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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Michael Davis,  
Plaintiff,  
vs.  
Allen Miser, et al.,  
Defendants.

No. CV 08-0679-PHX-DGC (MEA)

**ORDER**

Plaintiff Michael Davis, who is confined in the Arizona State Prison, Central Unit, in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. (Doc.# 1.)<sup>1</sup> On July 7, 2008, the Court dismissed Count II of the Complaint for failure to state a claim. (Doc.# 6.) On November 7, 2008, Plaintiff filed a motion for reconsideration. (Doc.# 13.) The Court will deny that motion.

Generally, motions to reconsider are appropriate only if the Court “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration should not be used to ask a court “to rethink what the court had already thought through, rightly or wrongly.” Above the Belt, Inc. v. Mel Bohannon

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<sup>1</sup> “Doc.#” refers to the docket number of filings in this case.

1 Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983)). Rather, such arguments should be  
2 directed to the court of appeals. Sullivan v. Faras-RLS Group, Ltd., 795 F. Supp. 305, 309  
3 (D. Ariz. 1992).

4 In Count II, Plaintiff alleged that Chaplain Miser retaliated against him based on the  
5 facts alleged in Count I. In Count I, Plaintiff alleged that Miser violated his religious rights  
6 by denying him a vegetarian diet as a Seventh Day Adventist. Plaintiff alleged that Miser  
7 cited the following reasons for concluding that he was not a sincere adherent for purposes  
8 of approving him a religious diet: Plaintiff did not request a religious diet until January 10,  
9 2008, more than eight months after he was incarcerated; Plaintiff had received 12  
10 disciplinary charges, six of them for major infractions; and Plaintiff had been placed on the  
11 grievance abuse list. The Court dismissed Count II because Plaintiff failed to allege facts to  
12 support that Miser retaliated against him for exercising a constitutional right.

13 In his motion for reconsideration, Plaintiff argues that the Court disregarded the  
14 allegation that Miser in part found Plaintiff not to be a sincere adherent because he was on  
15 the grievance abuse list. Based on the facts alleged by Plaintiff, his designation on the  
16 grievance abuse list was merely a factor in Miser's determination that Plaintiff was not a  
17 sincere adherent. That is not the same as retaliating against Plaintiff because he filed a  
18 grievance against Miser. Plaintiff's motion for reconsideration will be denied.

## 19 **Warnings**

### 20 **A. Release**

21 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.  
22 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay  
23 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result  
24 in dismissal of this action.

### 25 **B. Address Changes**

26 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
27 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other

1 relief with a notice of change of address. Failure to comply may result in dismissal of this  
2 action.

3 **C. Copies**

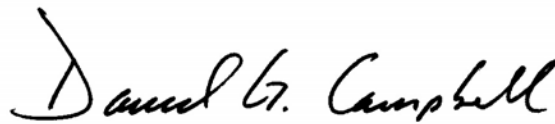
4 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy  
5 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate  
6 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit  
7 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply  
8 may result in the filing being stricken without further notice to Plaintiff.

9 **IT IS ORDERED:**

10 (1) Withdrawing the reference from the Magistrate Judge as to Plaintiff's motion  
11 for reconsideration (Doc.# 13).

12 (2) Plaintiff's motion for reconsideration is **denied**. (Doc.# 13.)

13 DATED this 2nd day of December, 2008.

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17 David G. Campbell  
18 United States District Judge  
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