UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRUCE LAXER, on behalf of himself and all other similarly situated persons,

Plaintiff,

-against-

NBA PROPERTIES, INC.,

Defendant.

96 CV 4449

MEMORANDUM AND ORDER

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BRUCE LAXER, on behalf of himself and all other similarly situated persons,

Plaintiff,

-against-

THE WALT DISNEY COMPANY,

Defendant.

96 CV 4511

MEMORANDUM AND ORDER

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BRUCE LAXER, on behalf of himself and all other similarly situated persons,

Plaintiff,

-against-

MAJOR LEAGUE BASEBALL PROPERTIES,

Defendant.

96 CV 4512

MEMORANDUM AND ORDER

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BRUCE LAXER, on behalf of himself and all other similarly situated persons,

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE PROPERTIES, INC.,

Defendant.

96 CV 4640

MEMORANDUM AND ORDER

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BRUCE LAXER, on behalf of himself and all other similarly situated persons,

Plaintiff,

-against-

NHL ENTERPRISES, INC.,

Defendant.

96 CV 4642

MEMORANDUM AND ORDER

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JEFFREY FISHMAN, STEVEN PRICE, BARRY ELGORT, and BRUCE LAXER, on behalf of themselves and all other similarly situated persons,

Plaintiffs,

-against-

MARVEL ENTERTAINMENT GROUP, INC.,

Defendant.

96 CV 3757

MEMORANDUM AND ORDER

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PATRICIA SULLIVAN, SEAN SULLIVAN, LANCE KUBA, MARTY SCHWARTZ, and JEFFREY FISHMAN, on behalf of themselves and all other similarly situated persons,

96 CV 3779

Plaintiffs,

-against-

MEMORANDUM AND ORDER

THE TOPPS COMPANY, INC.,

Defendant.

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for defendant The Topps Company, Inc.

NICKERSON, District Judge:

Plaintiffs brought these seven class actions on behalf of all original end-use purchasers of

entertainment trading cards licensed by defendants and marketed within the past four years in packages that may contain limited edition "chase" cards.

Plaintiffs say that these "chase" cards have cash values readily ascertainable in an established secondary market in which defendants' licensees promote the purchase of their cards. The basis of plaintiff's claims is that defendants' practices of randomly inserting chase cards into the card packs purchased by members of the putative plaintiff class constitute illegal gambling schemes and violate the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68.

Two of these actions, Fishman v. Marvel Entertainment Group, Inc., No. 96 CV 3757, and Sullivan v. The Topps Co., No. 96 CV 3779, were originally brought before Judge Sterling Johnson, Jr. Defendants moved to dismiss the complaints in all seven cases. Judge Johnson dismissed the complaints before him on August 12, 1997 for lack of standing. On August 13, 1997, this court dismissed the remaining complaints for

the reasons stated by Judge Johnson in Fishman v. Marvel Entertainment Group, Inc., No. 96 CV 3757, and Sullivan v. The Topps Co., Inc., No. 96 CV 3779, slip op. (E.D.N.Y. Aug. 12, 1997).

All seven cases were consolidated before this court. Plaintiffs now move to alter, amend, or vacate the judgments pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and for leave to file an amended complaint pursuant to Rule 15(a). They also submit an affirmation of a professor of economics, Richard McGowan, in support of their motion. Defendants cross-move to strike the affirmation as prohibited by Local Civil Rule 6.3.

The standard for a motion to alter or amend a judgment under Rule 59(e) is essentially the same as for a motion for reconsideration. See Local Civil Rule 6.3; Slattery v. Clinton, 1997 WL 291868, *1 n.2 (S.D.N.Y.).

Motions for reconsideration are committed to the sound discretion of the district court. See McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983). The

standard for a motion for reconsideration is strict. See Yankelevitz v. Cornell University, 1997 WL 115651 at *2 (S.D.N.Y.) (a motion for reconsideration "is not a mechanism to allow parties to relitigate contentions and arguments already briefed, considered and decided.").

The court must reconsider its rulings only where it has "overlooked controlling decisions or factual matters put before it on the underlying motion," In re New York Asbestos Litigation, 847 F. Supp. 1086, 1141 (S.D.N.Y. 1994), and which, had they been considered, "might reasonably have altered the result before the court." Consolidated Gold Fields v. Anglo American Corp., 713 F. Supp. 1457, 1476 (S.D.N.Y. 1989).

Plaintiffs' current motion merely revisits arguments and facts previously presented to the court. The motion presents no binding legal authority previously overlooked. Plaintiffs also seek to introduce an affirmation of Professor McGowan to support their claim. But Rule 59(e) does not give a losing party the opportunity to proffer additional

information or "evidence that was available but not previously introduced." United States v. Various Articles of Obscene Merchandise, 1995 WL 311341, *1 (E.D.N.Y.). The court will disregard the affirmation as improperly submitted.

The motion for reconsideration is denied. The court cannot entertain a motion to file an amended complaint if the underlying order is not vacated. See National Petrochemical Co. v. M/T Stolt Sheaf, 930 F.2d 240, 244-45 (2d Cir. 1991). The motion to file an amended complaint is denied. Plaintiffs also move for reargument on the same claims. That motion is denied. Defendants' motion to strike the affirmation is granted.

So ordered.

Dated: Brooklyn, New York
April 28, 1998

Eugene H. Nickerson

Eugene H. Nickerson, U.S.D.J.