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MEMORANDUM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (NOVEMBER 1, 2022)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SCOTT MEIDE; ET AL.,

Plaintiffs-Appellants,

v.

NOAH CENTINEO; ET AL.,

Defendants-Appellees.

No. 19-56402

D.C. No. 2:19-cv-07171-PA-KS

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted October 31, 2022**

Before: FRIEDLAND, BENNETT and BRESS,
Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

MEMORANDUM

Scott Meide and other plaintiffs appeal pro se the district court's dismissal of their securities fraud action against sixty-one defendants. We have jurisdiction under 28 U.S.C. § 1291. *See Martinez v. Barr*, 941 F.3d 907, 915-16 (9th Cir. 2019) (premature notice of appeal directed at non-appealable order may ripen into notice of appeal of subsequent final decision); *De Tie v. Orange Cty.*, 152 F.3d 1109, 1111 (9th Cir. 1998) ("The dismissal of an action, even when it is without prejudice, is a final order."). We review de novo the district court's dismissal for failure to state a claim. *Curry v. Yelp, Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017). We affirm.

The district court properly dismissed the securities fraud claim for 2012-14 investments as barred by the five-year statute of repose set forth in 28 U.S.C. § 1658(b). *See Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 650 (2010) (statute of repose provides for "unqualified bar" on claims filed more than five years after alleged violation of the Securities Exchange Act).

The district court properly dismissed the securities fraud claim for a 2016 investment for failure to comply with an order to file an amended complaint pursuant to Federal Rule of Civil Procedure 41(b). *See Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019) (standard for Rule 41(b) dismissal).

This case remains administratively closed as to Aviron Capital, LLC, and Aviron Pictures, LLC. *See* Docket Entry No. 92.

AFFIRMED.

ORDER OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, DISMISSING CASE WITH PREJUDICE (OCTOBER 31, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCOTT MEIDE; ET AL.

v.

NOAH CENTINEO; ET AL.

No. CV 19-7171 PA (KSx)

Before: Hon. PERCY ANDERSON,
United States District Judge.

Proceedings: IN CHAMBERS – ORDER

On October 16, 2019, the Court issued an Order to Show Cause requiring plaintiff Scott Meide ("Plaintiff") to show in writing why his securities fraud claim against all 61 named defendants (collectively "Defendants") should not be dismissed as time-barred under the statute of limitations governing Section 10(b) claims. (Docket No. 95.) The Court warned that "[f]ailure to adequately respond to this Order to Show Cause by October 30, 2019, may result in the dismissal of Plaintiff Scott Meide's claims without further warning." (*Id.* at 2.) Plaintiff filed a Response on Oct-

ober 23, 2019. (Docket No. 109.) Plaintiff's Response presents no new facts regarding his investments in the film "Legends of Oz: Dorothy's Return," nor does it present any arguments as to why Defendants should be treated differently regarding liability for the securities fraud claim.

The Court finds that Plaintiff's Response is insufficient to discharge the Order to Show Cause. For the reasons discussed below, the Court dismisses with prejudice Plaintiff's securities fraud claim for his 2012-2014 investments as time-barred under the statute of limitations. The Court also dismisses with leave to amend Plaintiff's securities fraud claim for his 2016 investment.

I. Background

Plaintiff's Complaint alleges that he invested in the production of the animated film "Legends of Oz: Dorothy's Return" ("Film"). Defendants Ryan and Roland Carroll, Summertime Entertainment, and Greg Centineo (collectively "Producers") created and sold membership interests in two limited liability companies —Dorothy of Oz, LLC and Emerald City of Oz, LLC —to finance the Film. (Compl. at ¶¶ 8, 86, 119.) Plaintiff alleges the Producers allowed the Film to fail and pocketed the excess investor funds, leaving him with nothing. (*Id.* at ¶¶ 26, 28, 51, 66(g), 69, 92(a)-(b), 93, 147.)

> According to Plaintiff, he invested in the Film seven times: (1) $900,000 on March 7, 2012, (2) $500,000 on September 19, 2012, (3) $250,000 on February 25, 2013, (4) $50,000 on March 5, 2013, (5) $1,000,000 on February

19, 2014, (6) $36,000 on March 7, 2014, and (7) $250,000 on April 23, 2014.

(*Id.* at ¶¶ 97, 99, 102-106.) When Plaintiff made these investments, he relied on representations from Producers and other Defendants that the Film would be successful and a worthwhile investment. (*Id.* At ¶¶ 96-101.) For example, on February 13, 2012, John King stated on a conference call that "[i]nvestors would be paid first, get their investment back, plus 20% before the studios get paid." (*Id.* at ¶ 97(a).) Plaintiff was then told the next day that "120% is paid to investors first." (*Id.* at ¶ 98(d).) In addition, Defendants told Plaintiff on April 11, 2012 that the "[f]ranchise is in tremendous shape . . . [and] Greg Centineo said that Will Finn (from Disney) said quality of film is as good as Disney, Dream Works or Pixar could put out." (*Id.* at ¶ 101(a), (b).) Defendant Ryan Carroll also said he had no concerns with distribution of the Film. (*Id.* at ¶ 101(h).) Notably, Plaintiff does not identify any specific statements made by any of the named Defendants that he relied on to make his 2013 and 2014 investments.

The Film was released on May 9, 2014. (*Id.* at 129.) It earned $18,662,027 worldwide—despite an estimated production cost of $24,000,000—and received substandard ratings and reviews from critics. (*Id.* at ¶¶ 4, 74, and p.129.) Over two years later, on July 25, 2016, Plaintiff made an eighth investment of $500 "to Oz Strategies towards a fund to try to take control of the two LLCs." (*Id.* at ¶ 107.) Plaintiff does not identify any specific statements made by any of the named Defendants that he relied on to make his 2016 investment.

Plaintiff filed a Complaint in this Court on August 16, 2019. He alleges the following claims against all

named Defendants: (1) securities fraud under § 10(b) of the Securities Exchange Act of 1934, (2) breach of good faith and fair dealing, (3) breach of fiduciary duty, (4) fraud, (5) promissory fraud, (6) unjust enrichment, (7) conversion, and (8) civil conspiracy. Plaintiff alleges that he has not received any return on his investments. Defendants have filed several motions to dismiss, alleging that Plaintiff has failed to state claims upon which relief may be granted. (*See* Docket Nos. 11, 12, 13, 38, 45, 64, 65, 70, 101, 104, 107, 112, 113, 116.) Several of these motions to dismiss also argue that Plaintiff's securities fraud claim is time-barred under the statute of limitations.

II. Legal Standard

The more stringent pleading requirements of Federal Rule of Civil Procedure 9(b) apply to allegations of fraud. "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). "Rule 9(b) requires particularity as to the circumstances of the fraud—this requires pleading facts that by any definition are 'evidentiary': time, place, persons, statements made, explanation of why or how such statements are false or misleading." *In re Glenfed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 at n.7 (9th Cir. 1994) (emphasis added). "A pleading is sufficient under rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989) (citing *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987)). "While statements of the time, place and nature of the alleged

fraudulent activities are sufficient, mere conclusory allegations of fraud are insufficient." *Id.*

In order to state a valid claim under Section 10(b) of the Securities Exchange Act of 1934, a plaintiff must allege "(1) a material misrepresentation (or omission) , . . . (2) scienter, *i.e.*, a wrongful state of mind, . . . (3) a connection with the purchase or sale of a security, . . . (4) reliance, often referred to in cases involving public securities markets (fraud-on-the-market cases) as 'transaction causation,' . . . (5) economic loss, . . . and (6) 'loss causation,' *i.e.*, a causal connection between the material misrepresentation and the loss." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341 (2005) (citations omitted). Importantly, "[a] plaintiff cannot recover without proving that a defendant made a material misstatement with an intent to deceive—not merely innocently or negligently." *Merck & Co. v. Reynolds*, 559 U.S. 633, 649 (2010) (emphasis added). "Indeed, Congress has enacted special heightened pleading requirements for the scienter element of § 10(b) fraud cases." *Id.* (citation omitted). "As a result, unless a § 10(b) plaintiff can set forth facts in the complaint showing that it is 'at least as likely as' not that the defendant acted with the relevant knowledge or intent, the claim will fail." *Id.* (emphasis added); *see also Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), vacated on other grounds by *Simpson v. Homestore.Com, Inc.*, 519 F.3d 1041 (9th Cir. 2008) ("We hold that to be liable as a primary violator of § 10(b) for participation in a 'scheme to defraud,' . . . It is not enough that a transaction in which a defendant was involved had a deceptive purpose and effect; the defendant's own conduct contrib-

uting to the transaction or overall scheme must have had a deceptive purpose and effect.").

III. Discussion

A. Plaintiff's 2012-2014 Investments

The Court finds that Plaintiff's securities fraud claim for his 2012-2014 investments in the Film is time-barred. The statute of limitations for a Section 10(b) claim is "(1) 2 years after the discovery of the facts constituting the violation; or (2) 5 years after such violation." 28 U.S.C. § 1658(b). "The two-year statute of limitations is not subject to equitable tolling." *In re Juniper Networks, Inc. Sec. Litig.*, 542 F. Supp. 2d 1037, 1050 (N.D. Cal. 2008) (citing *Durning v. Citibank, Int'l*, 990 F.2d 1133, 1136-37 (9th Cir. 1993)). "The five-year outer limitations period in a § 10(b) claim serves as a statute of repose." *Id.* (citing *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991)). The five-year limitation acts as "a fixed, statutory cut off date, usually independent of any variable, such as claimant's awareness of a violation." *Id.* at n.4 (emphasis added) (quoting *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9th Cir. 2003)). The Supreme Court has noted that "Congress' inclusion in the statute of an unqualified bar on actions instituted '5 years after such violation,' § 1658(b)(2), giving defendants total repose after five years, should diminish [their] fear" that the requirements of Section 10(b) "will give life to stale claims or subject defendants to liability for acts taken long ago." *Merck & Co. v. Reynolds*, 559 U.S. 633, 650 (2010).

Here, the statute of limitations began running on the date of each new investment Plaintiff made in

the Film. *See In re Juniper Networks, Inc. Sec. Litig.*, 542 F. Supp. 2d at 1051 ("[T]he five-year period begins to run with respect to each violation when it occurs. A plaintiff may not recover for reliance on representations made prior to the five-year statute of limitation period under a theory of continuing wrong."). Because Plaintiff did not file his Complaint until August 16, 2019, all of his allegations regarding his investments in March 2012, September 2012, February 2013, March 2013, February 2014, March 2014, and April 2014 are time-barred under the five-year statute of limitations.

Plaintiff contends that "every time [Defendants] promise[d] a return and/or with[held] the truth they reset the statute with their continual lulling statements." (Compl. at 133; *see also* Docket No. 109 at 2 ("Congress did not intend[] to create a statute that allowed fraudsters to lull investors into inactivity until the statute of limitations had run."). But Plaintiff's argument is unsupported by the case law. The "statute of limitations [for a Section 10(b) claim] ordinarily begins to run when an act occurs that gives rise to liability." *Asdar Group v. Pillsbury, Madison, and Sutro*, 99 F.3d 289, 295 (9th Cir. 1996). "Accordingly, the statute of limitations accrues as of when the violation itself occurs, not when the last violation in a series of alleged violations occur." *In re Zoran Corp. Derivative Litig.*, 511 F. Supp. 2d 986, 1014 (N.D. Cal. 2007) (rejecting plaintiff's argument that "each new false statement revives all previous ones" as "tenuous at best"); *see also Fodor v. Blakey*, 2012 WL 12893986, at *11 (C.D. Cal. Dec. 31, 2012) ("[T]he statute of repose begins to run when the alleged wrongdoing first occurs, not when the 'last overt act' takes place") (citing *Betz v. Trainer Wortham & Co.*,

Inc., 829 F. Supp. 2d 860, 864 (N.D. Cal. 2011) ("[E]ach false representation may constitute a separate violation of Section 10(b), but a plaintiff may not recover for reliance on representations made prior to the [] statute of limitations period under a theory of continuing wrong.") (quotations and citation omitted)). The Court therefore rejects Plaintiff's argument that his claims are not time-barred because Defendants "lulled" him into believing he would receive a return on his investment for several years after the Film was released.

The Court therefore dismisses with prejudice Plaintiff's securities fraud claim as to all investments made from 2012 to 2014. *See Veltex Corp. v. Matin*, 2010 WL 3834045, at *6 (C.D. Cal. Sept. 27, 2010) (dismissing securities fraud claim with prejudice because Plaintiff did not "identify any factual allegations that could be made to make the claim timely" and "Plaintiff cannot amend to avoid the five-year statute of repose").

B. Plaintiff's 2016 Investment

In addition, the Court finds that Plaintiff's securities fraud claim for his 2016 investment fails to state a claim upon which relief may be granted. "While it is true that pro se complaints, like Plaintiff's, are to be held to a less stringent standard than those drafted by lawyers, . . . even pro se complaints must state a claim upon which relief can be granted by the court." *Apolinar v. Baum*, 2008 U.S. Dist. LEXIS 113273, at *11-12 (D. Ariz. June 4, 2008) (quotations and citations omitted). "The right of self-representation is not a license excusing compliance with relevant rules of procedural and substantive law." *Id.* at *12 (citing

Faretta v. California, 422 U.S. 806, 834 at n.46 (1975)). "[E]ven though pro se pleadings are to be liberally construed, conclusory and vague allegations will not support a cause of action." *Id.* (citation omitted).

Plaintiff's sole allegation regarding his 2016 investment is: "My eighth investment was on July 25, 2016 in the amount of $500 to Oz Strategies towards a fund to try to take control of the two LLCs." (Compl. at ¶ 107.) This fails to meet the heightened pleading standard required for Section 10(b) claims because Plaintiff has not demonstrated that any of the 61 Defendants made a "material misstatement with an intent to deceive" him and induce this particular investment. *Merck & Co.*, 559 U.S. at 649. "[T]his 'fact' of scienter 'constitut[es]' an important and necessary element of a § 10(b) 'violation.'" *Id.* Without it, Plaintiff has failed to state a Section 10(b) claim upon which relief may be granted. *See also Sollberger v. Wachovia Securities, LLC*, 2010 WL 2674456, at *4 (C.D. Cal. June 30, 2010) ("One common theme of Rule 8(a), Rule 9(b), *Iqbal*, *Twombly*, and federal securities laws on pleading is that plaintiffs must give the defendants a clear statement about what the defendants allegedly did wrong."). The Court therefore dismisses with leave to amend Plaintiff's securities fraud claim for his 2016 investment. *See Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1561 (9th Cir. 1987) ("Leave to amend a complaint should be freely given in the absence of a showing of bad faith or undue delay by the moving party or prejudice to the nonmoving party.").

C. Plaintiff's State Law Claims

Because Plaintiff's sole federal claim is dismissed, the Court declines to address the validity of his

remaining state law claims until the Court's jurisdiction is established. The Court notes, however, that several of the arguments in Defendants' Motions to Dismiss appear to have merit.

IV. Conclusion

The Court dismisses with prejudice Plaintiff's securities fraud claim for all 2012-2014 investments. The Court also dismisses with leave to amend Plaintiff's securities fraud claim for his single 2016 investment. The Court declines to rule on all pending Motions to Dismiss until Plaintiff establishes that this Court has subject matter jurisdiction over this action. Plaintiff shall file a First Amended Complaint, if any, no later than 14 days from the date of this Order. The failure to file a First Amended Complaint by that date may result in the dismissal of this action without prejudice. No new claims shall be added to the amended complaint without leave of the Court. Alternatively, if Plaintiff elects to not cure the pleading deficiencies of his securities fraud claim, he may file a Notice of Election to Abandon Federal Claim no later than November 14, 2014. If Plaintiff elects to not pursue his federal claim, the Court will decline to exercise supplemental jurisdiction over the remaining state law claims and dismiss them without prejudice. Plaintiff will then be free to pursue his state law claims in state court.

IT IS SO ORDERED.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (DECEMBER 9, 2022)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SCOTT MEIDE; ET AL.,

Plaintiffs-Appellants,

v.

NOAH CENTINEO; ET AL.,

Defendants-Appellees.

No. 19-56402

D.C. No. 2:19-cv-07171-PA-KS
Central District of California, Los Angeles

Before: FRIEDLAND, BENNETT, and BRESS, Circuit Judges.

ORDER

The panel unanimously voted to deny the petition for panel rehearing and rehearing en banc. The petition for rehearing en banc was circulated to the judges of the Court, and no judge requested a vote for en banc consideration. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is DENIED.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING MOTION TO RECALL THE MANDATE (DECEMBER 19, 2022)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SCOTT MEIDE; ET AL.,

Plaintiffs-Appellants,

v.

NOAH CENTINEO; ET AL.,

Defendants-Appellees.

No. 19-56402

D.C. No. 2:19-cv-07171-PA-KS
Central District of California, Los Angeles

Before: FRIEDLAND, BENNETT, and BRESS, Circuit Judges.

ORDER

Appellants' motion to recall the mandate, Dkt. 139, is DENIED.

ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA DENYING MOTION FOR RECONSIDERATION (NOVEMBER 26, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCOTT MEIDE; ET AL.

v.

NOAH CENTINEO; ET AL.

No. CV 19-7171 PA (KSx)

Before: Hon. PERCY ANDERSON, United States District Judge.

Proceedings: IN CHAMBERS – ORDER

On October 31, 2019, the Court issued two orders in this case. In one Order, the Court dismissed all claims of Plaintiffs David Hegland, Dawn Hegland, Meryln Hegland, Nathan Hill, and Kyle A. Janes without prejudice. (Docket No. 121.) In the second Order, the Court dismissed Plaintiff Scott Meide's ("Plaintiff") securities fraud claim for all 2012-2014 investments with prejudice. (Docket No. 120.) The Court also dismissed Plaintiff's securities fraud claim for his 2016 investment with leave to amend. The

Court ordered Plaintiff to file a First Amended Complaint, if any, no later than November 14, 2019. As of today's date, Plaintiff has not filed an amended complaint. Instead, Plaintiff filed a Motion for Reconsideration on November 25, 2019. (Docket No. 127.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument.

For the reasons discussed below, Plaintiff's Motion for Reconsideration is denied. The Court hereby dismisses Plaintiffs' securities fraud claim for his 2016 investment without prejudice for failure to file an amended complaint. Finally, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. This action is dismissed.

I. Motion for Reconsideration

Plaintiff "moves this Court to reconsider its October 31, 2019 Order." (*Id.* at 2.) Plaintiff does not specify whether he is referring to the October 31st Order dismissing the claims of his co-plaintiffs (Docket No. 121), or the October 31st Order dismissing his securities fraud claim (Docket No. 120). Based on the arguments presented in Plaintiff's Motion, it appears that Plaintiff seeks reconsideration of the Court's Order addressing the merits of his securities fraud claim. (*See* Docket No. 127 at 4 (arguing that "[i]f lulling statements do nothing to stop the statute of limitations from running, then this Court should plainly so state"); *id.* at 5 ("This Court has quoted a plethora of case law that pre-dates *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010)").

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and

conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *see also Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Under Local Rule 7-18, a motion for reconsideration may only be brought if the moving party demonstrates:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision.

A motion for reconsideration cannot be used to raise arguments that were, or could have been, raised earlier in the litigation. *See, e.g., Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (a motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation."); *Parsons v. Alameda Cnty. Sheriff Dep't*, No. CV 14-04674 HSG, 2016 WL 3877907, at *1 (N.D. Cal. July 18, 2016) ("A motion for reconsideration under either Rule 59(e) or Rule 60(b) is an improper vehicle for

bringing new claims not previously raised."); *see also* L.R. 7-18 ("No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion."). "A party seeking reconsideration must show more than a disagreement with the Court's decision, and recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden." *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) (quotations and citation omitted).

Plaintiff's Motion fails to meet this standard. Plaintiff simply recycles old arguments that he already raised in his Complaint or in his October 23, 2019 Response to the Court's Order to Show Cause (Docket No. 109). For example, Plaintiff argues that defendants made "lulling statements" that stopped the statute of limitations from running on his securities fraud claim. (Docket No. 127 at 4.) But the Court has already addressed and rejected this argument. *See* Docket No. 120 at 4 (collecting cases that rejected the "continuing wrong" theory). Plaintiff argues the Court's citations are of "questionable validity" because the cases pre-date *Merck & Co. v. Reynolds*. However, *Merck* did not call into question the validity of the cases cited by this Court. Moreover, the facts of *Merck* are wholly different than the present action because *Merck* involved application of the two-year statute of limitations for securities fraud claims, rather than the five-year statute of limitations that applies to Plaintiffs' 2012-2014 investments. *See Merck*, 559 U.S. at 638 ("[N]o one doubts that [the complaint] was filed within five years of the alleged violation."). Plaintiff's argument is without merit.

In addition, Plaintiff cites to *U.S. v. Brown*, 771 F.3d 1149 (9th Cir. 2014) as "an excellent case demonstrating that defendants should be in prison." (Docket No. 127 at 4; *see also* Docket No. 105 at 4 (making same argument).) But *Brown* is irrelevant to the present action. *Brown* is a criminal case involving a ponzi scheme. *Brown* does not involve a section 10(b) securities fraud claim, and does not even address the 28 U.S.C. § 1658 statute of limitations provisions. Plaintiff's reliance on *Brown* is thus misplaced.

"A motion for reconsideration may not be used to get a second bite at the apple." *Garcia v. Biter*, 195 F. Supp. 3d 1131, 1133 (E.D. Cal. 2016) (quoting *Campion v. Old Repub. Home Protection Co., Inc.*, No. 09-CV-00748-JMA(NLS), 2011 U.S. Dist. LEXIS 54104, 2011 WL 1935967, at *1 (S.D. Cal. May 20, 2011)). Plaintiff's Motion is baseless. He has failed to identify any new evidence that would call into question the validity of the Court's October 31st Order. Moreover, Plaintiff has failed to identify any clear error made by the Court in rendering its decision. Regurgitation of old arguments, or even the presentation of new ones that could have easily been raised in prior briefing, is not a sufficient basis to support Plaintiff's Motion. The Court therefore denies Plaintiff's Motion for Reconsideration.

II. Plaintiff's Securities Fraud Claim for His 2016 Investment

The Court ordered Plaintiff to file a First Amended Complaint, if any, no later than November 14, 2019 and warned that "[t]he failure to file a First Amended Complaint by that date may result in the dismissal of this action without prejudice." (*Id.* at 5.) As of

today's date, Plaintiff has not filed an amended complaint. The Court hereby dismisses Plaintiff's securities fraud claim for his 2016 investment without prejudice for failure to file an amended complaint.

III. Supplemental Jurisdiction over Remaining State Law Claims

Because Plaintiff does not allege any other federal claims in the Complaint, the Court declines to exercise supplemental jurisdiction over his remaining state law claims. Here, "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "[I]n the usual case in which federal law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state law claims." *Reynolds v. Cnty. of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996) (quotations and citation omitted), overruled on other grounds by *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000-01 (9th Cir. 1997) ("The Supreme Court has stated, and we have often repeated, that in the usual case in which all federal-law claims are eliminated before trial, the balance of factor . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.") (quotations and citation omitted); *see also De La Torre v. CashCall, Inc.*, 2019 U.S. Dist. LEXIS 18624, at *12 (N.D. Cal. Feb. 5, 2019) ("The elimination of federal claims does not automatically deprive district courts of subject matter jurisdiction over any supplemental state law claims. . . . However, [c]omity and precedent in this circuit strongly disfavors exercising supplemental jurisdiction.") (quotations and citations omitted).

For these reasons, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims and dismisses them without prejudice.

CONCLUSION

Plaintiff's Motion for Reconsideration is denied. The Court hereby dismisses Plaintiffs' securities fraud claim for his 2016 investment without prejudice for failure to file an amended complaint. Finally, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. This action is dismissed.

IT IS SO ORDERED.