

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

CAMARIE MANGUM,	)	
	)	Case No. CV-05-507-E-BLW
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION</b>
v.	)	<b>AND ORDER</b>
	)	
ACTION COLLECTION SERVICE,	)	
INC., d/b/a/ ACTION	)	
COLLECTION, an Idaho corporation,	)	
BONNEVILLE BILLING &	)	
COLLECTIONS, INC., an Idaho	)	
corporation, BANNOCK	)	
COLLECTIONS, INC., an Idaho	)	
corporation, and CITY OF	)	
POCATELLO, a political subdivision	)	
of the State of Idaho,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

The Court has before it Defendant Bannock Collections's Motion for Sanctions (Docket No. 64), Mangum's Motion for Reconsideration and/or Clarification (Docket No. 90), and City of Pocatello's Motion for Reconsideration (Docket No. 93). The Court has determined that oral argument is not necessary. Accordingly, the Court will decide the issues based on the briefs.

**ANALYSIS**

## **I. Motion for Sanctions**

Defendant Bannock Collections, Inc. (“Bannock”) seeks sanctions against plaintiff and her attorneys for filing her claim under the Fair Debt Collections Practices Act (“FDCPA”), knowing that the statute of limitations had expired, as well as for filing a claim under the Fair Credit Reporting Act (“FCRA”), knowing that Bannock was not a consumer reporting agency.

Rule 11 sanctions are appropriate when an attorney presents to the court “claims, defenses, and other legal contentions ... [not] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law[.]” [\*Holgate v. Baldwin\*, 425 F.3d 671, 675-6 \(9th Cir. 2005\)](#) (quoting [Fed.R.Civ.P. 11\(b\)\(2\)](#)). When reviewing a complaint as the primary reason for sanctions, a district court considers whether, from an objective point of view, the complaint is legally or factually baseless, and whether the attorney conducted a reasonable and competent inquiry before signing and filing it. [Id. at 676](#). The Ninth Circuit has used the term “frivolous” as shorthand for this test, which denotes a filing that is both baseless and made without a reasonable and competent inquiry. [Id.](#)

Here, although on summary judgment the Court ultimately agreed with Bannock’s argument that Plaintiff’s FDCPA claim was barred by the statute of

limitations, and with Bannock's argument that Bannock was not a consumer reporting agency within the definition of the FCRA, Plaintiff's Complaint was not frivolous. With respect to the statute of limitations issue, the Court specifically noted in its earlier opinion that "[n]either the parties nor the Court was able to locate a case addressing the specific question of whether the general discovery rule applies to the FDCPA statute of limitations." (Docket No. 90. Pp. 4-5). To decide the issue, the Court was required to analogize an FDCPA claim to a FCRA claim in order to reach its ultimate decision not to apply the general discovery rule. Had the general rule applied, Plaintiff's claim would not have been barred by the statute of limitations. Accordingly, the Court finds that, from an objective point of view, the complaint was not legally or factually baseless, and Plaintiff's attorney conducted a reasonable and competent inquiry before signing and filing it.

With respect to whether Bannock was a consumer reporting agency within the definition of the FCRA, the Court notes that the frivolous nature of the claim is a somewhat closer question – but not that close. Mangum argued that because Bannock's procedure was to provide consumer or debtor information to police departments whenever such information was requested, Bannock assembled the information for the purpose of providing consumer reports to third parties, making Bannock a consumer protection agency for purposes of the FCRA. As the Court

pointed out in its earlier decision, just because a collection agency turns information over to the police in response to an investigation does not mean that the agency assembled the information for that purpose. There was nothing in the record suggesting that Bannock assembles or evaluates consumer information for any other purpose than to collect debt on behalf of their clients - the true business purpose of a collection agency.

However, as pointed out by Bannock in its summary judgment brief, there is no case law addressing a fact scenario like the one presented in this case – where an agency turned over credit information in response to a police investigation. Therefore, the Court concludes that Plaintiff did not present the Court with a claim not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. *See [Holgate v. Baldwin](#), 425 F.3d 671, 675-6 (9th Cir. 2005)*. Thus, Plaintiff's FCRA claim, from an objective point of view, was not legally or factually baseless, and Plaintiff's attorney conducted a reasonable and competent inquiry before signing and filing it. Accordingly, the Court will deny the motion for sanctions.

## II. Motions for Reconsideration and/or Clarification

A motion to reconsider an interlocutory ruling requires an analysis of two important principles: (1) error must be corrected; and (2) judicial efficiency demands forward progress. The former principle has led courts to hold that a denial of a motion to dismiss or for summary judgment may be reconsidered at any time before final judgment. [\*Preaseau v. Prudential Insurance Co.\*, 591 F.2d 74, 79-80 \(9th Cir. 1979\)](#). While even an interlocutory decision becomes the “law of the case,” it is not necessarily carved in stone. Justice Oliver Wendell Holmes concluded that the “law of the case” doctrine “merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.” [\*Messinger v. Anderson\*, 225 U.S. 436, 444 \(1912\)](#). “The only sensible thing for a trial court to do is to set itself right as soon as possible when convinced that the law of the case is erroneous. There is no need to await reversal.” [\*In re Airport Car Rental Antitrust Litigation\*, 521 F.Supp. 568, 572 \(N.D.Cal. 1981\)](#)(Schwartz, J.).

The need to be right, however, must be balanced with the need for forward progress. A court’s opinions “are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure.” [\*Quaker Alloy Casting Co. v. Gulfco Indus., Inc.\*, 123 F.R.D. 282, 288 \(N.D.Ill.1988\)](#). “Courts have distilled

various grounds for reconsideration of prior rulings into three major grounds for justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence or an expanded factual record; and (3) need to correct a clear error or to prevent manifest injustice.” [\*Louen v Twedt\*, 2007 WL 915226 \(E.D.Cal. March 26, 2007\)](#). If the motion to reconsider does not fall within one of these three categories, it must be denied.

City of Pocatello’s Motion for Reconsideration is simply a restatement of its earlier argument – it does not meet any of the three grounds outlined above for justifying reconsideration. Accordingly, the Court will deny the motion.

Likewise, Mangum’s request that the Court determine when an FDCPA violation occurs for an oral communication to a third party is simply an attempt to have the Court reconsider its dismissal of Mangum’s FDCPA claim based on the statute of limitations. Mangum’s argument does not fall within one of the three categories outlined above, and therefore the Court will deny that request as well.

As to Mangum’s request that the Court clarify her § 1983 claim for federal law violations, the Court recognizes that it did not specifically address that claim in its previous decision. In that claim, Mangum contends that § 1983 provides an avenue for recovery for violations of the FDCPA and FCRA. However, considering the fact that the Court already dismissed Mangum’s FDCPA and

FCRA claims for substantive reasons, Mangum is without a § 1983 claim for those alleged violations as well. Accordingly, Mangum's § 1983 claim is dismissed to the extent it is based on the FDCPA and FCRA. Mangum's § 1983 claims remains only as to allegations of constitutionally protected privacy interests as outlined in the Court's earlier opinion.

### **ORDER**

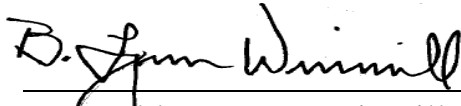
NOW THEREFORE IT IS HEREBY ORDERED that, Defendant Bannock Collections's Motion for Sanctions (Docket No. 64), shall be, and the same is hereby, DENIED.

IT IS FURTHER ORDERED that Mangum's Motion for Reconsideration and/or Clarification (Docket No. 90), shall be, and the same is hereby, DENIED.

IT IS FURTHER ORDERED that City of Pocatello's Motion for Reconsideration (Docket No. 93) shall be, and the same is hereby, DENIED.



**DATED: August 2, 2007**

  
Honorable B. Lynn Winmill  
Chief U. S. District Judge