

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

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4            DANILO MALLARI,  
5                                    Plaintiff,  
6                                    v.  
7            TRACY VESSIGAULT, et al.,  
8                                    Defendants.

Case No. 13-cv-04038-CW

ORDER ON PLAINTIFF'S MOTION  
FOR LEAVE TO FILE A MOTION  
FOR RECONSIDERATION TO REJOIN  
MEDHEALTH NURSING AS PARTY  
PLAINTIFF

(Dkt. No. 75)

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11            Plaintiff Danilo Mallari moves for leave to file a motion  
12 for reconsideration of the Court's January 3, 2018 order denying  
13 Mallari's motion to amend the scheduling order and rejoin  
14 Medhealth Nursing. See Docket No. 74. Having considered the  
15 papers and the record, the Court hereby DENIES Mallari's motion.

16            Civil Local Rule 7-9 governs motions for leave to file a  
17 motion for reconsideration. It provides that the "moving party  
18 must specifically show reasonable diligence in bringing the  
19 motion," as well as one of the following:

- 20            (1) That at the time of the motion for leave, a  
21            material difference in fact or law exists from  
22            that which was presented to the Court before entry  
23            of the interlocutory order for which  
24            reconsideration is sought. The party also must  
25            show that in the exercise of reasonable diligence  
26            the party applying for reconsideration did not  
27            know such fact or law at the time of the  
28            interlocutory order; or  
29            (2) The emergence of new material facts or a change of  
30            law occurring after the time of such order; or  
31            (3) A manifest failure by the Court to consider  
32            material facts or dispositive legal arguments  
33            which were presented to the Court before such  
34            interlocutory order.

1           Mallari asserts that he did not hear the deadline for adding  
2 additional parties or claims at the case management conference  
3 because he was sitting in the gallery and that counsel did not  
4 provide him with a copy of the minute order and case management  
5 order. He further asserts that he only became aware of the  
6 scheduling deadlines in August 2017 when he consulted with the  
7 Legal Help Center and obtained a copy of the minute order and  
8 case management order, and that he moved shortly thereafter to  
9 rejoin Medhealth as a party plaintiff. Mallari also alleges that  
10 "facts emerged that he has been misrepresented by counsel that  
11 caused the dismissal of other meritorious issues of the case as  
12 noted [in the Court's January 3, 2018 order]."

13           With the exception of Mallari's last argument, all of his  
14 arguments are not new and have already been addressed by the  
15 January 3, 2018 order. Mallari's last argument, that he recently  
16 discovered that he was misrepresented by counsel, is construed as  
17 an argument that new material facts have emerged since the  
18 issuance of the January 3, 2018 order that require  
19 reconsideration. See Civil Local Rule 7-9(2). Mallari does not  
20 explain, however, the nature of counsel's alleged  
21 misrepresentation, when he found out about the alleged  
22 misrepresentation, and why the alleged misrepresentation is  
23 material to the January 3, 2018 order. Moreover, Mallari  
24 indicates that he still has not retained a lawyer to represent  
25 Medhealth. As the Court advised him in its February 26, 2014  
26 order, Medhealth cannot be a party to this case without a lawyer.  
27 Docket No. 28 at 3-4, 8. Mallari's failure to retain a lawyer to  
28 represent Medhealth since he moved to rejoin Medhealth in

1 September 2017 demonstrates a lack of reasonable diligence.  
2 Accordingly, Mallari has not met his burden of showing that  
3 reconsideration of the January 3, 2018 order is warranted and his  
4 motion must be denied.

5 IT IS SO ORDERED.

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7 Dated: March 6, 2018



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8 CLAUDIA WILKEN  
9 United States District Judge

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