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**FILED**

MAY 09 2005

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**NOT FOR CITATION**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT-JOHN FOTI, et al.,  
Plaintiffs,  
v.  
OFFICER MCHUGH, et al.,  
Defendants.

No. C 04-2567 PJH

**ORDER DENYING MOTION  
FOR RECONSIDERATION**



Plaintiffs Robert-John:Foti, Joe Neufeld, and Ken Augustine seek reconsideration of the court's order of February 2, 2005, granting defendants' motion to dismiss the first amended complaint. Because the court found that there was no possibility that plaintiffs would prevail in any of their claims, the dismissal was with prejudice. Judgment was entered on February 3, 2005.

On February 17, 2005, plaintiffs filed a motion for reconsideration, claiming errors of law and fact, and also claiming fraud by the court. Because the motion was filed within ten days of the date of entry of judgment, the court interprets it as a motion under Federal Rule of Civil Procedure 59(e).

The Federal Rules of Civil Procedure do not expressly allow for motions for reconsideration. Nevertheless, a motion for reconsideration of judgment following an order granting a dispositive motion may be brought under either Rule 59(e) or Rule 60(e). Hinton

1 v. Pacific Enter., 5 F.3d 391, 395 (9th Cir. 1993) (motion for reconsideration of summary  
2 judgment is appropriately brought under either rule). A motion under Rule 59(e) must be  
3 brought within 10 days of the date of entry of judgment. Fed. R. Civ. P. 59(e). Where that  
4 deadline has passed, a party seeking amendment of the judgment can move under Rule  
5 60(b). Here, plaintiffs filed their motion within the time allowed by Rule 59(e). Thus, the  
6 court need not consider the motion as an alternative motion under Rule 60(b).

7 A district court has considerable discretion when considering a motion to amend a  
8 judgment under Rule 59(e). McDowell v. Calderon, 197 F. 3d 1253, 1254 n. 1 (9th Cir.  
9 1999) (quoting 11 Wright, Miller & Kane, Federal Practice and Procedure 2810.1 (2d  
10 ed.1995)). A Rule 59(e) motion may be granted if 1) the motion is necessary to correct  
11 manifest errors of law or fact upon which the judgment is based; 2) the moving party  
12 presents newly discovered or previously unavailable evidence; 3) the motion is necessary  
13 to prevent manifest injustice; or 4) there is an intervening change in controlling law. Turner  
14 v. Burlington Northern Santa Fe R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003).

15 Plaintiffs do not argue that reconsideration is warranted by virtue of newly  
16 discovered or previously unavailable evidence, or by virtue of an intervening change in  
17 controlling law. They assert only that the motion should be granted on grounds (1) and (3),  
18 above – to correct manifest errors of law or fact upon which the judgment is based, and to  
19 prevent manifest injustice.

20 The court finds that the motion must be DENIED. Plaintiffs have not identified any  
21 "manifest errors of law or fact" or any "manifest injustice" sufficient to support  
22 reconsideration of the court's dismissal of his claims. Instead, plaintiffs simply attempt to  
23 re-argue their opposition to defendants' motion to dismiss.

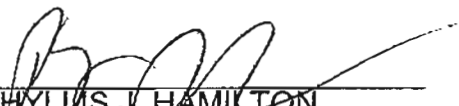
24 A motion for reconsideration should not merely present arguments previously  
25 raised, or which could have been raised in the initial motion. See Backlund v. Barnhart,  
26 778 F.2d 1386, 1388 (9th Cir.1985) (motion properly denied because it presented no  
27 arguments that had not already been raised in opposition to summary judgment); Beentjes  
28 v. Placer Co. Air Pollution Control Dist., 254 F.Supp. 2d 1159, 1161 (E.D. Cal. 2003)

1 (motion to reconsider is not a vehicle to reargue motion); United States v. Navarro, 972  
2 F.Supp. 1296, 1299 (E.D. Cal.1997) (motions to reconsider are not vehicles permitting  
3 unsuccessful party to “rehash” arguments previously presented). These relatively  
4 restrictive standards “reflect district courts” concerns for preserving dwindling resources  
5 and promoting judicial efficiency. Navarro, 972 F.Supp. at 1299 (citation and quotation  
6 omitted).

7 In accordance with the foregoing, the court finds that the motion for reconsideration  
8 must be DENIED.

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10 **IT IS SO ORDERED.**

11 Dated: May 9, 2005

  
12 PHYLIS J. HAMILTON  
13 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Foti et al,

Plaintiffs,

v.

McHugh et al,

Defendants.

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Case Number: CV04-02567 PJH

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 9, 2005, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

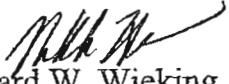
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Dated: May 9, 2005

  
Richard W. Wieking, Clerk  
By: Nichole Heuerman, Deputy Clerk