

1 claimed to exist which did not exist or were not shown upon such prior motion, or what other
2 grounds exist for the motion,” and “why the facts or circumstances were not shown at the time of
3 the prior motion.”

4 “A motion for reconsideration should not be granted, absent highly unusual
5 circumstances, unless the district court is presented with newly discovered evidence, committed
6 clear error, or if there is an intervening change in the controlling law,” and it “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.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
9 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
10 original).

11 Plaintiff has not shown any new or different facts or circumstances, newly discovered
12 evidence, or an intervening change of law to support his motion. Plaintiff argues that he was not
13 aware that the same parameters for discovery (i.e. needing to serve discovery 45 days prior to the
14 deadline and that a motion to compel must also be filed by the deadline) applied to the discovery
15 cut-off date in the order that granted his requested extension of time and modifying the discovery
16 and scheduling order. Plaintiff argues that he was misled because those same parameters were
17 not restated in the modifying order, which Plaintiff errantly calls the "new scheduling order."
18 Plaintiff also argues that the modifying order used the phrase "discovery cut-off date" which
19 could lead one to believe they could serve discovery up until that date. Plaintiff also argues that
20 the untimeliness of his motion to compel is related to the untimeliness of his discovery and that
21 both should be excused. None of this shows that the Magistrate Judge's denial without prejudice
22 of Plaintiff's motion to compel and/or for enlargement of time was clearly erroneous.

23 Plaintiff's arguments all fall short. The order modifying the discovery and scheduling
24 order specifically stated that its purpose was limited to just that -- modifying only the discovery
25 and dispositive motion deadlines. Nothing in the modifying order indicated that the rest of the
26 parameters of the original discovery and scheduling order were negated. Both the discovery
27 Plaintiff propounded on Defendants and Plaintiff's motion to compel were untimely.

28 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this

1 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
2 Court finds the Magistrate Judge's order denying Plaintiff's motion to compel and/or for
3 enlargement of time to be supported by the record and proper analysis.

4 Accordingly, Plaintiff's motion for reconsideration of the Magistrate Judge's order
5 denying Plaintiff's motion to compel, filed June 6, 2014 (Doc. 84), is HEREBY DENIED.

6 IT IS SO ORDERED.

7 Dated: October 2, 2014

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10 SENIOR DISTRICT JUDGE

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