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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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11 JOHN B. KENNEY,

CASE NO. 13cv248-WQH-JLB

12 Plaintiff,

ORDER

13 vs.

13 CITY OF SAN DIEGO, *et al.*,

14 Defendants.

15 HAYES, Judge:

16 The matters before the Court are (1) the Motion for Reconsideration, filed by
17 Plaintiff (ECF Nos. 85, 97); (2) the Motions to Supplement the First Amended
18 Complaint, filed by Plaintiff (ECF Nos. 103, 104, 109); and (3) the Motions to Dismiss,
19 filed by numerous Defendants (ECF Nos. 93, 107, 110, 119, 120).

20 **I. Background**

21 On January 30, 2013, Plaintiff John B. Kenney, proceeding *pro se*, filed a
22 Complaint in this Court. (ECF No. 1). On September 20, 2013, the Court granted in
23 part and denied in part the motion to dismiss the Complaint filed by Defendants City
24 of San Diego, San Diego Police Department, William Lansdowne, Jerry Sanders, Scott
25 Thompson, Kaseyelee Lawrence, David Stum, and Jan Goldsmith (collectively, “City
26 Defendants”). (ECF No. 20). In the same Order, the Court granted the motion to
27 dismiss filed by the San Diego Sheriff’s Department (“Sheriff’s Department”). *Id.*

28 On October 21, 2013, Plaintiff filed a First Amended Complaint. (ECF No. 21).

1 On January 28, 2014, the Court granted the motions to dismiss portions of the First
2 Amended Complaint filed by the City Defendants and the Sheriff’s Department. (ECF
3 No. 33). In the January 28, 2014 Order, the Court listed the nine causes of action
4 against various City Defendants which were not dismissed. *See id.* at 22-23. The Court
5 presumes familiarity with the January 28, 2014 Order and the other orders and filings
6 in this action.

7 **II. Motion for Reconsideration**

8 Plaintiff requests that the Court reconsider the rulings in the January 28, 2014
9 Order which were adverse to Plaintiff. (ECF No. 85). Plaintiff contends that he
10 adequately pled each of his asserted causes of action against each of the moving
11 Defendants, and the Court erred in dismissing certain claims against certain Defendants
12 and striking certain allegations. Plaintiff alternatively requests leave to amend the First
13 Amended Complaint. Plaintiff also requests that “the Court excuse itself for obvious
14 bias.” *Id.* at 19. In a separate motion, Plaintiff filed exhibits in support of the Motion
15 for Reconsideration.¹ (ECF No. 97).

16 The City Defendants filed oppositions to the Motion for Reconsideration, and
17 Plaintiff filed replies. (ECF Nos. 88, 96, 100, 105).

18 **A. Request for Reconsideration**

19 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests
20 of finality and conservation of judicial resources.” *Kona Enters. Inc. v. Estate of*
21 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quotation omitted). “[A] motion for
22 reconsideration should not be granted, absent highly unusual circumstances, unless the
23 district court is presented with newly discovered evidence, committed clear error, or if
24 there is an intervening change in the controlling law.” *Marlyn Natraceuticals, Inc. v.*
25 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quotation omitted).

26 After review of the Motion for Reconsideration and the prior orders issued in this

27
28 ¹ Plaintiff’s motion to file exhibits in support of the Motion for Reconsideration
is granted. (ECF No. 97). Plaintiff’s request for leave to amend the First Amended
Complaint is discussed *infra*.

1 case, the Court concludes that Plaintiff does not present the Court with newly
2 discovered evidence, does not establish that the Court committed clear error, and does
3 not establish an intervening change in the law. Accordingly, the Motion for
4 Reconsideration is denied.

5 **B. Request for Recusal**

6 “The standard for recusal ... is whether a reasonable person with knowledge of
7 all the facts would conclude the judge’s impartiality might reasonably be questioned.”
8 *Taylor v. Regents of the Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993) (quotation
9 omitted). “To warrant recusal, judicial bias must stem from an extrajudicial source.”
10 *Id.* (citation omitted). “[A] judge’s prior adverse ruling is not sufficient cause for
11 recusal.” *Id.* (quotation omitted).

12 Plaintiff requests that the Court recuse on the grounds that the Court’s prior
13 rulings in this case and a prior case were adverse to him. Plaintiff has not alleged
14 judicial bias from an extrajudicial source. Plaintiff’s request that the Court recuse itself
15 from this case is denied.

16 **III. Motions to Supplement the First Amended Complaint**

17 Plaintiff moves for an order allowing Plaintiff to supplement the First Amended
18 Complaint with two exhibits. *See* ECF Nos. 102-1, 102-2, 103-2, 104-2, 109 at 13-14.
19 The docket reflects that the motions are unopposed. Pursuant to Civil Local Rule
20 7.1(f)(3)(c), Plaintiff’s motions to supplement the First Amended Complaint are
21 granted. (ECF Nos. 103, 104, 109). The two exhibits are considered part of the First
22 Amended Complaint, which is the operative pleading. (ECF Nos. 21, 102).² Any
23 further amendment or supplement to the operative pleading must be done by filing a
24 motion for leave to amend the First Amended Complaint, accompanied by a copy of the
25 proposed amended pleading, which shall be entitled “Second Amended Complaint.”
26 Any amended pleading must be complete in itself without reference to any prior

27 ² Plaintiff filed the First Amended Complaint twice, on October 21, 2013,
28 without the two exhibits (ECF No. 21), and March 14, 2014, with the two exhibits (ECF
No. 102). Apart from the exhibits, the two filings are identical.

1 pleading. *See* S.D. Cal. Civ. L.R. 15.1.

2 **IV. Motions to Dismiss**

3 The following Defendants have filed pending Motions to Dismiss the First
4 Amended Complaint: Bret Jacobus (ECF No. 93), Jeffrey Foshag (ECF No. 107), the
5 City Defendants (ECF No. 110), various federal Defendants (ECF No. 119), and
6 Gordon Pettus (ECF No. 120).

7 **A. Standard of Review**

8 The majority of the pending Motions to Dismiss are brought pursuant to Federal
9 Rule of Civil Procedure 12(b)(6). Rule 12(b)(6) permits dismissal for “failure to state
10 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of
11 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must
12 contain ... a short and plain statement of the claim showing that the pleader is entitled
13 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
14 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
15 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

16 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
17 requires more than labels and conclusions, and a formulaic recitation of the elements
18 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
19 (quoting Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must
20 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
21 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
22 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
23 content that allows the court to draw the reasonable inference that the defendant is liable
24 for the misconduct alleged.” *Id.* (citation omitted). “[T]he tenet that a court must
25 accept as true all of the allegations contained in a complaint is inapplicable to legal
26 conclusions. Threadbare recitals of the elements of a cause of action, supported by
27 mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are
28 well-pleaded factual allegations, a court should assume their veracity and then

1 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. “In
2 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content,
3 and reasonable inferences from that content, must be plausibly suggestive of a claim
4 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
5 2009) (quotations omitted).

6 *Pro se* complaints are held to a less stringent standard than formal pleadings by
7 lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). A *pro se* plaintiff’s
8 complaint must be construed liberally to determine whether a claim has been stated.
9 *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). However, a *pro se* litigant’s
10 pleadings still must meet some minimum threshold in providing the defendant with
11 notice of what it is that it allegedly did wrong. *See Brazil v. U.S. Dep’t of Navy*, 66
12 F.3d 193, 199 (9th Cir. 1995); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.
13 1995) (“Although we construe pleadings liberally in their favor, *pro se* litigants are
14 bound by the rules of procedure.”).

15 **B. Bret Jacobus**

16 Defendant Bret Jacobus (sued as “Brett”) moves for the dismissal of all claims
17 against him in the First Amended Complaint pursuant to Rule 12(b)(6). (ECF No. 93).
18 Plaintiff opposes the Motion to Dismiss, and contends that the First Amended
19 Complaint adequately pleads claims for relief against Jacobus. (ECF No. 118).

20 The sole specific reference to Jacobus in the First Amended Complaint is the
21 reference to “Brett” in the following passage:

22 Throughout Plaintiff Kenney’s time here in Scam Diego he has been
23 surveilled, monitored and interfered with by the Scam Diego - San Diego
24 Security Network, Cubic Corp. L-3, U.S. Security Associates, Pinkertons,
25 Pinkerton Governmental Services, SAIC, Tyco Corporation, and others,
26 including their agents in the only place Plaintiff was allowed to live in San
27 Diego, 5076 Saratoga Ave. including its owner, ex-Duke
28 Cunninghamesque ‘Naval Fighter Pilot’ Gordon Pettus, Paul ‘Pablo’
Martin, who had previously entered Plaintiff’s home with his partner,
psychiatrist and e-mail, electronic surveillance pretexter Allison, formerly
of Apt. #6, 5076 Saratoga Ave. San Diego, Randal Holmes, (or Randall K.
Holmes, or Randall Kenneth Holmes), formerly of Apt. #9, 5076 Saratoga
Ave. and of Pinkerton’s &/or Pinkerton Governmental Services (PGS)
&/or U.S. Security Services, and his ex-wife Dina Holmes, and his ‘boss’
Jim Clark of PGS and the San Diego Regional Chamber of Commerce;

1 and Brett, formerly of Apt. #3, presently Apt. #6, 5076 Saratoga Ave., and
2 of Tyco Corporation, and SAIC, and Mitch, presently of Apt. #3, 5076
3 Saratoga Ave. and of computer geek Matthew of Apt. #5, 5076 Saratoga
4 Ave. and his previous roommate and head-hunter Bernardo, formerly of
5 Apt. #5, 5076 Saratoga Ave, as well as probably all other present
6 occupants of 5076 Saratoga Ave.

7 All of the herein mentioned Defendants are sued for defamation, invasion
8 of privacy, [negligent infliction of emotional distress] &/or [intentional
9 infliction of emotional distress], other civil rights violations, and other
10 causes of action as they are discovered.

11 (ECF No. 102 at 31; *see also* ECF No. 21 at 31 (same)). In opposition to the Motion
12 to Dismiss, Plaintiff contends that “Defendant Jacobus has acted as an agent under the
13 color of law of other state actors,” and “Plaintiff pled such ‘conspiratorial role(s)’
14 relating back to the various pertinent Defendants, often as ‘All Defendants,’ in nearly
15 every allegation of causes of actions.” (ECF No. 118 at 4, 7).

16 After review of the motion, the opposition and the First Amended Complaint, the
17 Court finds that the allegations of the First Amended Complaint related to Jacobus “are
18 conclusory and not entitled to be assumed true.” *Iqbal*, 556 U.S. at 680-81 (“[Plaintiff]
19 pleads that [defendants] ‘knew of, condoned, and willfully and maliciously agreed to
20 subject [him]’ to harsh conditions of confinement ‘as a matter of policy, solely on
21 account of [his] religion, race, and/or national origin and for no legitimate penological
22 interest.’ The complaint alleges that [defendant] Ashcroft was the ‘principal architect’
23 of this invidious policy, and that [defendant] Mueller was ‘instrumental’ in adopting
24 and executing it. These bare assertions ... amount to nothing more than a ‘formulaic
25 recitation of the elements’ of a constitutional discrimination claim.... As such, the
26 allegations are conclusory and not entitled to be assumed true.”) (quoting *Twombly*, 550
27 U.S. at 555). To the extent the First Amended Complaint alleges Jacobus is liable for
28 a claim of conspiracy pursuant to 42 U.S.C. § 1985(3), that claim is dismissed for the
reasons discussed in the January 28, 2014 Order (ECF No. 33 at 5-7). *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002) (“To bring a cause of action successfully under § 1985(3), a plaintiff must demonstrate a deprivation of a right motivated by some racial, or perhaps otherwise class-based, invidiously discriminatory

1 animus behind the conspirators’ action.”) (quotation omitted); *see also United Bhd. of*
2 *Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 837 (1983)
3 (§ 1985(3) was not “intended to reach conspiracies motivated by bias towards others
4 on account of their *economic* views, status, or activities”); *Perez-Sanchez v. Pub. Bldg.*
5 *Auth.*, 531 F.3d 104, 108-09 (1st Cir. 2008) (a majority of courts that have considered
6 the issue have held that “§ 1985(3) provides no remedy for animus on the basis of
7 political beliefs”) (collecting cases). The Motion to Dismiss filed by Jacobus is granted.

8 **C. Gordon Pettus**

9 Defendant Gordon Pettus moves for the dismissal of all claims against him in the
10 First Amended Complaint pursuant to Rule 12(b)(6). (ECF No. 120). Plaintiff opposes
11 the Motion to Dismiss, contending that Pettus is in default and the First Amended
12 Complaint adequately states a claim against Pettus. (ECF No. 127).

13 **1. Default**

14 On February 18, 2014, Plaintiff filed a proof of service as to Pettus. (ECF No.
15 43). On April 25, 2014, Pettus filed the Motion to Dismiss. (ECF No. 120). On May
16 13, 2014, Plaintiff filed a request for entry of default as to Pettus. (ECF No. 124). On
17 May 15, 2014, the Clerk of the Court entered default as to Pettus. (ECF No. 128).

18 Federal Rule of Civil Procedure 55(a) provides: “When a party against whom a
19 judgment for affirmative relief is sought has failed to plead or otherwise defend, and
20 that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”
21 Fed. R. Civ. P. 55(a). Courts have held that the filing of an untimely motion to dismiss
22 constitutes defending an action within the meaning of Rule 55(a), and the clerk should
23 not enter default when the request is made after the filing of the motion to dismiss. *See*
24 *Hudson v. State of N.C.*, 158 F.R.D. 78, 80 (E.D.N.C. 1994) (collecting cases); *see also*
25 *Tweh v. Green*, No. GLR-12-2360, 2013 WL 6259863, at *2 (D. Md. Dec. 2, 2013)
26 (same). The Court will apply this rule in this case, in light of the general rule that
27 “judgment by default is a drastic step appropriate only in extreme circumstances; a case
28 should, whenever possible, be decided on the merits.” *United States v. Signed Pers.*

1 *Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010). This is
2 particularly true in light of the absence of any showing of prejudice to Plaintiff in
3 setting aside the entry of default. *Cf. id.* at 1095 (“To be prejudicial, the setting aside
4 of a [default] judgment must result in greater harm than simply delaying resolution of
5 the case.”) (quotation omitted). Accordingly, the Court finds good cause to set aside
6 the entry of default against Pettus pursuant to Federal Rule of Civil Procedure 55(c).

7 **2. Motion to Dismiss**

8 The sole specific reference to Pettus in the First Amended Complaint is the
9 reference to the “owner” of “5076 Saratoga Ave.,” the “ex-Duke Cunninghamesque
10 ‘Naval Fighter Pilot’ Gordon Pettus.”³ (ECF No. 102 at 31; *see also* ECF No. 21 at 31
11 (same)). For the reasons the Court granted the Motion to Dismiss filed by Jacobus, the
12 Motion to Dismiss filed by Pettus is granted.

13 **D. Jeffrey Foshag**

14 Jeffrey Foshag, proceeding pro se, moves for the dismissal of all claims against
15 him in the First Amended Complaint pursuant to Rule 12(b)(6). (ECF No. 107). The
16 docket reflects that Plaintiff has not filed an opposition to Foshag’s Motion to Dismiss.

17 Foshag is not named in the First Amended Complaint, and Foshag asserts that the
18 sole allusion to Foshag in the First Amended Complaint is “probably all other present
19 occupants of 5076 Saratoga Ave.”⁴ (ECF No. 102 at 31; *see also* ECF No. 21 at 31
20 (same)). For the reasons the Court granted the Motion to Dismiss filed by Jacobus, and
21 pursuant to Civil Local Rule 7.1(f)(3)(c), the Motion to Dismiss filed by Foshag is
22 granted.

23 **E. City Defendants**

24 The City Defendants filed a Motion to Dismiss the March 14, 2014 version of the
25 First Amended Complaint (which, as discussed above, is identical to the October 21,

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27 ³ The full quote from the First Amended Complaint is set out above during the
discussion of the Motion to Dismiss filed by Jacobus.

28 ⁴ The full quote from the First Amended Complaint is set out above during the
discussion of the Motion to Dismiss filed by Jacobus.

1 2013 version of the First Amended Complaint, except for two exhibits). (ECF No. 110
2 (Motion to Dismiss); ECF No. 102 (March 14, 2014 First Amended Complaint); ECF
3 No. 21 (October 21, 2013 First Amended Complaint)). The City Defendants seek to
4 dismiss the same causes of action they sought to dismiss in their Motion to Dismiss the
5 first version of the First Amended Complaint, and the City Defendants additionally
6 request that the Court strike as immaterial the second exhibit of the October 21, 2013
7 version of the First Amended Complaint. The docket reflects that Plaintiff has not filed
8 an opposition to the City Defendants' pending Motion to Dismiss.

9 For the reasons stated in the January 28, 2014 Order granting the City
10 Defendants' prior Motion to Dismiss the First Amended Complaint, and pursuant to
11 Civil Local Rule 7.1(f)(3)(c), the pending Motion to Dismiss filed by the City
12 Defendants is granted. The City Defendants' request to strike the second exhibit to the
13 First Amended Complaint is denied without prejudice to renew the objection to the
14 exhibit at a later date. The claims against the City Defendants which were listed as
15 pending in the January 28, 2014 Order (*see* ECF No. 33 at 22-23) remain pending. The
16 Answer filed by the City Defendants on February 10, 2014 (ECF No. 34) is construed
17 as the City Defendants' Answer to the March 14, 2014 First Amended Complaint.

18 **F. Federal Defendants**

19 The U.S. Department of Homeland Security, Federal Protective Service, DHS
20 Office State & Local Law Enforcement, U.S. Justice Department, the Federal Bureau
21 of Investigation, the FBI Joint Terrorism Task Force, Counter Terrorism Information
22 Center, the Central Intelligence Agency, the Drug Enforcement Administration, US
23 Military, Border Patrol, the Navy, other Armed Military Services, and U.S. Government
24 Intelligence Offices & Officers in San Diego (collectively "Federal Defendants") move
25 to dismiss all claims against them in the First Amended Complaint pursuant to Federal
26 Rule of Civil Procedure 12(b)(1) (lack of subject-matter jurisdiction) and Federal Rule
27 of Civil Procedure 12(b)(6) (failure to state a claim). (ECF No. 119). Plaintiff opposes
28 the Motion to Dismiss. (ECF No. 121).

1 The United States, as a sovereign, is immune from suit. *United States v. Mitchell*,
2 445 U.S. 535, 538 (1980). “It is axiomatic that Congressional waiver of sovereign
3 immunity is a prerequisite to any suit brought against the United States.” *Roberts v.*
4 *United States*, 498 F.2d 520, 525 (9th Cir. 1974). The United States “may not be sued
5 without its consent and the terms of such consent define the court’s jurisdiction.” *Baker*
6 *v. United States*, 817 F.2d 560, 562 (9th Cir. 1987). A waiver of sovereign immunity
7 as contained in any statute “will be strictly construed, in terms of its scope, in favor of
8 the sovereign.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). “A party bringing a cause of
9 action against the federal government bears the burden of showing an unequivocal
10 waiver of immunity.” *Baker*, 817 F.2d at 562.

11 With respect to causes of action 1, 2, 9 and 12, which allege claims pursuant to
12 42 U.S.C. §§ 1983 and 1985, “§§ 1983 and 1985 impose liability upon a ‘person,’ and
13 a federal agency is not a ‘person’ within the meaning of these provisions.” *Jachetta v.*
14 *United States*, 653 F.3d 898, 908 (9th Cir. 2011) (citations omitted). The First
15 Amended Complaint fails to identify specific, individual federal agents who might be
16 subject to suit pursuant to *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403
17 U.S. 388 (1971). *Cf. F.D.I.C. v. Meyer*, 510 U.S. 471, 484-87 (1994) (holding that a
18 *Bivens* cause of action may not be brought against a federal agency). The First
19 Amended Complaint also fails to allege in a non-conclusory manner how any individual
20 federal agents violated Plaintiff’s constitutional rights. *See Iqbal*, 556 U.S. at 680-81;
21 *see also Moss*, 572 F.3d at 969-72; *Kwai Fun Wong v. United States*, 373 F.3d 952,
22 966-67 (9th Cir. 2004). Plaintiff has failed to show an unequivocal waiver of immunity
23 as to causes of action 1, 2, 9 and 12 against the federal agencies listed in the First
24 Amended Complaint, and to the extent these claims are being made against individual
25 federal agents, they are dismissed pursuant to Rule 12(b)(6).

26 With respect to Plaintiff’s remaining causes of action, alleging claims pursuant
27 to state law (causes of action 3-8 and 10-12), Plaintiff’s suit may be maintained only
28 pursuant to the Federal Tort Claims Act (“FCTA”). *See F.D.I.C. v. Craft*, 157 F.3d 697,

1 706 (9th Cir. 1988) (“The FTCA is the exclusive remedy for tortious conduct by the
2 United States....”) (citations omitted). The filing of an administrative claim with the
3 appropriate federal agency pursuant to 28 U.S.C. § 2675(a) is a jurisdictional
4 prerequisite to filing an FTCA lawsuit. *See Brady v. United States*, 211 F.3d 499, 502
5 (9th Cir. 2000). “Because the requirement is jurisdictional, it must be strictly adhered
6 to.” *Id.* (quotation omitted). Plaintiff bears the burden of affirmatively alleging
7 compliance with the FTCA’s administrative exhaustion requirement. *See Gillespie v.*
8 *Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (“The timely filing of an administrative
9 claim is a jurisdictional prerequisite to the bringing of a suit under the FTCA, and, as
10 such, should be affirmatively alleged in the complaint. A district court may dismiss a
11 complaint for failure to allege this jurisdictional prerequisite.”) (citation omitted).

12 Plaintiff fails to allege in the First Amended Complaint, or in his opposition to
13 the Motion to Dismiss, that he complied with the administrative exhaustion requirement
14 of the FTCA. Accordingly, all state law causes of action must be dismissed pursuant
15 to Rule 12(b)(1). The Motion to Dismiss the Federal Defendants is granted.

16 **V. Conclusion**

17 IT IS HEREBY ORDERED that Plaintiff’s motion to file exhibits in support of
18 the Motion for Reconsideration is granted, and Plaintiff’s Motion for Reconsideration
19 is denied. (ECF Nos. 85, 97).

20 IT IS FURTHER ORDERED that Plaintiff’s motions to supplement the First
21 Amended Complaint are granted, as discussed above. (ECF Nos. 103, 104, 109). Any
22 further amendment or supplement to the operative pleading must be done by filing a
23 motion for leave to amend the First Amended Complaint, accompanied by a copy of the
24 proposed amended pleading, which shall be entitled “Second Amended Complaint.”

25 IT IS FURTHER ORDERED that the Motions to Dismiss filed by Jacobus,
26 Pettus, Foshag, the City Defendants, and the Federal Defendants are granted, as
27 discussed above. (ECF Nos. 93, 107, 110, 119, 120). All claims dismissed by this
28 Order are dismissed without prejudice. The default entered against Pettus is set aside.


1 (ECF No. 128).

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DATED: June 30, 2014

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WILLIAM Q. HAYES
United States District Judge

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