

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARGARITA CARRERA,

Plaintiff,

vs.

ALLIED COLLECTION SERVICES, INC.,

Defendant.

Case No.: 2:22-cv-01604-GMN-DJA

**ORDER GRANTING, IN PART, AND
DENYING, IN PART, MOTION FOR
RECONSIDERATION**

Pending before the Court is the Motion for Reconsideration, (ECF No. 37), filed by Defendant Allied Collection Services Inc. Plaintiff Margarita Carrera filed a Response, (ECF No. 38), to which Defendant filed a Reply, (ECF No. 39).

For the reasons discussed below, the Court **GRANTS, in part, and DENIES, in part,** Defendant's Motion for Reconsideration.

I. BACKGROUND

This action arises from a default judgment obtained by Defendant in Nevada state court in 2009 and the subsequent renewal of that judgment in 2022. (*See generally* Compl., ECF No. 1). Plaintiff alleges this judgment was improperly obtained and renewed through misrepresentations and unfair conduct and brought this action to recover damages under the Federal Debt Collections Practices Act ("FDCPA"). (*Id.*). The full background is articulated in the Court's Order granting, in part, and denying, in part, the Cross Motions for Summary Judgment, (the "Order"), which the Court incorporates by reference. (Order, ECF No. 30).

In its Order, this Court held that Plaintiff and Defendant were entitled to summary judgment on certain claims. Defendant now moves the Court to reconsider that Order.

1 **II. LEGAL STANDARD**

2 Pursuant to Rule 59, a district court may grant a motion for reconsideration only where:
 3 (1) it is presented with newly discovered evidence; (2) it has committed clear error, or the
 4 initial decision was manifestly unjust; or (3) there has been an intervening change in controlling
 5 law. *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004); *Kona Enters., Inc. v. Estate of*
 6 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Further, a “Rule 59(e) motion may not be used to
 7 raise arguments or present evidence for the first time when they could reasonably have been
 8 raised earlier in the litigation.” *Kona*, 229 F.3d at 890. Moreover, Rule 60(b) permits a court to
 9 grant relief from a final order on a showing of mistake, surprise, or excusable neglect, Rule
 10 60(b)(1); newly discovered evidence, Rule 60(b)(2); fraud, Rule 60(b)(3); a void judgment,
 11 Rule 60(b)(4); a satisfied or discharged judgment, Rule 60(b)(5); or other circumstances
 12 justifying relief, Rule 60(b)(6). “A party seeking reconsideration . . . must state with
 13 particularity the points of law or fact that the court has overlooked or misunderstood. Changes
 14 in legal or factual circumstances that may entitle the movant to relief also must be stated with
 15 particularity.” L.R. 59-1. “Motions for reconsideration are disfavored.” *Id.*

16 **III. DISCUSSION**

17 Pursuant to FRCP 59(a)(1)(e) and 60(b)(6), Defendant moves the Court to reconsider
 18 and amend its Order. (*See generally* Mot. Reconsideration, ECF No. 37). Its primary argument
 19 is that the Court erred in its application of the *Rooker-Feldman* doctrine, made irreconcilable
 20 conclusions, erred in not finding that Plaintiff’s claims were time barred by the relevant statute
 21 of limitations, and erred in holding that Plaintiff had standing. (*Id.*). The Court takes up each
 22 argument in turn as they are organized in Defendant’s Motion.

23 **A. *Rooker-Feldman* Doctrine Application**

24 Defendant contends that the Court erred in its application of the *Rooker-Feldman*
 25 doctrine because (1) the Court considered an exception that was not argued by Plaintiff nor

1 supported by the record, and (2) Plaintiff’s claims are barred by the statute of limitations. (*Id.*
2 6:4–27).

3 To Court begins with Defendant’s first argument and incorporates its discussion of the
4 *Rooker-Feldman* doctrine in the previous Order. (*See* Order at 8–9, ECF No. 30). Defendant
5 argues that Plaintiff does not use the word “fraud,” or argue a fraud exception to *Rooker-*
6 *Feldman* in her Complaint, during discovery, or in her Motion for Summary Judgment briefing.
7 (Mot. Reconsideration 6:14–17). While the Court agrees that Plaintiff did not use the word
8 “fraud” during the litigation process, she adequately alleged facts and presented evidence to
9 establish that the fraud exception should nonetheless be analyzed by the Court in its Order.

10 In response to Defendant’s Motion for Summary Judgment, Plaintiff advanced that her
11 claims are not a forbidden de facto appeal because “she asserts legal wrongs by Defendant in its
12 debt collection practices that encompass more than just obtaining the [s]tate [c]ourt judgment.”
13 (Resp. Def.’s MSJ 6:20–22, ECF No. 22). In her Complaint and Motion for Summary
14 Judgment, Plaintiff asserts that Defendant used “false representations or deceptive means to
15 collect debt from Plaintiff,” and made “misrepresentations” and “misleading representations.”
16 (*See* Compl. ¶ 31, 33); (*see generally* Pl.’s MSJ, ECF No. 19). These allegations provided a
17 basis for the Court’s inclusion of a fraud exception analysis. *Benavidez v. Cnty. of San Diego*,
18 993 F.3d 1134, 1143 (9th Cir. 2021) (“[W]here a party alleges extrinsic fraud by an adverse
19 party in procuring a state court judgment, the *Rooker-Feldman* doctrine does not apply, because
20 such a claim does not challenge the state court decision directly.”); *see also Bailey v. I.R.S.*, 188
21 F.R.D. 346 (D. Ariz. 1999), *aff’d sub nom. Bailey v. U.S. Internal Revenue Serv.*, 232 F.3d 893
22 (9th Cir. 2000) (“Examples of [extrinsic fraud] include circumstances where a party was kept in
23 ignorance of a lawsuit or was induced not to appear, a claim or defense was concealed from a
24 party, and where the prevailing party obtained the judgment through coercion or duress.”).
25 Moreover, *Rooker-Feldman* relates to a court’s subject matter jurisdiction, and therefore can be

1 raised sua sponte. *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986).
2 Thus, even though the Parties argued the issue of *Rooker-Feldman* generally, the Court did not
3 err in discussing the doctrine's exceptions because it is in the Court's authority to raise issues
4 of subject matter jurisdiction.

5 Nevertheless, Defendant argues that the fraud exception is not supported by the record.
6 In its Order, the Court explained that to date, Defendant had not produced the agreement
7 showing that Plaintiff was liable for the debt. Moreover, this Court found that the only
8 evidence provided by the parties as to who owns the account was Plaintiff's assertions
9 disavowing ownership. (Carrera Dep. 135:25–136:22, Ex. 1 to Resp. Def.'s MSJ., ECF No. 22-
10 2). However, Defendant argues that the Court should have considered two attorney
11 declarations it attached as exhibits to its Motion for Summary Judgment. (Mot. Reconsideration
12 6:18–23). Indeed, the declarations affirm that Plaintiff allegedly owed the debt at issue in the
13 2009 state court case. Moreover, the Assignment of Account,¹ which was also not considered
14 by the Court in its Order, likewise confirms that Plaintiff owed the alleged debt at issue. (*See*
15 Smith Decl. ¶¶ 10–11, Ex. 2 to Def.'s MSJ, ECF No. 18-2); (*see also* Duncan Aff. at 21, Ex. 2
16 to Def.'s MSJ, ECF No. 18-2); (*see also* Assignment of Account at 23, Ex. 2 to Def.'s MSJ,
17 ECF No. 18-2). Plaintiff's Response to the present Motion sets forth no argument regarding
18 this evidence. (*See generally* Resp., ECF No. 38).

19 After considering Defendant's evidence, which was available to the Court at the
20 summary judgment stage, the Court now concludes that a genuine dispute of material fact exists
21 as to whether Plaintiff owed the debt. If originally considered by the Court, this evidence
22 would have demonstrated that Defendant met its initial burden at the summary judgment stage,
23 and Plaintiff's evidence would have established that a genuine dispute of material fact existed.
24 The same would be true when applying the burden shifting analysis to Plaintiff's Motion for
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¹ The Assignment of Account transfers Plaintiff's alleged debt from one entity to another.

1 Summary Judgment. If Plaintiff indeed owed the debt, then a fraud exception would not apply,
2 and her claim would thus be barred by *Rooker-Feldman*. But, if she did not owe the debt, then
3 the fraud exception would apply, and her claim would not be barred. Accordingly, the Court
4 holds that a genuine dispute of material fact exists as to whether Plaintiff's 15 U.S.C.
5 § 1692e claim, based on Defendant's conduct in obtaining the state court judgment, is barred by
6 *Rooker-Feldman*. The Court maintains its holding that her claim, as it relates to Defendant's
7 attempt to collect on the state court judgment, is barred by the doctrine.

8 Defendant's second argument contends that regardless of *Rooker-Feldman*'s
9 applicability, Plaintiff's claims are nonetheless barred by the statute of limitations under 15
10 U.S.C. § 1692k. But the Motion for Reconsideration is the first time Defendant raised a statute
11 of limitations defense. A Motion for Reconsideration brought under Rule 59 "shall not raise
12 arguments or present evidence for the first time when they could reasonably have been raised
13 earlier in the litigation." *Kona*, 229 F.3d at 890. Moreover, relief under Rule 60, is reserved for
14 "extraordinary circumstances." *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (*see*
15 *also* 12 James Wm. Moore, et. al., Moore's Federal Practice § 60.48[3][c] (3d ed. 2005) ("fault
16 by movant usually means [a] lack of 'extraordinary circumstances'"). Accordingly, the Court
17 concludes that it is impermissible for Defendant to raise its statute of limitations defense for the
18 first time in its Motion for Reconsideration and does not find that its failure to raise it sooner
19 qualifies as an "extraordinary circumstance."²

20 In sum, a genuine dispute of material fact exists as to Plaintiff's 15 U.S.C. § 1692e claim
21 regarding Defendant's actions in obtaining the state court judgment. Thus, the Motion for
22 Reconsideration is GRANTED as to this claim.

25 ² Defendant asserts a statute of limitations defense numerous times throughout its Motion for Reconsideration.
The Court's discussion of the impermissible nature of this argument applies generally to the entire Motion.

B. Triable Issues as to 15 U.S.C. § 1692e Claim

Next, Defendant argues that the Court’s discussion and conclusion regarding Plaintiff’s 15 U.S.C. § 1692e claim is contradictory. The Court agrees.

Relevant to Defendant’s Motion for Summary Judgment, this Court held that “a material dispute of fact exists as to Plaintiff’s 15 U.S.C. §1692e claims because Defendant initiated a lawsuit to claim a nonexistent debt.” (Order 15:08, 15:21–23). Then this Court found that relative to Plaintiff’s Motion for Summary Judgment, “taken together, the record before the Court lends itself to the conclusion that Defendant misrepresented to the state court Plaintiff’s ownership of the Chase Account and initiated a legal action that could not legally be taken.” (*Id.* 22:12–14). It then held that “Plaintiff is entitled to summary judgment on her 15 U.S.C. § 1692e claims.” (*Id.* 22:17–18). The Court agrees with Defendant that it cannot hold that there is a genuine dispute of material fact as to a claim presented by one party and then grant summary judgment for the other party on the same claim.

For the reasons discussed in Section A, the Court holds that a genuine dispute of material fact exists as to whether Plaintiff’s 15 U.S.C. § 1692e claim based on Defendant’s conduct in obtaining the state court judgment is barred by *Rooker-Feldman*. The Court maintains its holding that her claim as it relates to Defendant’s attempt to collect on the state court judgment is barred by the doctrine. Thus, the Motion for Reconsideration is GRANTED as to this argument.

C. Standing

Defendant further contends that the Court erred in concluding that Plaintiff has standing to bring her claims. (Mot. Reconsideration 7:24–25). In its Motion for Summary Judgment, Defendant argued that the Court lacked subject matter jurisdiction because Plaintiff failed to introduce evidence showing a concrete injury. (Def.’s Resp. to Pl.’s MSJ 17:2–4). Defendant now argues that it cannot reconcile the Court’s holding that Plaintiff’s claims regarding

1 Defendant's collection of the state court judgment are barred by *Rooker-Feldman*, but Plaintiff
2 has standing to sue.

3 The issue of standing is a threshold determination of "whether the litigant is entitled to
4 have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422
5 U.S. 490, 498 (1975). The *Rooker-Feldman* doctrine is a jurisdictional rule that prevents
6 federal district courts from hearing cases that effectively seek to appeal state court judgments.
7 *Benavidez*, 993 F.3d at 1142. The doctrine does not relate to standing, nor is it a defense.
8 Rather it is a limitation on the subject matter jurisdiction of federal courts. A plaintiff can have
9 a concrete injury to satisfy standing, but a federal district court can nonetheless be barred from
10 addressing the injury per *Rooker-Feldman* because the state court decision can only be
11 reviewed by the United States Supreme Court. *Worldwide Church of God*, 805 F.2d at 891; *see*
12 28 U.S.C. § 1257; *see also Exxon Mobil Corp. v. Saudi Basic Indust. Corp.*, 544 U.S. 280, 291
13 (2005). So, while standing and *Rooker-Feldman* both relate to a court's subject matter
14 jurisdiction, they are distinct principles. Accordingly, the Court did not err when it determined
15 that Plaintiff had standing to sue for the reasons discussed in its Order and also held that some
16 of Plaintiff's claims were barred by *Rooker-Feldman*. Thus, the Motion for Reconsideration is
17 DENIED as to this argument.

18 **D. 15 U.S.C § 1692f Claims**

19 Defendant avers that the Court provided conflicting conclusions as to Plaintiff's 15
20 U.S.C § 1692f claims. This Court granted summary judgment to Defendant for these claims,
21 but in its conclusion, set forth that "Plaintiff is entitled to judgment on her § 1692f claims in
22 their entirety." (Order 17:22–25, 18:16–17, 23:10). Plaintiff now asks the Court to enter
23 summary judgment in her favor for these claims, but the Court finds that she has not met her
24 burden now, nor in her Motion for Summary Judgment. (Resp. to Mot. Reconsideration 11:24–
25 28). The Court maintains its reasoning for granting Defendant summary judgment on

1 Plaintiff's §1692(f) claims as articulated in its Order and believes it made a typographical error
2 in its conclusion. Accordingly, Defendant is entitled to judgment on Plaintiff's § 1692f claims
3 in their entirety. Thus, the Motion for Reconsideration is GRANTED as to this claim.

4 **E. Damages**

5 Lastly, Defendant avers, based on its standing argument, that where the Court accepted
6 the *Rooker-Feldman* bar for Defendant's post judgment activities, finding "the state court
7 judgment did not cause her injuries," (Order 22:16–17), Plaintiff's damages could only attach
8 to prior activities such as bringing suit and obtaining judgment, which are barred by the
9 limitations period. For the reasons discussed above in Sections A and C, the Court disagrees
10 with Defendant's assertions regarding damages. Thus, the Motion for Reconsideration is
11 DENIED as to this argument.

12 In conclusion, Defendant's Motion for Reconsideration is GRANTED, in part, and
13 DENIED, in part.

14 **IV. CONCLUSION**

15 **IT IS HEREBY ORDERED** that Defendant's Motion for Reconsideration, (ECF No.
16 37), is **GRANTED, in part, and DENIED, in part.**

17 The Amended Conclusion of this Court's Order, (ECF No. 30), shall be:

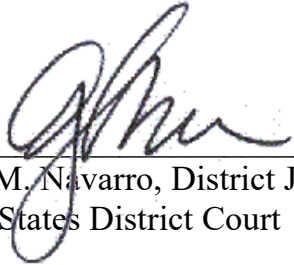
18 **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment, (ECF
19 No. 18), is **GRANTED, in part, and DENIED, in part.**

20 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF
21 No. 19), is **DENIED.**

22 **IT IS FURTHER ORDERED** that the parties will have thirty days from the date of this
23 Order to file a jointly proposed pretrial order pursuant to LR 16-3(b) using the form provided in
24 LR 16-4.

1 The Clerk of Court is kindly instructed to open the case. Defendant is entitled to
2 judgment on Plaintiff's § 1692e claims to the extent they are based on Defendant's conduct
3 after it obtained the state court judgment. Defendant is also entitled to judgment on Plaintiff's
4 § 1692f claims in their entirety. There remains, however, a triable issue of fact as to whether
5 Plaintiff's § 1692e claims, to the extent they are based on Defendant's conduct in obtaining the
6 state court default judgment, are barred by *Rooker-Feldman*.

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8 **DATED** this 17 day of March, 2025.

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12 Gloria M. Navarro, District Judge
13 United States District Court
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