

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FEDERAL TRADE COMMISSION,

Case No. 2:11-CV-283 JCM (NJK)

Plaintiff(s),

ORDER

v.

IVY CAPITAL, INC., et al.,

Defendant(s).

Presently before the court is relief-defendant Leanne Rodgers (“Rodgers”)’s motion for relief and/or modification of judgment to preclude enforcement. (ECF No. 509).¹ Plaintiff Federal Trade Commission (the “FTC”) filed a response (ECF No. 511), to which Rodgers responded. (ECF No. 514).

I. Background

This case, which has been before this court since 2011, arises from the FTC’s allegation that multiple defendants committed numerous violations of the Federal Trade Commission Act of 1914, prohibiting “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a).

Given the case’s prolix and complex history, most of which does not pertain to Rodgers, the court will focus on the facts relevant to the instant motions only. The FTC alleged that Rodgers

¹ Rodgers is listed in the complaint and is continuously referred to as a “relief-defendant,” as opposed to a “defendant.” The FTC does not directly accuse Rodgers of wrongdoing, but it alleges that she has received assets to which she has no legitimate claim, as she is not a bona fide purchaser with legal or equitable title. (ECF No. 1 at 27).

1 “received, directly or indirectly, funds, other assets, or both, from [d]efendants that are traceable
2 to funds obtained from [d]efendants’ customers through . . . unlawful acts or practices.” (ECF No.
3 1 at 27).

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5 In 2013, the court entered judgment against Rodgers in the amount of \$1,128,795.78 plus
6 prejudgment interest in the amount of \$6,830.90. (ECF No. 409 at 8). Following an appeal, the
7 court amended its judgment and found Rodgers and defendant Oxford Financial, LLC jointly and
8 severally liable for a total amount of \$1,529,292.52. (ECF No. 446). Rodgers failed to satisfy the
9 judgment.

10
11 Rodgers now moves for relief from further enforcement of the court’s final judgment and
12 order for permanent injunction entered in July of 2013. (ECF No. 409). Rodgers asserts that the
13 FTC’s recent enforcement attempts are inequitable, as more than ten years have passed since the
14 court’s entry of judgment. (ECF No. 509 at 1-2).

15
16 The court finds that the FTC’s enforcement efforts violate the Nevada statute of limitations
17 governing enforcement of a judgment, and the Fair Debt Collection Practices Act (“FDCPA”) does
18 not apply to the instant matter. Accordingly, Rodgers’ motion for relief to preclude enforcement
19 of the court’s judgment is granted.

20 **II. Legal Standard**

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22 Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from
23 judgment on the basis of: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
24 discovered evidence that, with reasonable diligence, could not have been discovered in time to
25 move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing
26 party; (4) a judgment that is void; (5) a judgment that has been satisfied, released, or discharged;
27 or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).
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1 “Relief under Rule 60(b)(6) will not be granted unless the moving party is able to show
2 both injury and circumstances beyond its control prevented timely action to protect its interest.”
3 *Gardner v. Martino*, 563 F.3d 981, 991 (9th Cir. 2009). The rule “gives the district court power
4 to vacate judgments whenever such action is appropriate to accomplish justice.” *Henson v. Fid.*
5 *Nat’l Fin., Inc.*, 943 F.3d 434, 439 (9th Cir. 2019) (international quotations omitted).
6

7 **III. Discussion**

8 Rodgers argues that regardless of her motion’s merits, the court should grant the motion
9 because further enforcement of the judgment is barred by the applicable limitations period. (ECF
10 No. 509 at 11-13). The court concurs.
11

12 Pursuant to Federal Rule of Civil Procedure 69, execution on judgments “must accord with
13 the procedure of the state where the court is located, but a federal statute governs to the extent it
14 applies.” Fed R. Civ. P. 69(a)(1). In Nevada, there is a six-year limitation period for any “action
15 upon a judgment or decree of any court of the United States.” NRS 11.190(1)(a).
16

17 Here, there is no applicable federal statute governing the execution of the judgment.
18 Accordingly, Nevada’s six-year limitation period applies. Judgment was entered against Rodgers
19 in 2013. (ECF No. 409). The FTC began seeking writs of continuing garnishment and execution
20 directed at Rodgers’ bank accounts in June of 2023, well after the applicable six-year limitation
21 period. (ECF Nos. 478-481). Under Nevada law, the FTC’s actions are unlawful and violative of
22 the statute of limitations. *See* NRS 11.190(1)(a).
23

24 The FTC avers that the FDCPA applies to collection of the judgment and does not limit the
25 time for enforcement. (ECF No. 511 at 9-10). The FTC cites a case holding that the FDCPA is a
26 statute that would preempt state law as provided in Federal Rule of Civil Procedure 69(a)(1). (*Id.*
27
28

1 at 10). However, the case cited by the FTC is from the Fifth Circuit, and thus is not binding on
 2 this court.

3 The court also finds the Ninth Circuit case cited by the FTC inapposite to the case at hand.
 4 In *United States v. Gianelli*, 543 F.3d 1177 (9th Cir. 2008), the Ninth Circuit held that “[t]he
 5 FDCPA provides no time limit for the collect of debts by writ of execution.” *Id.* at 1183 (internal
 6 citation omitted). That case is not applicable to the pertinent facts of this action, as the defendant
 7 in *Gianelli* was charged with multiple counts of mail fraud and conspiracy. *Id.* at 1181. The
 8 judgment entered against the defendant, unlike in this case, was *criminal*, not civil. *Id.* (emphasis
 9 added). The defendant was ordered to pay \$125,000 in restitution to the United States. *Id.*
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11 The court in *Gianelli* clarified that the scope of the FDCPA is limited to collection of debts
 12 owed to the federal government. *Id.* at 1183 (emphasis added). Here, the purpose of execution
 13 and disgorgement is to refund any ill-gotten gains to consumers, not the federal government. (ECF
 14 No. 1). Unlike in *Giannelli*, the federal entity, which in this case is the FTC, is not owed any
 15 money. The FDCPA thus does not preempt the Nevada statute of limitations, and further
 16 enforcement of the judgment is barred. *See* NRS 11.190(1)(a).
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18 **IV. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that relief-defendant Leanne
 21 Rodgers’ motion for relief and/or modification of judgment to preclude enforcement (ECF No.
 22 509) be, and the same hereby is, GRANTED.
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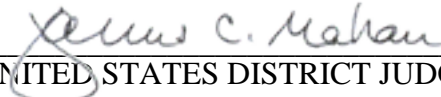
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1 Counsel for Rodgers shall submit a proposed order consistent with the foregoing and
2 outlining the specific relief sought within twenty-one (21) days.

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4 DATED July 26, 2024.

5 
6 UNITED STATES DISTRICT JUDGE
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