

1 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
2 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
3 § 1915(e)(2).

4 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
5 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
6 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
7 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
8 490 U.S. at 327.

9 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
10 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
11 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
12 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
13 Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
14 this standard, the court must accept as true the allegations of the complaint in question, Hospital
15 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
16 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor, Jenkins v.
17 McKeithen, 395 U.S. 411, 421 (1969).

18 B. Motion for Reconsideration

19 Where reconsideration of a non-final order is sought, the court has “inherent jurisdiction
20 to modify, alter or revoke it.” United States v. Martin, 226 F.3d 1042, 1048–49 (9th Cir. 2000).
21 Generally stated, reconsideration is appropriate where there has been an intervening change in
22 controlling law, new evidence has become available, or it is necessary to correct clear error or
23 prevent manifest injustice. See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d
24 1255, 1263 (9th Cir. 1993).

25 In the absence of new evidence or a change in the law, a party may not use a motion for
26 reconsideration to raise arguments or present new evidence for the first time when it could
27 reasonably have been raised earlier in the litigation. Carroll v. Nakatani, 342 F.3d 934, 945 (9th
28 Cir. 2003); see also Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Motions

1 to reconsider are also “not vehicles permitting the unsuccessful party to ‘rehash’ arguments
2 previously presented.” United States v. Navarro, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997), rev'd
3 on other grounds, 160 F.3d 1254 (9th Cir. 1998). Ultimately, a party seeking reconsideration
4 must show “more than a disagreement with the Court's decision, and recapitulation of the cases
5 and arguments considered by the court before rendering its original decision fails to carry the
6 moving party's burden.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131
7 (E.D. Cal. 2001).

8 ANALYSIS

9 The court declines to reconsider its order dismissing plaintiff’s first amended complaint
10 with leave to amend because plaintiff has failed to point to any new evidence or intervening law
11 that renders its previous order manifestly unjust. Plaintiff’s motion for reconsideration merely
12 rehashes matters asserted in his first amended complaint and does not address the underlying
13 problem with his claims, that defendant is immune from liability under the Eleventh Amendment.
14 See Dwyer v. Regan, 777 F.2d 825, 835 (2d Cir. 1985). As the court has explained, motions to
15 reconsider must not be based on arguments that the court has already addressed. Navarro, 972 F.
16 Supp. at 1299. Accordingly, the court declines to reconsider its order dismissing plaintiff’s first
17 amended complaint with leave to amend.

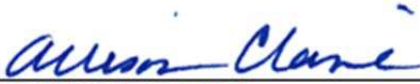
18 Plaintiff is hereby cautioned that the filing of his interlocutory appeal with the Ninth
19 Circuit Court of Appeals in no way stays this action. Thus, regardless of the pending appeal,
20 plaintiff is required to timely file an amended complaint in accordance with this order. Failure to
21 do so will result in a recommendation that this action be dismissed without leave to amend
22 pursuant to Federal Rule of Civil Procedure 41(b).

23 In light of the foregoing, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff’s November 24, 2014, motion for reconsideration (ECF No. 13) is denied; and
- 25 2. Plaintiff is granted thirty days from the date of service of this order to file an amended
26 complaint that complies with the requirements of the Federal Rules of Civil Procedure, the Local
27 Rules of Practice, and the court’s October 23, 2014, order (ECF No. 12); the amended complaint
28 must bear the docket number assigned this case and must be labeled “Second Amended

1 Complaint;" plaintiff must file an original and two copies of the amended complaint; failure to
2 file an amended complaint in accordance with this order will result in a recommendation that this
3 action be dismissed without leave to amend.

4 DATED: December 1, 2014

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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