

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GERALDINE A. TRICE,)
)
 Plaintiff,)
 vs.)
 JAMES HUYNH,)
)
 Defendant.)

Case No.: 2:16-cv-02424-GMN-VCF

ORDER

Pending before the Court is the Motion to Reconsider, (ECF No. 10), filed by pro se Defendant Geraldine A. Trice (“Defendant”)¹ against Plaintiff James Huynh (“Plaintiff”).² For the reasons discussed below, the Court DENIES the Motion.

I. BACKGROUND

Plaintiff filed a Complaint for Unlawful Detainer on August 22, 2016, in the Justice Court, Las Vegas Township, Clark County, in order to obtain possession of certain real property. (Ex. 1 to Ex Parte Appl. (“Compl.”), ¶ 1–9, ECF No. 6). On October 17, 2016, Defendant removed the eviction action to this Court based upon federal question jurisdiction. (See Notice of Removal ¶ 10, ECF No. 1-1).

¹ It appears that Defendant’s Notice of Removal inadvertently switched the title of the parties. (See Mot. to Am. 1:21–22, ECF No. 4) (“This amendment is in order due to the Plaintiff and Defendant name . . . was [sic] incorrect.”). Accordingly, the Court will refer to the parties as they were named prior to removal from state court: Plaintiff James Huynh and Defendant Geraldine A. Trice.

² In light of Defendant’s status as a pro se litigant, the Court has liberally construed her filings, holding them to standards less stringent than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94 (2007).

1 On November 30, 2016, the Court issued an Order, (ECF No. 8), remanding this case
2 back to the Las Vegas Justice Court. In the instant Motion, Defendant asks the Court to
3 reconsider its Order and reinstate this case in this Court. (See Mot. to Reconsider, ECF No. 10).

4 **II. LEGAL STANDARD**

5 “[A] motion for reconsideration should not be granted, absent highly unusual
6 circumstances.” Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003). Reconsideration is
7 appropriate where: (1) the court is presented with newly discovered evidence, (2) the court
8 committed clear error or the initial decision was manifestly unjust, or (3) if there is an
9 intervening change in controlling law. School Dist. No. 1J, Multnomah County v. ACandS, Inc.,
10 5 F.3d 1255, 1263 (9th Cir. 1993). However, a motion for reconsideration is not a mechanism
11 for rearguing issues presented in the original filings, Backlund v. Barnhart, 778 F.2d 1386,
12 1388 (9th Cir. 1985), or “advancing theories of the case that could have been presented earlier,”
13 Resolution Trust Corp. v. Holmes, 846 F. Supp. 1310, 1316 (S.D. Tex. 1994). Thus, Rules
14 59(e) and 60(b) are not “intended to give an unhappy litigant one additional chance to sway the
15 judge.” See Durkin v. Taylor, 444 F. Supp. 879, 889 (E.D. Va. 1977).

16 **III. DISCUSSION**


17 As the Court’s previous Order explained, Plaintiff’s Complaint for Unlawful Detainer
18 asserts only state law claims. See, e.g., Wachovia Mortg., FSB v. Rabb, No. 2:15-cv-03903-
19 ODW AS, 2015 WL 3454558, at *1 (C.D. Cal. May 29, 2015) (compiling cases).
20 Nevertheless, Plaintiff’s Motion cites various federal statutes as well as the United States
21 Constitution, which she insists invoke this Court’s federal question jurisdiction pursuant to 28
22 U.S.C. § 1331. (See Mot. to Reconsider) (arguing, inter alia, that the state court case is
23 “preempted by the Civil Rights of 1855”). The Court has already rejected this argument.
24 (Order 2:18–20, ECF No. 8) (“To the extent that Defendant attempts to allege that her defenses
25 or counterclaims in the eviction action raise a federal question, the Court notes that defenses

1 and counterclaims cannot form a basis for federal jurisdiction.”) (citing Vaden v. Discover
2 Bank, 556 U.S. 49, 60 (2009). Having reviewed the record in this case, the Court can discern
3 no reason to reject its prior Order. Plaintiff’s Motion is therefore DENIED.

4 **IV. CONCLUSION**

5 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Reconsider, (ECF No. 10), is
6 **DENIED.**

7 **DATED** this 14 day of April, 2017.

8
9
10 
11 _____
12 Gloria M. Navarro, Chief Judge
13 United States District Court
14
15
16
17
18
19
20
21
22
23
24
25