

1 demonstrate that the motion is necessary to correct manifest errors of law or fact upon which
2 the judgment is based; 2) the motion may be granted so that the moving party may present
3 newly discovered or previously unavailable evidence; 3) the motion will be granted if
4 necessary to prevent manifest injustice, such as serious misconduct of counsel may justify
5 relief under this theory, and 4) a motion may be justified by an intervening change in
6 controlling law. 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2nd §
7 2810.1 (citations omitted).

8 Alternatively, a court can construe a motion to reconsider as a Rule 60 motion for
9 relief from a judgment or order. Under Rule 60, a party can obtain relief from a court order
10 for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
11 discovered evidence which by due diligence could not have been discovered in time to move
12 for a new trial under Rule 59(b); (3) fraud; (4) the judgment is void; (5) the judgment has
13 been satisfied; (6) any other reason justifying relief from the operation of the judgment. Fed.
14 R. Civ. P. 60(b).

15 Consequently, motions to reconsider are appropriate only in rare circumstances to
16 correct manifest errors of law or fact or to present newly discovered evidence. *Harsco*
17 *Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985) (1986). A motion for reconsideration
18 should not be used to ask a court "to rethink what the court had already thought through--
19 rightly or wrongly". *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101
20 (E.D. Va. 1983); *cf.*, *Agric. Research & Tech. Group*, 916 F.2d at 542. Arguments that a
21 court was in error on the issues it considered should be directed to the court of appeals. *See*
22 *Refrigeration Sales Co. v. Mitchell-Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983).

23 Plaintiff argues that the Court should reconsider its Order because it considered
24 document 81, Motion to Deny Defendant's Motion to Dismiss/Motion for Summary
25 Judgment, or Grant a Continuance, as his response when it was actually a request to conduct
26 discovery. Plaintiff requested discovery, pursuant to Fed. R. Civ. P. 56(d), prior to
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1 responding to the Defendant's pending dispositive motions on August 30, 2010, (doc. 79),
2 and August 27, 2010, (doc. 76). The Court denied the Plaintiff's request for discovery on
3 September 14, 2010. (Doc. 85).

4 Plaintiff seeks reconsideration because the Court did not consider Plaintiff's
5 Statement of Facts and Exhibits, docs. 98, 99, 101-102, which he filed on November 29,
6 2010, after the Defendants filed their Reply to their Summary Judgment Motion. On
7 September 30, 2010, the Court denied Plaintiff's extension of time and ordered him to file
8 his Reply in support of his Motion for Summary Judgment and his Response to the
9 Defendants' Motion to Dismiss/Motion for Summary Judgment within 14 days. Thereafter,
10 he filed five documents, a reply on October 8 (doc. 90), a declaration and reply on October
11 12 (docs. 91 and 92), exhibits on October 25 (doc. 93), and a Reply Memorandum on
12 November 1 (doc. 94). The Court affirms its finding that the documents filed by Plaintiff on
13 November 29, 2010, were untimely.

14 In the future if Plaintiff seeks to avoid confusion and ensure that relevant arguments
15 and evidence are considered by the Court, he should comply with the deadlines and page
16 limit requirements for filing documents. This Court will, hereafter, strike any document that
17 is not timely filed. The Plaintiff must file all related documents simultaneously in one filing
18 so that page limitations for memoranda of law may accordingly be enforced. Failure to
19 comply with any provision of the Court's Orders may result in penalties, including dismissal
20 of Plaintiff's action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 2002) (a
21 district court may dismiss an action for failure to comply with any order of the court).

22 Finally, the Court notes that the Motion for Reconsideration is filed late. The Court
23 rejects Plaintiff's argument that the Clerk of the Court mailed it late. The Court issued the
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1 Order on December 27, 2010, and the it was mailed to Plaintiff the same day. Regardless,
2 the Court has considered it and finds no basis for reconsideration.

3 **Accordingly,**

4 **IT IS ORDERED** that the Motion for Relief from Judgment (doc. 109), treated here
5 as a Motion for Reconsideration, is DENIED.

6 DATED this 7th day of February, 2011.

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11 David C. Bury
12 United States District Judge
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