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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

P. ORB HATTON and DIANE HATTON,  
Plaintiffs,  
v.  
BSI FINANCIAL SERVICES,  
Defendant.

Case No. 1:15-cv-00187-EPG  
**ORDER DENYING PLAINTIFFS’  
MOTION FOR RECONSIDERATION OF  
THE COURT’S NOVEMBER 16, 2017  
ORDER**  
(ECF No. 116)

Plaintiffs P. Orb and Diane Hatton commenced this action on February 4, 2015. (ECF No. 1.) On November 16, 2017, the Court denied Plaintiffs’ motion for continuance of the trial and granted Defendant’s motion for terminating sanctions, dismissing this action for Plaintiffs’ failure to appear for depositions, failure to comply with court orders, and failure to prosecute. (ECF No. 114.)

Plaintiffs now move for the Court to reconsider its November 16, 2017 Order. (ECF No. 116.) For the reasons set forth below, Plaintiffs’ motion for reconsideration is DENIED.

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1       **I.   LEGAL STANDARD**

2           Rule 60(b)(6) allows the Court to relieve a party from an order on a prior motion for any  
3 reason that justifies relief. Under Local Rule 230(j), a party seeking reconsideration must  
4 demonstrate “what new or different facts or circumstances are claimed to exist which did not exist  
5 or were not shown upon such prior motion, or what other grounds exist for the motion.”

6           “A motion for reconsideration should not be granted, absent highly unusual  
7 circumstances, unless the district court is presented with newly discovered evidence, committed  
8 clear error, or if there is an intervening change in the controlling law.” *Marlyn Nutraceuticals,*  
9 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). ““ ‘A party seeking  
10 reconsideration must show more than a disagreement with the Court's decision, and recapitulation  
11 of the cases and arguments considered by the court before rendering its original decision fails to  
12 carry the moving party's burden.’” *U.S. v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131  
13 (E.D. Cal. 2001) (internal quotations omitted). To succeed, a party must set forth facts or law of a  
14 strongly convincing nature to induce the court to reverse its prior order. *See Kern-Tulare Water*  
15 *Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *affirmed in part and reversed*  
16 *in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

17       **II.   ANALYSIS**

18           Plaintiffs’ motion for reconsideration does not present any newly discovered evidence,  
19 demonstrate clear error, or set forth any change in the controlling law. Rather, Plaintiffs argue  
20 that they should be given more time to prosecute their case in light of various hardships. The  
21 Court stands by its earlier ruling, while addressing certain of Plaintiffs’ arguments below.

22           Plaintiffs argue that the Court should reconsider its prior order because they have endured  
23 numerous tragedies during the course of these proceedings:

24                   Mr. Hatton’s back broken.  
25                   Hatton’s business flooded with neighbors effluent repairs so  
26                   extensive resulted in closure of business.  
27                   18 year old son was in catastrophic accident in which his face was  
28                   partially destroyed.  
                    Son endured 35 surgeries and 76 out of area Doctors visits.  
                    Same son charged with felony offense allegedly occurring during  
                    his 24 hour a day medical supervision.  
                    Alleged victim admitted perjury (false accusations) on 3 occasions.

1 Son's attorney charged with murder.  
2 Son's attorney's incompetent representation resulted in 8-year  
3 prison sentence for son.  
4 Mr. Hatton got pneumonia.  
5 Mr. Hatton diagnosed with lung cancer.  
6 Mr. Hatton underwent lung surgery, a partial removal.  
7 Mrs. Hatton had hip replacement surgery.  
8 Mr. Hatton's cancer metastasized to Lymph glands.  
9 Mr. Hatton had lymph gland surgery.  
10 Mr. Hatton underwent radiation therapy, 28 sessions.  
11 Mr. Hatton suffered a burn to his esophagus.  
12 Mr. Hatton endured chemotherapy.  
13 Mr. Hatton contracted "Chemo Brain" as a result.  
14 Chemotherapy resulted in unstable balance resulting in 3 falls:  
15 1. Front teeth knocked out  
16 2. 3 broken ribs  
17 3. Detached retina  
18 Mr. Hatton underwent Retina surgery.

19 (ECF No. 116.)

20 Plaintiffs fail, however, to offer any new facts, circumstances, or grounds that would  
21 induce the Court to reverse its prior order. First, Plaintiffs provide no dates of occurrence for the  
22 listed events, except for stating that the events took place from 2008 to present. *Id.* Second, to the  
23 extent that these events occurred before the pendency of this action and do not relate to the  
24 disputes in this action, they are irrelevant. Plaintiffs commenced this action on February 4, 2015.  
25 (ECF No. 1.) The Court opened discovery in this action on August 18, 2015. (ECF No. 55.)  
26 Defendant first noticed Plaintiffs' depositions for March 28, 2016. (ECF No. 114.) Therefore, at  
27 least some of the events listed by Plaintiffs cannot serve as justification for their failure to appear  
28 for deposition, failure to comply with court orders, and failure to diligently prosecute this action.  
Third, the Court considered Mr. Hatton's health and difficult circumstances in its prior order. The  
Court specifically found:

Although the Court has shown willingness to accommodate Mr. Hatton's medical needs, it is unwilling to do so again. The Court has repeatedly extended the schedule based on allegations of side effects of medical procedures and assurances that additional time would allow Plaintiffs to comply with their obligations. Yet, Plaintiffs have not participated in their depositions despite these extensions to the schedule.

(ECF No. 114 at 5.)

Plaintiffs also argue that they should have the opportunity to prosecute the actions of

1 Defendant, and if given the opportunity they will do so to the best of their ability. The Court has  
2 given Plaintiffs many opportunities to prosecute this action, however. As the Court stated in its  
3 prior order:

4           Given the repeated requests for postponement, as well as Diane  
5 Hatton's failure to attend her deposition without any justification,  
6 the Court has no reason to believe that less drastic sanctions would  
7 cause Plaintiffs to diligently prosecute this action. Plaintiffs have  
8 been given numerous extensions and warnings. Still, Plaintiffs have  
frustrated the discovery process for over a year and a half by failing  
to appear for deposition, and have continuously failed to comply  
with the Court's scheduling orders.

9 *Id.* at 9.

10           Plaintiffs further argue that they provided the Court with appointment dates for Mr.  
11 Hatton's eye surgery to correct his detached retina. However, as the Court stated in its prior order,  
12 "The evidence available to the Court reveals that Mr. Hatton was treated for blurred vision due to  
13 corneal scratches on September 18, 2017, and visited an Ophthalmologist on September 21, 2017.  
14 . . . That information alone does not support a postponement of the schedule."

15           Plaintiffs also state, "Should the court wish for further evidence of the veracity of the  
16 above statements I am prepared to provide proof of all." (ECF No. 116 at 3.) However, Plaintiffs  
17 already have had a full opportunity to provide "evidence of the veracity" of their statements.  
18 Plaintiffs could have submitted additional evidence in response to Defendant's motion asking for  
19 dismissal. Even now, Plaintiffs again fail to offer such evidence.

20           Lastly, Plaintiffs argue that the Court's "rulings imply a specific intent to delay or  
21 otherwise impede the proceedings," and "no deliberate intent to delay was present" in this case.  
22 (ECF No. 116 at 4.) The Court's specific finding was that Plaintiffs "have displayed an  
23 unwillingness to diligently prosecute this action in compliance with the rules, procedures, and  
24 orders of this Court. (ECF No. 114 at 9.) Notably, Plaintiffs' again fail to offer any concrete dates  
25 for their depositions to take place should the Court reopen the case.

26           Therefore, Plaintiffs have not set forth any facts or law of a strongly convincing nature to  
27 induce the Court to reverse the November 16, 2017 Order.

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**III. CONCLUSION**

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiffs' motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: December 27, 2017

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE