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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Composite Resources, Inc.,

Plaintiff,

v.

Derek R. Parsons,

Defendant.

No. 2:21-cv-02352-KJM-DMC

ORDER

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The court previously granted defendant Derek Parsons's motion to dismiss without leave to amend. *See* Prev. Order, ECF No. 26. Plaintiff Composite Resources, Inc. now moves to alter or amend the judgment under Rule 59(e). As explained in this order, Composite has not identified relevant changes in the law or evidence, has not shown the court's decision rested on clear error, and has not established the court's order was manifestly unjust, as would be necessary to obtain relief under Rule 59(e), so its motion is **denied**.

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**I. BACKGROUND**

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Composite originally pursued claims against a different defendant, Recon Medical, LLC, in the United States District Court for the District of Nevada. *See* Compl. ¶¶ 7–25, ECF No. 1. The Nevada court found Recon liable for unfair competition and trademark infringement. *Id.* ¶¶ 19–20. Then, as the trial on Composite's remaining claims was beginning, Recon filed for Chapter 11 bankruptcy. *Id.* ¶¶ 26–27. The case went forward, however, and the jury found that

1 Recon’s tourniquets infringed Composite’s patents. *Id.* ¶ 35. The district court then permanently  
2 enjoined Recon and anyone affiliated with Recon from using, selling, importing, or monetizing its  
3 infringing tourniquets. Perm. Inj. Order at 13, ECF No. 16-1.

4 Recon filed this case against Parsons, Recon’s CEO, after the trial but before the Nevada  
5 District Court entered the permanent injunction. *See generally* Compl., ECF No. 1. After the  
6 Nevada District Court issued the permanent injunction, Parsons moved to dismiss this action  
7 under Federal Rule of Civil Procedure 12(b)(6), arguing the Nevada case was preclusive. *See*  
8 *generally* Mot. to Dismiss, ECF No. 13-1. The court agreed the Nevada case was preclusive and  
9 granted Parsons’s motion to dismiss without leave to amend. Prev. Order at 10.

10 This court first rejected Composite’s argument that its claims against Parsons could move  
11 forward because Parsons was not a defendant in the Nevada lawsuit. *Id.* at 4–6, *see also* Opp’n at  
12 8–12, ECF No.16. Composite’s complaint “conclusively demonstrate[d] privity between Parsons  
13 and Recon for claim preclusion purposes: Composite repeatedly allege[d] that Parsons ‘controls  
14 Recon’ and has ‘ultimate authority’ over all of Recon’s business activities; it describe[d] Parsons  
15 as the ‘moving force’ and the person ‘responsible for all of [Recon’s] relevant decisions’ that led  
16 to its ‘tortious acts of patent infringement.’” Prev. Order at 6 (quoting Compl. ¶ 2). Composite  
17 also alleged Parsons was bound by the judgment against Recon. *Id.* (citing Compl. ¶¶ 50, 62, 74).

18 The court then rejected Composite’s argument that it could rely on two exceptions to the  
19 ordinary claim preclusion rules. These exceptions allow plaintiffs to assert otherwise precluded  
20 claims if “temporal” or “formal jurisdictional or statutory barriers” prevented them from asserting  
21 those claims in the original case. *See id.* at 7–10. First, the court interpreted the Federal Circuit’s  
22 relevant decisions as requiring a “new right” for the temporal exemption to apply. *Id.* at 7  
23 (quoting *Gillig v. Nike, Inc.*, 602 F.3d 1354 (Fed. Cir. 2010)). Composite had not pointed to any  
24 such “new rights.” Both cases concerned the same products and the same patents. Second, the  
25 court held the exception for “formal jurisdictional or statutory barriers” did not apply. *Id.* at 9.  
26 Composite did not explain how “its inability to recover damages in the Nevada case stemmed  
27 from any limitations on the Nevada court’s jurisdiction or its continued use, if any, of older

1 modes of procedure.” *Id.* Composite did not develop its claim of any barrier and cited no statute  
2 to support its claim of a “statutory barrier” in the bankruptcy code. *Id.* at 9–10.

3 Composite now asks the court to reconsider under Federal Rule of Civil Procedure 59(e).  
4 ECF No. 27. Parsons opposes the motion, ECF No. 33, and Composite has replied, ECF No. 34.  
5 The court submitted the matter without hearing oral arguments.

## 6 **II. LEGAL STANDARD**

7 A motion under Rule 59(e) may be granted (1) “to correct manifest errors of law or fact  
8 upon which the judgment rests”; (2) “to present newly discovered or previously unavailable  
9 evidence”; (3) “to prevent manifest injustice”; or (4) to account for “an intervening change in  
10 controlling law.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). The moving  
11 party bears the burden to show it is entitled to relief, and that burden is heavy. *See S.E.C. v.*  
12 *Pattison*, No. 08-4238, 2011 WL 2293195, at \*1–2 (N.D. Cal. June 9, 2011). Absent clear error  
13 or changes in the evidence or controlling law, a Rule 59(e) motion “should not be granted absent  
14 highly unusual circumstances.” *Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.  
15 1999). Rule 59(e) “may not be used to relitigate old matters, or to raise arguments or present  
16 evidence that could have been made prior to the entry of judgment.” *Exxon Shipping Co. v.*  
17 *Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11 Charles Wright & Arthur Miller, Fed. Prac. &  
18 Proc. § 2810.1 at 127–28 (2d ed. 1995)).

## 19 **III. ANALYSIS**

20 Composite first contends the court’s order was manifestly unjust. *See* Pls.’ Mem. at 2–4,  
21 ECF No. 27-1. Similarly, it urges the court to consider the equitable implications of its previous  
22 order. *See id.* at 10–12. District courts have described manifest injustice as “a catch-all factor.”  
23 *Galen v. Redfin Corp.*, No. 14-05229, 2015 WL 7734137, at \*4 (N.D. Cal. Dec. 1, 2015). It can  
24 capture a variety of “situations that strike the court as unfair.” *Id.* But “a disappointed litigant”  
25 cannot claim manifest injustice in an “attempt to persuade the court to change its mind.” *Young v.*  
26 *Thomas*, No. 14-02550, 2015 WL 3397193, at \*2 (D.S.C. May 26, 2015) (quoting *Abdur-Rahim*  
27 *v. Holland*, No. 17-0079, 2015 WL 859117 (E.D. Ky. Feb. 27, 2015)). Composite’s motion fits  
28 that mold. It reiterates its argument that uncited provisions of the Bankruptcy Code prevented it

1 from recovering damages in the Nevada case, so it argues it would be unfair to preclude it from  
2 asserting damages claims in this action. Pl.’s Mem. at 3, ECF No. 27-1. Composite’s motion  
3 does not show manifest injustice, but rather attempts to “relitigate old matters” improperly.  
4 *Exxon Shipping Co.*, 554 U.S. at 485 n.5 (citation omitted).

5 Composite argues similarly that the court’s order unfairly forces patent holders to “sue not  
6 only the infringing company, but also every single officer, employee, and agent of the company,  
7 or else run the risk that the corporate defendant could wait until the eve of trial to file for  
8 bankruptcy and leave the patent owner without any remedy for damages.” Pl.’s Mem. at 3. This  
9 argument relies on too many unsupported assumptions to be persuasive. It assumes, for example,  
10 that Composite could not have amended or supplemented its complaint in the Nevada case after  
11 learning about the bankruptcy. *Cf.* Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave  
12 [to amend the complaint] when justice so requires.”); Fed. R. Civ. P. 15(d) (“On motion and  
13 reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading  
14 setting out any transaction, occurrence, or event that happened after the date of the pleading to be  
15 supplemented.”). It assumes Composite had no recourse under the Bankruptcy Code. And it  
16 assumes Composite was unaware of Parsons’s integral role in the company earlier in the case, and  
17 could not previously have pled that he “controls” Recon and “took part in” Recon’s infringing  
18 actions, as it now alleges. Compl. ¶¶ 2, 33, 47.

19 Composite’s second argument for reconsideration rests on its claim that the court clearly  
20 erred. *See* Pl.’s Mem. at 4–9. The Ninth Circuit has not defined “clear error” in the specific  
21 context of a Rule 59(e) motion. District courts within the Ninth Circuit ordinarily use “clear  
22 error” to refer to situations in which they have a “definite and firm conviction that a mistake has  
23 been made,” adopting the standard commonly applied in the appellate context. *U.S. Ethernet  
24 Innovations, LLC v. Acer, Inc.*, No. 10-3724, 2015 WL 1478636, at \*2 (N.D. Cal. Mar. 31, 2015)  
25 (quoting *United States v. Ruiz–Gaxiola*, 623 F.3d 684, 693 (9th Cir. 2010)).

26 Composite argues the court clearly erred in finding privity between Parsons and Recon  
27 and in concluding the Nevada court had jurisdiction over Parsons. Composite could have raised  
28 these arguments in its opposition to Parsons’s motion to dismiss and at hearing on that motion,

1 but it did not. The court declines to consider them now. *See Banister v. Davis*, 140 S. Ct. 1698,  
2 1703 (2020) (“[C]ourts will not address new arguments or evidence that the moving party could  
3 have raised before the decision issued.”); *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890  
4 (9th Cir. 2000) (“A Rule 59(e) motion may not be used to raise arguments or present evidence for  
5 the first time when they could reasonably have been raised earlier in the litigation.”).

6 Composite also reiterates its argument that Parsons’s acts following the filing of the  
7 Nevada lawsuit fit the temporal exception to the ordinary claim preclusion rules. Pl.’s Mem. at 9.  
8 The court declines to reopen this debate. *See Exxon Shipping*, 554 U.S. at 485 n.5. Composite  
9 argues similarly the court clearly erred by “limiting the *Gillig v. Nike* case to ‘new rights’  
10 acquired by the plaintiff.” Pl.’s Mem. at 9. Conflicting readings of *Gillig* may be plausible, but  
11 the court perceives no “clear error,” i.e., a mistake “beyond debate,” in its previous conclusions.  
12 *United States v. Wanland*, No. 13-02343, 2017 WL 3712908, at \*3 (E.D. Cal. Aug. 28, 2017). As  
13 the court noted in its previous order, another district court has persuasively rejected the reading of  
14 *Gillig* that Composite now advances. Prev. Order at 7 (citing *Adaptix, Inc. v. Amazon.com, Inc.*,  
15 No. 14-01379, 2015 WL 4999944, at \*7–8 (N.D. Cal. Aug. 21, 2015)).

16 Finally, Composite argues in its reply brief that the court clearly erred by granting the  
17 motion to dismiss without leave to amend. Reply at 2–3. Composite could have requested leave  
18 to amend in opposition to the motion to dismiss or at hearing, but it did not. A post-judgment  
19 motion is not an appropriate way to raise arguments and evidence that could have been raised  
20 earlier. *Banister*, 140 S. Ct. at 1703. But in any event, the court perceives no clear error in its  
21 previous determination that an amendment would be futile. *See* Prev. Order at 10. The  
22 amendments Composite now proposes would not allow it to rely on exceptions to claim  
23 preclusion rules.

#### 24 **IV. CONCLUSION**

25 The court **denies** Composite’s motion to alter or amend the judgment (ECF No. 27).

26 IT IS SO ORDERED.

27 DATED: January 17, 2023.

  
CHIEF UNITED STATES DISTRICT JUDGE