

1 asserting that dismissal of his negligence claim under California law against Defendant Rasey
2 was erroneous as, under California law, his filing of this action was timely which was denied.
3 (Docs. 53, 61.) Plaintiff has now filed a second motion for reconsideration on this issue. (Doc.
4 63.) Defendants filed an opposition. (Doc. 66.) Despite lapse of more than the allowed time,
5 Plaintiff has not filed a reply. The motion is deemed submitted. L.R. 230(l).

6 **II. Reconsideration Standards**

7 Rule 60(b) of the Federal Rules of Civil Procedure provides that “[o]n motion and upon
8 such terms as are just, the court may relieve a party . . . from a final judgment, order, or
9 proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;
10 (2) newly discovered evidence that, with reasonable diligence could not have been discovered in
11 time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by
12 an opposing party; . . . or (6) any other reason justifying relief from the operation of judgment.”
13 Motions under Rule 60(b) “must be made within a reasonable time -- and for reasons (1), (2), and
14 (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”

15 Relief under Rule 60 “is to be used sparingly as an equitable remedy to prevent manifest
16 injustice and is to be utilized only where extraordinary circumstances . . .” exist. *Harvest v.*
17 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation omitted)
18 (addressing reconsideration under Rules 60(b)(1)-(5)). The moving party “must demonstrate both
19 injury and circumstances beyond his control . . .” *Id.* (internal quotation marks and citation
20 omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or
21 different facts or circumstances are claimed to exist which did not exist or were not shown”
22 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
23 not shown” at the time the substance of the order which is objected to was considered.

24 “A motion for reconsideration should not be granted, absent highly unusual
25 circumstances, unless the district court is presented with newly discovered evidence, committed
26 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
27 raise arguments or present evidence for the first time when they could reasonably have been
28 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571

1 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
2 original).

3 Plaintiff fails to show newly discovered evidence, clear error, or an intervening change in the
4 controlling law, *Marlyn Nutraceuticals*, 571 F.3d at 880, and the Court declines to spend its scarce
5 resources to further explain an issue that it has now addressed multiple times in this action.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this
7 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
8 Court finds the Findings and Recommendation, which issued on July 27, 2016 (Doc. 43) and
9 Order Adopting which issued on September 16, 2016 (Doc. 47), which dismissed Plaintiff's
10 negligence claim under California law against Defendant Rasey, as well as the order denying
11 Plaintiff's previous motion for reconsideration thereof which issued on February 13, 2017 (Doc.
12 61), to be supported by the record and proper analysis.

13 **III. Order**

14 Accordingly, Plaintiff's motion for reconsideration, filed on March 3, 2017 (Doc. 63), is
15 **DENIED with prejudice**. Any further motions for reconsideration from Plaintiff on the issue of
16 exhaustion will be STRICKEN from the docket.

17 IT IS SO ORDERED.

18 Dated: April 6, 2017

19 /s/ Lawrence J. O'Neill
20 UNITED STATES CHIEF DISTRICT JUDGE