

1 The amended complaint in this case, founded on 42 U.S.C. § 1983, alleges two
2 City of Auburn police officers violated plaintiff’s Fourth Amendment rights when they arrested
3 and jailed plaintiff. ECF No. 8-1. Defendant moved to dismiss, contending plaintiff’s claim is
4 barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because the amended complaint alleged the
5 arrest leading to plaintiff’s conviction lacked probable cause, ECF No. 12, and *Heck* bars claims
6 under 42 U.S.C. § 1983 where judgment entered in favor of plaintiff “would necessarily imply the
7 invalidity of [plaintiff’s] conviction or sentence.” 512 U.S. 477, 487.² At hearing on the motion
8 to dismiss, plaintiff conceded he was challenging the arrest that led to his conviction. ECF No.
9 23 at 4. The magistrate judge thus found plaintiff’s action “barred by *Heck* until plaintiff’s
10 conviction is overturned.” *Id.*

11 Federal Rule of Civil Procedure 60(b) governs relief from orders and judgments of
12 the district court. The Rule permits a district court to relieve a party from a final order or
13 judgment on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud
14 . . . by an opposing party, . . . or (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b).
15 The motion for reconsideration must be made within a reasonable time. *Id.* Rule 60(b)(6) “is to
16 be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only
17 where [there are] extraordinary circumstances.” *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir.
18 2008). The moving party “must demonstrate both injury and circumstances beyond his control
19 . . .” *Id.* Local Rule 230(j) also requires Plaintiff to show “what new or different facts or
20 circumstances are claimed to exist which did not exist or were not shown upon such prior motion,
21 or what other grounds exist for the motion.” As the Ninth Circuit has observed, “a motion for
22 reconsideration should not be granted, absent highly unusual circumstances, unless the district
23 court is presented with newly discovered evidence, committed clear error, or if there is an
24 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH*
25 *& Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (emphasis in omitted). Such a motion “may not be used

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27 ² Plaintiff has not contested the magistrate judge’s findings and recommendations with
28 respect to the dismissal of other claims for lack of jurisdiction or her denial of a motion to
continue.

1 to raise arguments or present evidence for the first time when they could reasonably have been
2 raised earlier in the litigation.” *Id.*

3 Here, plaintiff does not present the court with any newly discovered evidence,
4 argue that the court has committed clear error or made an unjust decision, or point out there was a
5 change in controlling law. Instead, plaintiff merely reasserts his claims as presented in the
6 amended complaint, challenging the arrest that led to his conviction, and stating in a conclusory
7 fashion that the action is not barred by *Heck*. ECF No. 32 at 2–4. As a brother court has stated,
8 “[a] party seeking reconsideration must show more than a disagreement with the [c]ourt’s
9 decision, and recapitulation of that which was already considered by the [c]ourt in rendering its
10 decision.” *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001)
11 (citations and quotations omitted).

12 The court DENIES the motion for reconsideration. The February 4, 2016 order
13 adopting the findings and recommendations shall not be disturbed.

14 IT IS SO ORDERED.

15 DATED: March 7, 2016.

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UNITED STATES DISTRICT JUDGE