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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**SHARRON LEFAY, et al.,**

Plaintiffs,

v.

**WILLIAM CHARLES LEFAY, et al.,**

Defendants.

1:13-cv-01362 AWI MJS

**ORDER DENYING PLAINTIFFS' MOTION  
FOR RECONSIDERATION**

**(ECF No. 67)**

**I. INTRODUCTION**

Currently before the Court is Plaintiffs' Motion for Reconsideration of the Court's Order modifying the scheduling order to consider Defendants disclosure of experts as timely.<sup>1</sup> (ECF No. 65.) Defendant City of Fresno opposed the motion. (ECF No 68.) Having taken the matter under submission and having carefully considered the parties' briefs, as well as the entire record in the case, Plaintiffs' Motion for Reconsideration is DENIED.

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<sup>1</sup> Plaintiffs did not specify whether they sought reconsideration by the issuing Magistrate Judge, or by the District Court Judge. Plaintiffs cited to the general standard for reconsideration under Local Rule 230(j), rather than the procedure for review by a District Court Judge described in Local Rule 303(c), Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(a). Moreover, the request was not captioned as a "Request for Reconsideration by the District Court of Magistrate Judge's Ruling" as required by Local Rule 303. Accordingly, the Magistrate Judge will review the Motion for Reconsideration.

1 **II. BACKGROUND**

2 **A. Factual Background**

3 This is a 42 U.S.C. § 1983 civil rights action, with multiple supplemental state law  
4 claims, arising out of Defendants' actions obtaining a medical commitment of Sharron  
5 LeFay against her will under California Welfare and Institutions Code Section 5150. (See  
6 generally, 1st Am. Compl., ECF No. 17.) This action was initiated in this Court on August  
7 24, 2013. (Compl., ECF No. 1.) On December 16, 2013, a Scheduling Order was issued  
8 directing the parties to disclose expert witnesses on or before July 18, 2014, with  
9 supplementation, if any, of the disclosures to be made on or before August 18, 2014.  
10 (Sched. Order, ECF No. 15.) The parties were ordered to complete all discovery by  
11 September 19, 2014. (Id.)

12 At the request of the parties, the Court extended the expert designation deadline  
13 to August 18, 2014, and the supplemental designation deadline to September 1, 2014.  
14 (Order, ECF No. 30.)

15 Defendants did not fully comply with the expert disclosure requirements. They  
16 timely identified their expert witnesses, but did not timely provide expert reports as  
17 required by Fed. R. Civ. P. 26(a)(2).

18 Plaintiffs' counsel identified Darrel York as a police practices expert and served  
19 his written report on Defendants' counsel on August 18, 2014. Counsel for Defendant  
20 City of Fresno timely designated Joe Callanan as a police practices expert and Dwight  
21 Sievert, M.D., as a psychiatric expert. However service of the reports of these two  
22 experts was not made until August 29, 2014, and September 17, 2014, respectively.  
23 Defendant William LeFay timely designated a psychiatrist, Howard Terrell, M.D., but did  
24 not submit a report.

25 Plaintiffs objected to Defendants' failure to fully comply with Rule 26(a)(2). In  
26 response, Defendants, the City of Fresno and police officers Gleim, Gomez,  
27 Vandeursen, and Panabaker (collectively, the "City"), and Defendant William LeFay  
28 separately filed motions for an order modifying the Scheduling Order to allow additional

1 time for expert disclosure and discovery of Defendants' experts. (Mot., ECF No. 38, 40.)

2 The matter was briefed and argued before the Court on October 24, 2014.

3 In the motions, Defendants attributed their failure to fully disclose experts timely to  
4 delays by Plaintiffs. The City argues that it was not able to produce Dr. Sievert's report  
5 because it was waiting on Sharron LeFay's medical records and deposition and that it  
6 was not able to provide Mr. Callanan's report due to delay in obtaining records from the  
7 Sacramento sheriff's office. Defendant William LeFay argued that he was unable to  
8 produce Dr. Terrell's expert report due to the delay in obtaining Sharron LeFay's medical  
9 records and deposition.

10 On November 18, 2014, the Court granted Defendants' motions to amend the  
11 scheduling order. (ECF No. 65.) The Court found that there was not a willful failure to  
12 comply with the rules or bad faith on the part of either of the Defendants, and that all the  
13 parties contributed to innocent, good faith delays. Further, the Court found that there  
14 was no prejudice created by the delay. The Court noted that there was no prejudice  
15 because the "City and its expert have declared under penalty of perjury that the report as  
16 belatedly exchanged was drafted without City's expert having considered the Plaintiffs'  
17 police practices expert's report." (Order, ECF No. 65 at 10.) To prevent against further  
18 prejudice, the Court ordered that Plaintiffs would have the opportunity to depose  
19 Defendants' experts and that Defendants' expert on police practices, Joseph Callanan,  
20 be limited to those opinions and testimony in his written report and that he not comment  
21 on the opinions made by Plaintiffs' expert York in his timely filed report. (Id. at 11-12.)

22 **B. The Parties' Arguments**

23 On November 19, 2014, Plaintiffs moved for reconsideration of the Court's Order  
24 modifying the scheduling order. (ECF No. 67.)

25 Plaintiffs note that Defendant City's expert, Callanan, indeed reviewed and  
26 considered York's report when drafting his own and that he did not provide any sworn  
27 statements otherwise. Accordingly, Plaintiffs assert that prejudice occurred as Callanan  
28 had the benefit of shaping his opinion to respond to the arguments presented in York's

1 report.

2 In opposition, the Defendants argue that both Callanan and Defendants' counsel  
3 presented representations under the penalty of perjury that the opinions presented by  
4 Callanan in his report were made prior to reviewing York's report.

5 **III. DISCUSSION**

6 **A. Legal Standard**

7 Eastern District Local Rule 230(j) requires that a party moving for reconsideration  
8 show "what new or different facts or circumstances are claimed to exist which did not  
9 exist or were not shown upon such prior motion, or what other grounds exist for the  
10 motion, and why the fact or circumstances were not shown at the time of the prior  
11 motion." E.D. Cal. L.R. 230(j).

12 To prevail on a motion for reconsideration, "a party must set forth facts or law of a  
13 strongly convincing nature to induce the court to reverse its prior decision." Hansen v.  
14 Schubert, 459 F.Supp.2d 973, 998 (E.D. Cal. 2006). "A motion for reconsideration  
15 should not be granted, absent highly unusual circumstances, unless the district court is  
16 presented with newly discovered evidence, committed clear error, or if there is an  
17 intervening change in the controlling law," Marlyn Nutraceuticals, Inc. v. Mucos Pharma  
18 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks and citations  
19 omitted) "A party seeking reconsideration must show more than a disagreement with the  
20 Court's decision, and recapitulation of the cases and argument considered by the court  
21 before rendering its original decision fails to carry the moving party's burden." United  
22 States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2006) (internal  
23 citations omitted).

24 **B. Analysis**

25 Plaintiffs point out that in Callanan's report, he lists York's report as one of the  
26 materials that he reviewed and considered. (See Callanan Rept. at 8.75, ECF No. 38-1.)  
27 In rebuttal, Defendants note that Callanan noted in his report, signed under penalty of  
28 perjury, that his opinion stated in the report was prepared prior to his review of Plaintiffs'

1 depositions or York's report. (Id. at 17.04, 17.06.) Further, Defendant's counsel provided  
2 a declaration signed under perjury explaining that she instructed Callanan to finalize the  
3 report without reference to Plaintiffs' deposition testimony. (Camarena Decl. at ¶ 7, ECF  
4 No. 38-1.)

5 Plaintiffs have not shown that the Court has committed clear error in its factual  
6 determination regarding the contents of Callanan's report. While the Court's initial  
7 language may have been imprecise, it is consistent with the undisputed, sworn facts: the  
8 opinions in Callanan's report were made prior to, and hence without consideration of,  
9 review of York's report or Plaintiff's deposition transcripts. In Section 17 of his report,  
10 Callanan explains in detail that the opinions of the report were made before reviewing  
11 York's report. It is true that Callanan included York's report on the list of materials he  
12 reviewed and considered. However, his more specific statement that he prepared the  
13 opinions in his report prior to receipt of York's report is more persuasive. Having been  
14 provided York's report, it is understandable that Callanan placed the report on the list of  
15 material he had reviewed and considered. However, the statements in section 17 of  
16 Callanan's report clearly indicate that the statements and conclusions in his report were  
17 completed prior to such review and remained unchanged after his review.

18 The arguments presented in the motion for reconsideration do not cause the  
19 Court to question its finding that the opinions presented in Callanan's report were  
20 prepared prior to review of York's report, and that Plaintiffs were not prejudiced by the  
21 delay in providing the reports. See e.g., Dally Props., LLC v. Truck Ins. Exch., 2006 U.S.  
22 Dist. LEXIS 97166 (W.D. Wash. Jan. 9, 2006). The argument presented in the motion  
23 simply restates the argument presented in the underlying motion, and does not show  
24 that the Court committed clear error. See Marlyn Nutraceuticals, Inc., 571 F.3d at 880.  
25 Accordingly, Plaintiffs' motion for reconsideration is denied.

#### 26 **IV. PROCEDURAL CONSIDERATIONS**

27 In the motion for reconsideration, Plaintiffs request the Court consider several  
28 procedural issues including, the lack of a deadline for rebuttal expert designation, the

1 opportunity to supplement summary judgment proceedings with testimony from defense  
2 experts' depositions, and whether the trial is capable of proceeding on the set date. The  
3 Court hereby orders that rebuttal experts be designated within fourteen (14) days of  
4 issuance of this order. The other matters may be raised, if still at issue, at the pretrial  
5 conference currently set before Judge Ishii on January 7, 2015.

6 **V. CONCLUSION**

7 For the reasons discussed herein, Plaintiffs' Motion for Reconsideration is  
8 DENIED.

9  
10 IT IS SO ORDERED.

11 Dated: December 19, 2014

*/s/ Michael J. Seng*  
12 UNITED STATES MAGISTRATE JUDGE

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