | ) |
| NIKE, INC., an Oregon corporation, NIKE EUROPEAN OPERATIONS NETHERLANDS, B.V., a foreign corporation, Defendants. | ) |

### ORDER

**Michael H. Simon, District Judge.**

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on December 10, 2020. Judge Acosta recommended that this Court deny Plaintiff's motion for relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure as untimely and allow Plaintiff to proceed to a resolution on the merits of her motion under Rule 60(d)(3).

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate judge's recommendations for "clear error on the face of the record."

Plaintiff timely filed an objection. ECF 196. Plaintiff's objection includes arguments relating to the merits instead of the timeliness of Plaintiff's Rule 60

motion. Only the timeliness of Plaintiff's motion was at issue in the Findings and Recommendation. Accordingly, the Court only addresses the objections relating to timelines.

Regarding the timeliness issue, Judge Acosta found that Plaintiff did not file her motion under Rule 60(b)(6) within a "reasonable time." Plaintiff objects that in reaching that conclusion Judge Acosta failed properly to consider that Plaintiff pursued litigation against Nike European Operations Netherlands, B.V. (NEON) in the alternative forum until that forum became no longer available due to her filing a few days after the running of the statute of limitations and her case being dismissed. Plaintiff argues that because the alternative forum is no longer available, her claims against Nike, Inc., a separate corporate entity from NEON, which were dismissed by the Ninth Circuit on *forum non conveniens* grounds in 2016, must now be allowed to be resumed in this Court. Plaintiff's various objections center on the fact that she is no longer able to bring her claims in the Netherlands and thus no longer has an available alternative forum.

The Court has reviewed *de novo* those portions of Judge Acosta's Findings and Recommendation regarding Plaintiff's Rule 60(b)(6) motion, agrees with his reasoning, and adopts those portions of the Findings and Recommendation. Additionally, even if the running of the statute of limitations of Plaintiff's claims in the Netherlands could trigger some new consideration with respect to Plaintiff's claims against Nike in the United States, the Court does not find persuasive Plaintiff's argument that it does so under

the facts of this case for two reasons. First, in the *forum non conveniens* analysis, the availability of the alternative forum is considered at the time of the decision on the original motion. *See, e.g.*, *Veba-Chemie A.G. v. M/V Getafix*, 711 F.2d 1243, 1248 (5th Cir. 1983) (stating that an alternative forum must "be available *at the time of dismissal* so that [the] plaintiff can pursue his action in what has been determined to be a substantially more convenient forum" (emphasis added)). Plaintiff does not dispute that the Netherlands was an available forum at the time Plaintiff's claims against Nike and NEON were dismissed in 2016.

Second, the statute of limitations ran and the Netherlands became an unavailable forum under Plaintiff's argument based on conduct *by Plaintiff*, in filing her claim a few days late. It is Plaintiff's action that lost her access to what was adjudged by the Ninth Circuit to be the most convenient forum. As described by the Southern District of New York

> The plaintiff had a most convenient forum, the Dominican Republic. But, through his own inaction, he lost access to it. He let the Dominican Republic's six-month statute of limitations pass and has lost his remedy there, as well as in India, which presumably would follow the Dominican Republic's statute. It would be a strange world if a litigant could "bootstrap" himself into a New York court by missing the statute of limitations in the proper forum.

*Castillo v. Shipping Corp. of India*, 606 F. Supp. 497, 503-4 (S.D.N.Y. 1985); *accord Veba-Chemie*, 711 F.2d at

1248 n.10 ("Perhaps if the plaintiff's plight is of his own making . . . the court would be permitted to disregard [the consideration that the alternative forum be available] and dismiss."); *In re Air Crash Over the Mid-Atl. on June 1, 2009*, 792 F. Supp. 2d 1090, 1095- 97 (N.D. Cal. 2011) (finding that a plaintiff "cannot render France unavailable through unilateral" conduct, even though the statute of limitations ran between the court's first *forum non conveniens* dismissal order and the pending motion); *In re Compania Naviera Joanna S.A.*, 531 F. Supp. 2d 680, 686 (D.S.C. 2007), *aff'd as modified on other grounds sub nom. Compania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV*, 569 F.3d 189 (4th Cir. 2009) ("A party should not be allowed to assert the unavailability of an alternative forum when the unavailability is a product of its own purposeful conduct."). Similarly, Plaintiff cannot "bootstrap" claims in Oregon because she missed the statute of limitations in the Netherlands six months after being ordered to litigate there.

For those portions of Judge Acosta's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court ADOPTS Judge Acosta's Findings and Recommendation, ECF 192. The Court DENIES AS UNTIMELY Plaintiff's motion for relief from final judgment (ECF 173) under Rule 60(b)(6) of the Federal Rules of Civil Procedure. Plaintiff's motion may proceed on the merits under Rule 60(d)(3).

**IT IS SO ORDERED.**

DATED this 3rd day of February, 2021.

/s/ *Michael H. Simon*
Michael H. Simon
United States District Judge

## APPENDIX C

**UNITED STATES DISTRICT COURT**
**DISTRICT OF OREGON**
**PORTLAND DIVISION**

**Case No. 3:10-cv-01285-AC**

**[Filed December 10, 2020]**

| | |
|---|---|
| LOREDANA RANZA,<br>Plaintiff,<br><br>v.<br><br>NIKE, INC., an Oregon corporation, NIKE EUROPEAN OPERATIONS NETHERLANDS, B.V., a foreign corporation,<br>Defendants. | ) |

FINDINGS AND RECOMMENDATION

ACOSTA, Magistrate Judge:

*Introduction*

Plaintiff Loredana Ranza ("Ranza") filed a motion for relief for judgment in this closed case, and the question for the court's decision is whether her motion was filed timely. The court finds Ranza did not seek relief from judgment within a "reasonable time," as required under Rule 60 of the Federal Rules of Civil

Procedure ("Rule 60"). However, the time limits set forth in Rule 60(c) do not apply to relief sought under Rule 60(d). Accordingly, Ranza's motion for relief from judgment should be limited to relief sought pursuant to Rule 60(d)(3).

*Background*

Defendant Nike European Operations Netherlands, B.V., a foreign corporation doing business in Europe ("NEON"), terminated Ranza's employment on October 1, 2008. (Compl. ECF No. 1 ¶¶ 4, 7.) NEON was a wholly owned subsidiary of defendant Nike, an Oregon corporation ("Nike"). (Compl. ¶ 4.) Ranza was a citizen of the United States, a resident of the Netherlands, a female, and forty-five years old at the time of her termination. (Compl. ¶¶ 3, 8, 14.)

As required under Dutch law, NEON sought approval from the Court of Hilversum to terminate Ranza. *Ranza v. Nike*, 793 F.3d 1059, 1066 (9th Cir. 2015), *cert denied,* 577 U.S. 1104 (2016). After a hearing, at which Ranza was represented by legal counsel, the court found Ranza's proposed termination was "'neutral,' i.e., that no party was at fault," granted NEON permission to terminate Ranza's employment, and awarded Ranza approximately $205,000 in severance pay. *Id.* The court declined Ranza's request to determine if she had a valid claim of discrimination, stating that "such a claim should be brought before the Dutch Equal Treatment Commission (ETC) or a court in the United States." *Id.*

Ranza then pursued claims for age and sex discrimination with the ETC. The Ninth Circuit

summarized the authority of the ETC and its resolution of Ranza's discrimination claims in the following manner:

> According to an English translation of an ETC publication, the ETC is a "special 'enforcement institution [ ]'" established by the Dutch government to help implement the country's equal treatment laws. It is separate from the judiciary but shares some features in common with a judicial tribunal: its nine commissioners have salary protections, decisional independence and insulation from firing by the government. It "provides easy access to an independent and expert judgement in matters of alleged unequal treatment and/or discrimination, both for individuals and for private and public organisations and institutions." Its proceedings are "less formal than a court procedure," but litigants are permitted to submit evidence, present witnesses and argue their case at a hearing. When investigating a complaint, the ETC can make direct inquiries of the parties and call on independent experts to evaluate the facts.
>
> The ETC does not provide direct relief, however; its power is in its ability to persuade the parties or a court of law to act in accordance with its conclusions and recommendations. It determines whether unlawful discrimination has occurred and publishes reasoned opinions applying the law to the facts of a case. It can also make recommendations to prevent future discrimination. But it has no authority to

enforce its judgments or recommendations. After the Commission issues a judgment finding discrimination, it follows up with the parties to determine whether the defendant has taken remedial actions and to encourage compliance. Although the ETC cannot impose penalties or other sanctions on a defendant who fails to remedy discrimination, a complainant may try to persuade a court of law to enforce an ETC judgment, either through money damages or injunctive relief. In such a case, the Commission's determination that discrimination has occurred "can be of great value," according to the Commission, in part because the ETC takes considerable effort in drafting its judgments to make them persuasive to the parties and the courts. Additionally, the ETC itself may bring legal action in Dutch courts to enforce its judgments.

Here, the ETC held a hearing on Ranza's claims of discrimination in June 2009. Ranza and NEON representatives were present at the hearing (along with English translators) and were represented by counsel. At the conclusion of the hearing, the ETC initiated an investigation and requested further information from the parties. The ETC also asked its independent job evaluation expert to investigate Ranza's claims and provided the expert's findings to the parties to give them an opportunity to respond. After concluding its investigation, the ETC issued a thorough opinion in June 2010, finding NEON "ha[d] not

> discriminated [against] L. Ranza during her work on the basis of sex or age, nor ha[d] [it] acted in violation of the victimization prohibition [under Dutch law]." The opinion addressed each of Ranza's allegations, including her claims that NEON discriminated against her when it promoted a younger, less qualified male instead of her; that NEON paid Ranza less than her more junior male coworkers; and that NEON fired her because of her sex, age and in retaliation for her complaints of discrimination. The opinion presented the facts, law and positions of the parties on each of Ranza's claims before concluding they lacked merit.

*Id.* at 1066-67.[1]

Having received a negative ruling from the ETC on her discrimination claims, Ranza decided to file this lawsuit rather than continue to pursue her claims in the Netherlands. Accordingly, Ranza filed her complaint on October 18, 2010, alleging NEON and Nike discriminated against her on based on her sex and age in violation of federal statutes. ("Complaint"). (Compl.) On March 3, 2011, Defendants moved to dismiss the Complaint on five grounds: (1) the court lacked personal jurisdiction over NEON; (2) Nike lacked the control over NEON sufficient to subject NEON to liability under relevant federal statutes; (3) Ranza did not timely exhaust her administrative

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[1] The Ninth Circuit noted in a footnote that "Dutch law prohibits discrimination on the basis of sex and age, among other protected statuses." *Id.* at 106 n. 1.

remedies; (4) the proper forum is the Netherlands; and (5) Ranza has not met the applicable pleading standard.

In a Findings and Recommendation filed January 4, 2013 (the "F&R"), this court found: "it lacks personal jurisdiction over NEON, there are no genuine issues of fact regarding whether Nike controls NEON sufficient to hold NEON liable under Title VII and the ADEA, Ranza exhausted her administrative remedies with respect to both NEON and Nike, and Oregon is an improper venue for Ranza's claims." (*Ranza v. Nike, Inc.*, CIV No. 3:10-cv-01285-AC, Findings and Recommendation dated January 4, 2013, ECF No. 130 ("F&R"), at 2.) As a result, this court recommended the lawsuit be dismissed. (F&R at 83.)

In reaching its recommendation to dismiss Ranza's lawsuit, this court addressed her argument that, based on Nike's degree of control over NEON, Nike effectively was her employer and, consequently, liable for violations of Title VII and the ADEA as a substantive, rather than jurisdictional, question. (F&R at 52-53.) The court explained that "to assert liability against a domestic parent corporation, a plaintiff must show that it controlled the foreign subsidiary," engaged in a detailed and extensive analysis of Nike's relationship with NEON, and found Ranza failed to present sufficient evidence to rebut the strong presumption that Nike, as the parent company of NEON, was not liable for employment violations of its subsidiary for the purposes of Title VII or the ADEA. (F&R at 53-67.)

Judge Anna Brown adopted the F&R in an Amended Order dated March 7, 2013 ("Order"), relying

solely on this court's finding it lacked personal jurisdiction over NEON and on Ranza's failure to state a claim against Nike for violation of Title VII and the ADEA. *Ranza v. Nike, Inc.*, No. 3:10-CV-01285-AC, 2013 WL 869522, at *2 (D. Or. March 7, 2013)("Because this court concludes it lacks personal jurisdiction as to NEON and that Plaintiff cannot under any set of facts state a claim against Nike for violation of Title VII or the ADEA, it is unnecessary for the Court to consider the Magistrate Judge's alternative recommendations regarding exhaustion of administrative remedies or *forum non conveniens*.") Judge Brown issued a Judgment dismissing this action with prejudice on March 8, 2013 ("Judgment"). (Judgment, ECF No. 143.)

Ranza appealed the dismissal to the Ninth Circuit Court of Appeals. In an opinion dated July 16, 2015, the Ninth Circuit affirmed the dismissal based on lack of personal jurisdiction over NEON and on the existence of a more convenient forum for litigating Ranza' s claims against Nike. *Ranza*, 793 F.3d at 1079. The Ninth Circuit found:

> The district court properly dismissed Ranz's claims against NEON for lack of general personal jurisdiction. NEON is a Dutch company that mostly operates outside the United States. Its contacts with Oregon are not "so continuous and systematic as to render [it] essentially at home" there. Although we conclude a plaintiff may impute a local entity's contacts to its foreign affiliate if it demonstrates an alter ego relationship between the entities, Ranza has not made that showing. Nike, a corporation that is

> based in Oregon, is heavily involved in NEON's micromanagement, but it is not so enmeshed in NEON's "routine matters of day-to-day operation" that the two companies should be treated as a single enterprise for the purpose of jurisdiction.
>
> We further hold the district court properly dismissed Ranza's claims against Nike, albeit for a different reason than the district court cited. Under the circumstances, the Netherlands provided an adequate and more convenient alternative forum in which to litigate Ranza's claims, thus justifying Nike's dismissal under the *forum non conveniens* doctrine.

*Id.* (internal citations omitted).

The Ninth Circuit rejected Ranza's argument the "Netherlands is an inadequate forum under the second prong because it cannot provide her with a satisfactory remedy" based, in part, on Ranza's choice "to litigate her discrimination claims before the ETC, which thoroughly reviewed those claims." *Id.* The Ninth Circuit noted a foreign forum need not offer the same remedy as the United States, but must merely provide "some" remedy, and a forum will typically "'be inadequate only where the remedy provided is so clearly inadequate or unsatisfactory, that it is no remedy at all.'" *Id.* (quoting *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1266, (9th Cir. 2011)). It then explained Ranza took advantage of the opportunity to litigate her claims for violation of Dutch equal protections laws before the ETC, have the ETC investigate her claims and employ an expert to

evaluate NEON's employment practices, and present evidence and witnesses at a hearing. *Ranza*, 793 F.3d at 1078. While acknowledging the ETC did not have the authority to award damages or enforce its judgments based on findings of discrimination, the Ninth Circuit reasoned the ETC:

> publishes its findings, coordinates with both governmental and non-governmental bodies and "actively follow[ s] up" with employers to ensure compliance with its findings and to remedy any discrimination. The ETC publication Ranza provided states that a prevailing claimant can ask a Dutch court to enforce an ETC judgment, through damages and injunctive relief, and the Commission may pursue claims on behalf of claimants. Had Ranza prevailed before the ETC, these remedies would have been available to her. Even if these remedies proved less generous than those available to a prevailing plaintiff in a Title VII and ADEA action in the United States, they nevertheless represent "some remedy" and are therefore adequate under the *forum non conveniens* inquiry.

*Id.* at 1077-78.

After the United States Supreme Court denied her petition for certiorari on January 19, 2016, Ranza initiated proceedings against NEON, "also called Nike," in a Dutch court on July 16, 2016 ("Dutch Action"). (Pl.s' Mot. to Take Judicial Notice of Adjudicative Facts Pursuant to FED. R. EVID. 201, ECF No. 172

("Request"), at 97, 99.)[2] In an opinion dated March 21, 2018, Judge A. van Dijk rejected Ranza's discrimination claims because she had not filed them within the applicable six-month statute of limitations. (Request at 99.) Judge van Dijk found the filing of the lawsuit in this court "interrupted," or tolled, the statute of limitations and the limitations period resumed when the United States Supreme Court denied Ranza's petition for certiorari on January 19, 2016. (Request at 99.) Because Ranza did not file the Dutch action until July 21, 2016, more than six months after this lawsuit ultimately expired, her claims were not timely. (Request at 99.) The Court of Appeal of Anrhem-Leeuwarden agreed with Judge van Dijk's ruling in an Opinion dated September 3, 2019. (Request at 102-08.)

On March 20, 2020, Ranza, now appearing *pro se*, filed a "Motion for Relief from Final Judgment Under FED. R. CIV. PROC. 60(b)(6), 60(d)(3), and/or the Court's Inherent Equitable Powers" ("Motion"), and accompanying "Motion to Take Judicial Notice of

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[2] Ranza asks the court to take "judicial notice of events subsequent to the dismissal of her Title VII case" against Nike and NEON. (Request at 6.) Nike does not object to the court taking judicial notice of the opinions of the Dutch courts found at 97-108 of Ranza's motion for judicial notice. (Def. Nike Inc.'s Resp. to Pl.'s Mot. for Relief from Judgment and to Take Judicial Notice, ECF No. 183, at 6.) Given the lack of objections and the existence of clear case law allowing courts to take judicial notice of complaints, briefs, as well as of opinions filed in another case to determine what issues were before that court and were actually litigated, the court grants Ranza's motion for judicial notice of the Dutch court opinions. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Adjudicative Facts Pursuant to FED. R. EVID. 201" ("Request"), asking the court to set aside the Judgment, reopen this lawsuit, and allow her to proceed with her claims against Nike. Ranza claims Neon's "refus[al] to cooperate in the Dutch forum by objecting to the court's jurisdiction and raising multiple defenses to her suit . . . left Plaintiff in the extraordinary circumstance of having no forum capable of providing her with a remedy to hear her claims." (Pl.'s Rule 60 Mot. for Relief from Final Judgment, ECF No. 173 ("Mot.") at 6.) She asserts "the lack of any forum able to provide her with a remedy for violations of her civil rights as an American citizen is an extraordinary circumstance" establishing she filed the Motion in a timely manner under Rule 60 of the Federal Rules of Civil Procedure ("Rule 60"). In a minute order dated March 30, 2020, the court allowed "the recent filings (Request for Judicial Notice #[172] and Motion for Relief from Final Judgment #[173]) at this time only for the purpose of determining whether the motion for relief from judgment meets Rule 60's timeliness requirement." (Order dated March 30, 2020, ECF No. 174.) Consequently, while the parties addressed the merits of the Motion and Request to some degree in their opposition and replies, the court at this time limits its consideration to the question of timeliness.

*Legal Standard*

Rule 60(b) allows a district court to relieve a party from a final judgment or order for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud . . . by an opposing party; (4) the judgment is

void; (5) the judgment has been satisfied . . . ; or (6) any other reason that justifies relief." FED. R. CIV. P. 60(b) (2019). Rule 60(d)(3) similarly allows the court to "set aside a judgment for fraud on the court." FED. R. CIV. P. 60(d)(3) (2019). Relief under Rule 60 "should be granted sparingly to avoid manifest injustice and only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1173 (9th Cir. 2017) (internal quotation marks omitted). The party making the Rule 60 motion bears the burden of proof. *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992).

*Discussion*

I. Rule 60(b)

A motion under Rule 60(b) must be made within a reasonable time and, if seeking relief under Rule 60(b)(1)-(3), "no more than a year after the entry of the judgment or order or the date of the proceeding." FED. R. CIV. P. 60(c) (2019). Here, Ranza seeks to set aside the Order and Judgment based on Rule 60(b)(6). Consequently, the one-year limitation in inapplicable and the court must determine if Ranza's Rule 60(b) motion was filed within a "reasonable time."

"What constitutes reasonable time depends upon the facts of each case, taking into consideration the interest in finality, the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties." *Lemoge v. United States*, 587 F.3d 1188, 1196-97 (9th Cir. 2009) (quoting *Ashford v. Steuart*, 657 F.2d

1053, 1055 (9th Cir.1981) (per curiam)). In *Ashford*, the district court denied the plaintiff's Rule 60(b) motion seeking to set aside an order denying leave to file a complaint *in forma pauperis* which was filed thirty days after the order in question became final. *Ashford*, 675 F.3d at 1054. The Ninth Circuit affirmed the denial because the Rule 60(b) motion was not timely filed, giving "great weight" to the interest in finality factor and noting the time for appeal had passed by the time the motion had been filed. *Ashford*, 675 F.3d at 1055.

Ranza did not include Nike as a defendant in the Dutch Action and the record reveals no reason that explains this omission. If Ranze concluded she had no cause of action against Nike in the Netherlands, then clearly she knew of this futility by the time she filed the Dutch Action in July 2016. Alternatively, if Ranza omitted Nike because she did not intend to pursue Nike in the Netherlands, then the Dutch court's rulings on her claims against NEON were irrelevant to the remedies available to her with respect to Nike in the Dutch Action, and that circumstance does not justify her delay in filing the Motion. Under either theory, Ranza was aware she either was not able or did not intend to pursue Nike in Dutch court by July 2016, more than three and one-half years before she filed the Motion. Nike therefore had the right to rely on Ranza's actions in believing the Order and Judgment was final with respect to it as of July 2016. Ranza's delay in filing the Motion under this scenario clearly was unreasonable.

Even assuming Ranza could not have known she had no remedy against Nike in the Dutch Action until

September 3, 2019, when the Dutch appellate court upheld the dismissal of her claims against NEON, Ranza still did not file the Motion within a reasonable period of time. She argues the Dutch Action was not final until December 3, 2019, when the time for her to file an appeal to the Dutch Supreme Court expired. She represents she approached two lawyers for assistance in appealing the September 3, 2019 opinion to the Dutch Supreme Court and did not know until late November 2019 that neither lawyer would not take her case. Nonetheless, during this three-month period, Ranza had time to consider, and should have been considering, the effect of a decision not to file an appeal in the Dutch Action on her claims against Nike in this action. Accordingly, Ranza had six months, not three, to consider her next steps with regard to both the Dutch Action and this action, and she should have filed the Motion shortly after becoming aware she would not be filing a second appeal in the Dutch Action. Consequently, the three-month delay after the Dutch Action allegedly became final and the date Ranza filed the Motion was unreasonable.

Additionally, the Ninth Circuit implied, if not explicitly stated, that Ranza enjoyed an alternative adequate remedy in the Netherlands through her claim before the ETC. That she was not successful in that claim did not alter the conclusion the ETC offered her an adequate remedy. *Ranza*, 793 F.3d at 1078 ("Had Ranza prevailed before the ETC, these remedies would have been available to her. Even if these remedies proved less generous than those available to a plaintiff in a Title VII and ADEA action in the United States, they nevertheless represent 'some remedy' and are

therefore adequate under the *forum non conveniens* inquiry.") Consequently, Nike was entitled to rely on the Ninth Circuit opinion as a final resolution of Ranza's claims against it. Allowing Ranza to reinstate those claims now clearly would be prejudicial to Nike and, essentially, would retroactively deprive Nike of the ability to rely on the Ninth Circuit ruling as a final judgment.

Moreover, Ranza's failure to timely file the Dutch Action prevented her from taking full advantage of the remedies available to her and obtaining the remedy she sought there. She should not be awarded for her dilatory actions in that case by allowing her the extraordinary relief she seeks here after her untimely attempt in the Dutch court. The court finds Ranza did not file the Motion within a reasonable time and, therefore, is not entitled to pursue her request to set aside the Judgment under Rule 60(b)(6).

II. Rule 60(d)

Rule 60(d) specifically provides: "This rule does not limit a court's power to . . . set aside a judgment for fraud on the court." FED. R. CIV. P. 60(d)(3) (2019). The Ninth Circuit and courts in this district have interpreted this language to exempt motions under Rule 60(d) from the limitations found in Rule 60(c). *See In re Pryor*, No. 2:09-AP-02322-BR, 2016 WL 400119, at *3 (B.A.P. 9th Cir. Jan. 29, 2016) ("motions to set aside a judgment for 'fraud on the court' under Civil Rule 60(d)(3) are not subject to time limits"); *United States v. Estate of Stonehill*, 660 F.3d 415, 443-44 (9th Cir. 2011) ("Rule 60(b), which governs relief from a judgment or order, provides no time limit on courts'

power to set aside judgments based on a finding of fraud on the court."); *In re Von Borstel*, No. ADV 03-3523, 2011 WL 477817, at *4 (Bankr. D. Or. Feb. 3, 2011) ("a motion under Rule 60(d)(3) to set aside a judgment for fraud on the court is not subject to the same 'reasonable time' limit.") Consequently, Ranza timely filed the Motion to the extent she relies on Rule 60(d)(3) and the court should consider the merits of the Motion only with respect to Rule 60(d)(3).

*Conclusion*

Ranza's motion (173) for relief from final judgment under Rule 60(b)(6) should be denied as untimely, and Ranza should be allowed to proceed with her motion only under Rule 60(d)(3).

*Scheduling Order*

The Findings and Recommendation will be referred to a district judge for review. Objections, if any, are due within seventeen (17) days. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 10th day of December 2020.

/s/ John V. Acosta
JOHN V. ACOSTA
United States Magistrate Judge

## APPENDIX D

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**No. 21-35992**
**D.C. No. 3:10-cv-01285-AC**
**District of Oregon, Portland**

**[Filed January 16, 2024]**

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|---|---|
| LOREDANA RANZA, Plaintiff-Appellant, | ) |
| v. | ) |
| NIKE, INC., an Oregon corporation, Defendant-Appellee. | ) |

ORDER

Before: BERZON, NGUYEN, and MILLER, Circuit Judges.

Judge Nguyen and Judge Miller have voted to deny the petition for rehearing en banc. Judge Berzon recommends denial of the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.