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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lance M. Benedict,

10 Plaintiff,

11 v.

12 Google LLC, *et al.*,

13 Defendants.
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No. CV-23-02392-PHX-JJT

ORDER

15 At issue is *pro se* Plaintiff Lance M. Benedict's Motion for Reconsideration and
16 Leave to Amend (Doc. 30), which he brings under Federal Rules of Civil Procedure 59(e)
17 and 60(b) to ask the Court to reconsider its Order (Doc. 27) and Judgment (Doc. 28)
18 granting Defendant's Motion to Dismiss (Doc. 20) and dismissing Plaintiff's Amended
19 Complaint (Doc. 18) without leave to amend.

20 Generally brought under Local Rule of Civil Procedure 7.2(g) in this District,
21 motions for reconsideration are generally disfavored and should be granted only in rare
22 circumstances. *See Ross v. Arpaio*, No. CV 05-4177-PHX-MHM (ECV), 2008 WL
23 1776502, at *2 (D. Ariz. Apr. 15, 2008) (citing *Defenders of Wildlife v. Browner*, 909 F.
24 Supp. 1342, 1351 (D. Ariz. 1995)). Disagreement with an order is an insufficient basis for
25 reconsideration. *See id.* (citing *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D.
26 Haw. 1988)). Reconsideration is only appropriate if: (1) the court is presented with newly
27 discovered, previously unavailable evidence; (2) the court committed a clear error of law
28 and the initial decision was manifestly unjust; or (3) there has been an intervening change

1 in controlling law. *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255,
2 1263 (9th Cir. 1993).

3 Rule 59(e) enables the Court to amend a judgment. “Amending a judgment after its
4 entry remains ‘an extraordinary remedy which should be used sparingly.’” *Allstate Ins. Co.*
5 *v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (quoting *McDowell v. Calderon*, 197 F.3d
6 1253, 1255 n.1 (9th Cir. 1999)). “Since specific grounds for a motion to amend or alter are
7 not listed in the rule, the district court enjoys considerable discretion in granting or denying
8 the motion.” *Id.* Nonetheless, the Ninth Circuit has defined several grounds on which a
9 Rule 59(e) motion may be granted:

10 (1) if such motion is necessary to correct manifest errors of law or fact upon
11 which the judgment rests; (2) if such motion is necessary to present newly
12 discovered or previously unavailable evidence; (3) if such motion is
13 necessary to prevent manifest injustice; or (4) if the amendment is justified
14 by an intervening change in controlling law.

13 *Id.*

14 Lastly, under Rule 60(b), a court may relieve a party from a final judgment or order
15 only for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;
16 (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing
17 party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged;
18 or (6) any other reason that justifies relief. *See Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442
19 (9th Cir. 1991). A party moving for relief under Rule 60(b)(6) “must demonstrate both
20 injury and circumstances beyond his control that prevented him from proceeding with the
21 action in a proper fashion.” *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (quoting
22 *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)).

23 Plaintiff bases his Motion on his belief that, in dismissing the Amended Complaint,
24 the Court erred in not granting him leave to amend. The Court will consider this Motion as
25 one for reconsideration under Local Rule 7.2(g) or to amend the judgment under Rule
26 59(e), but Plaintiff provides insufficient basis for the Court to review the judgment under
27 Rule 60(b).

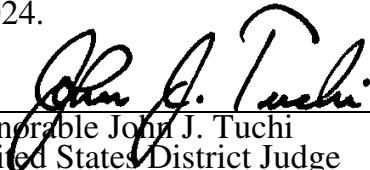
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After the Court finds that a complaint fails to state a claim, warranting dismissal, the plaintiff is entitled to amend the complaint if the Court finds the defects in the complaint can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). The Court has carefully reviewed the Amended Complaint (Doc. 18) and its Order (Doc. 27) dismissing the claims therein, and the Court remains convinced that Plaintiff cannot cure the fatal defects in his claims by further amendment of the Amended Complaint.

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Reconsideration and Leave to Amend (Doc. 30). This case remains closed.

Dated this 16th day of October, 2024.



Honorable John J. Tuchi
United States District Judge