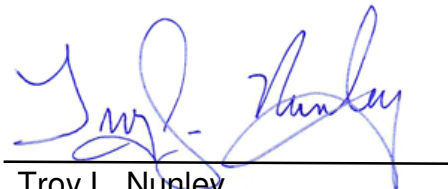


1 613, 615 (9th Cir. 2010). Plaintiff's motion for a new trial is inappropriate because the Court
2 dismissed his claims pursuant to a motion under Rule 12(b)(6). Federal Rule of Civil Procedure
3 12(b)(6) allows defendants to move to dismiss a complaint prior to litigation on the merits for
4 failing to state a claim upon which relief may be granted. Here, Plaintiff's complaint was
5 dismissed with prejudice under Rule 12(b)(6) because Plaintiff could not allege any facts that
6 would make a § 1983 claim plausible. (ECF No. 45.) As such, Plaintiff's claims were never
7 litigated at a trial. Accordingly, the Court DENIES Plaintiff's Motion for a New Trial under Rule
8 59(a).

9 Plaintiff further moves to alter or amend this Court's order adopting Magistrate Judge
10 Brennan's Findings and Recommendations (ECF No. 45) and dismissing Plaintiff's complaint
11 without leave to amend. (ECF No. 47.) Plaintiff moves to alter the judgment pursuant to Rule
12 59(e). A motion to amend or alter a judgment under Rule 59(e) should not be granted "unless the
13 district court is presented with newly discovered evidence, committed clear error, or if there is an
14 intervening change in the controlling law." *Carol v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).
15 Having read and considered the Plaintiff's motion and reply, the Court cannot find that Plaintiff
16 presented new evidence, demonstrated clear error or established an intervening change in the
17 controlling law. Consequently, the Court finds Plaintiff has failed to meet his burden and hereby
18 DENIES Plaintiff's Motion to Amend or Alter Judgment.

19 IT IS SO ORDERED.

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21 Dated: September 27, 2016

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25 Troy L. Nunley
26 United States District Judge
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