



1 mitigation costs or that the investigation costs sought by Plaintiff Sephora USA, Inc. (“Sephora”)  
2 in this matter are unreasonable per se. On October 11, 2013, Defendants filed the current motion,  
3 arguing that the court “did not consider the ‘recoverability’ of [investigation] costs under the  
4 Carmack Amendment.”<sup>3</sup>

## 5 II. LEGAL STANDARDS

6 “Although Rule 59(e) permits a district court to reconsider and amend a previous order, the  
7 rule offers an extraordinary remedy, to be used sparingly in the interests of finality and  
8 conservation of judicial resources.”<sup>4</sup> Civ. L.R. 7-9(b) requires that to obtain leave to file a motion  
9 for reconsideration, the moving party must specifically show:  
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- 11 (1) That at the time of the motion for leave, a material difference in fact or law exists from  
12 that which was presented to the Court before entry of the interlocutory order for which  
13 reconsideration is sought. The party also must show that in the exercise of reasonable  
14 diligence the party applying for reconsideration did not know such fact or law at the  
15 time of the interlocutory order;
- 16 (2) The emergence of new material facts or a change of law occurring after the time of such  
17 order; or
- 18 (3) A manifest failure by the Court to consider material facts or dispositive legal arguments  
19 which were presented to the Court before such interlocutory order.

20 “Indeed, a motion for reconsideration should not be granted, absent highly unusual  
21 circumstances, unless the district court is presented with newly discovered evidence, committed  
22 clear error, or if there is an intervening change in the controlling law.”<sup>5</sup> “A Rule 59(e) motion may  
23 not be used to raise arguments or present evidence for the first time when they could reasonably  
24 have been raised earlier in the litigation.”<sup>6</sup> Here, Defendants appear to seek leave to move for

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25 <sup>3</sup> Docket No. 82 at 2.

26 <sup>4</sup> *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotations  
and citations omitted).

27 <sup>5</sup> *Id.*

28 <sup>6</sup> *Id.*

1 reconsideration based on their belief that the court committed clear error through a manifest failure  
2 to consider material facts or dispositive legal arguments.

3 **III. DISCUSSION**


4 The court does not begrudge any party for exercising its right to seek reconsideration on an  
5 order it believes to be erroneous, but as discussed above, Civ. L.R. 7-9 sets a high standard for  
6 parties seeking leave to file a motion for reconsideration. In this motion, as in the underlying  
7 motion, Defendants fail to identify a single case holding that there is a total bar to recovering costs  
8 of investigation as mitigation.<sup>7</sup> Instead, they ask the court for leave to reargue an uncharted area of  
9 Carmack Amendment jurisprudence on a motion for reconsideration. The plain language of the  
10 Carmack Amendment does not, however, ban the recovery of investigation costs as reasonable  
11 mitigation, and Defendants have not presented any precedent that erects such a barrier. The  
12 question is one of degree, not kind, and such questions are most appropriately left to the jury.  
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14 If the court was not clear before, it regrets any misunderstanding created as a result. In any  
15 event, the court will articulate more clearly now that it was not persuaded by Defendants' argument  
16 that there is a total bar to recovering investigation costs as mitigation expenses. Because  
17 Defendants have not identified a case or statutory provision indicating that this was a clearly  
18 erroneous legal ruling, Defendants' motion is DENIED.  
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20 The court looks forward to speaking with counsel at the status conference on Tuesday about  
21 the further schedule of the case and how best to proceed.  
22

23 **IT IS SO ORDERED.**

24 Dated: October 17, 2013

25   
26 PAUL S. GREWAL  
27 United States Magistrate Judge

28 <sup>7</sup> See Docket Nos. 36, 82.