

APPENDIX

United States Court of Appeals for the 9th Circuit

Argued: There was no Appellees Answer Brief.

Decided: December 12, 2023

No. 22-55402

Marcelo Hernandez

v.

Hassan Alameddine et al.

COPY OF ORDERS

Marcelo Hernandez argued the case and Respondents did not reply: The 9th circuit made a ruling with no opposition to Marcelo's opening brief.

See copy of orders attached.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12, 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARCELO HERNANDEZ,
Plaintiff-Appellant,

v.

HASSAN ALAMEDDINE, individually
and in his official capacity as Building
Official for the County of Los Angeles,
California; COUNTY OF LOS
ANGELES; MARY CONWAY
WICKHAM, County Counsel; ROBERT
C. CARTWRIGHT, Assistant County
Counsel; ROSA LINDA CRUZ, Senior
Deputy County Counsel; MARK
KENNETH WORTHGE, Esq. SBN
118435; ALEXANDRIA HOBSON, SBN
303320,

Defendants-Appellees.

No. 22-55402

D.C.No.
2:20-cv-02534-DMG-SK
Central District of
California

ORDER

Before: O'SCANNLAIN, FERNANDEZ, and SILVERMAN,
Circuit Judges.

The mandate is recalled for the limited purpose of
considering Marcelo Hernandez's motion for reconsideration.
Hernandez's motion for reconsideration (Docket Entry No. 23) is
denied. The mandate shall reissue forthwith.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 2, 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARCELO HERNANDEZ,

Plaintiff-Appellant,

v.

HASSAN ALAMEDDINE, individually and in his official capacity as Building Official for the County of Los Angeles, California; COUNTY OF LOS ANGELES; MARY CONWAY WICKHAM, County Counsel; ROBERT C. CARTWRIGHT, Assistant County Counsel; ROSA LINDA CRUZ, Senior Deputy County Counsel; MARK KENNETH WORTHGE, Esq. SBN 118435; ALEXANDRIA HOBSON, SBN 303320,

Defendants-Appellees.

No. 22-55402

D.C.No.
2:20-cv-02534-DMG-SK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted November 2, 2023**

Before: O'SCANLAIN, FERNANDEZ, and SILVERMAN, 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).

Marcelo Hernandez appeals prose from the district court's judgment dismissing his civil rights action with prejudice. We have jurisdiction under 28 U.S. C. § 1291. We review de novo, see, e.g., *Weston Family P'ship LLLP v. Twitter*, 29 F.4th 611, 617 (9th Cir. 2022), and we affirm.

The district court properly determined that it had jurisdiction to adjudicate Hernandez's complaint, because Hernandez alleged a violation of a federal statute. 28 U.S.C. § 1331; *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) (to establish jurisdiction under § 1331, a federal question must be "presented on the face of the plaintiffs properly pleaded complaint" (citation and internal quotation marks omitted)).

The district court properly dismissed Hernandez's federal claims because Hernandez failed to state a colorable claim under federal law. See U.S. Const., amend. X ("The powers not delegated to the United States ... are reserved to the States respectively, or to the people."); *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (Fourth Amendment); *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (vicarious liability under 42 U.S.C. § 1983); *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 538 (2005) (Fifth Amendment takings per se); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978) (Fifth Amendment takings); *see generally Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (due process).

The district court properly dismissed Hernandez's state law claims, because Hernandez did not file a timely notice under the California Tort Claims Act. Cal. Gov't Code § 911.2(a); see also, e.g., *Mangold v. California Public Utilities Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995).

The district court did not abuse its discretion in denying Hernandez's motion for reconsideration, because he presented no

colorable basis for reconsideration. *See, e.g., Carroll v. Nakatani*, 342 F.3d 934, 940, 945 (9th Cir. 2003) (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; it 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); *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) (setting forth standard of review).

We reject as without merit and unsupported by the record Hernandez's arguments that he was denied discovery, or a trial; that there were no findings; that the district court allowed "false documents"; and that he was not heard before the district court.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations made for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Hernandez levies wild accusations against the district court. These accusations are utterly unsupported. The record reveals no judicial misconduct, and certainly no criminal liability, for proper decisions that went against Hernandez.

Hernandez's motions for a stay and for remand (Docket Entry Nos. 14, 17, 18) are denied.

AFFIRMED.

IN THE
SUPREME COURT OF UNITED STATES

MARCELO HERNANDEZ

Petitioners,
VS.

HASSAN ALAMEDDINE
COUNTY OF LOS ANGELES CALIFORNIA;

MARY C. WICKHAM
ROBERT C. CARTWRIGHT
ROSA LINDA CRUZ

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 9TH CIRCUIT

**Supplemental Appendix As Requested By The
clerk**

Marcelo Hernandez In Pro-Se
18715 Delight St.
Canyon Country, CA 91351
Phone Number 661-212-8683

SUPPLEMENTAL APPENDIX

United States District Court
Central District of California

Argued: Order regarding motion for reconsideration

Decided: March 31, 2022

No. 20-2534-Dmg

Marcelo Hernandez

v.

Hassan Alameddine et al.

COPY OF ORDERS

See copy of order attached.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 20-2534-DMG (SK:x)** Date March 31, 2022

Title **Marcelo Hernandez v. Hassan Alamaddine, et al.**

Page 1 of 2

Present: The Honorable DOLLY M. GEE, UNITED STATES
DISTRICT JUDGE

<u>KANE TIEN</u>	<u>NOT REPORTED</u>
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	None Present
Attorneys Present for Defendant(s)	None Present

**Proceedings: IN CHAMBERS—ORDER RE PLAINTIFF'S
MOTION FOR RECONSIDERATION [74]**

1. INTRODUCTION

On July 16, 2021, the Court granted Defendants Hassan Alamaddine and the County of Los Angeles's motion to dismiss the Second Amended Complaint with prejudice and entered judgment in Defendants' favor. [Doc. ##68, 69.] On August 3, 2021, *pro se* Plaintiff Marcelo Hernandez filed a motion for reconsideration. [Doc. # 74.] Defendants filed their opposition on August 20, 2021 [Doc. # 79], and Plaintiff filed a reply on September 9, 2021 [Doc. # 82]. The matter was deemed submitted thereafter. [See Doc. # 81.] Having carefully

considered the arguments set forth in the parties' briefs, plaintiff's motion is **DENIED**.

II. DISCUSSION¹

As an initial matter, Defendants contend that Plaintiffs motion should be rejected as untimely because it was filed more than ten days after entry of judgment. In doing so, Defendants cite to an outdated version of Federal Rule of Civil Procedure 59(e), which was amended in 2009 to provide parties up to 28 days to seek to amend a judgment. *See Fed. R. Civ. P. 59(e)*, Adv. Comm. Notes, 2009 Amendment; *see also Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (“Under Federal Rule of Civil Procedure 59(e), a party may move to have the court amend its judgment within twenty-eight days after entry of the judgment.”). Here, judgment was entered on July 16, 2021 and Plaintiffs motion was filed 18 days later on August 3, 2021. Accordingly, the motion is timely.²

¹ Plaintiffs allegations are discussed at length in the Court's July 16, 2021 order granting Defendants' motion to dismiss the Second Amended Complaint [Doc.# 68], as well as the Court's February 19, 2021 order granting, *inter alia*, Defendants' motion to dismiss the First Amended Complaint [Doc. # 49], and are not repeated here.

² Plaintiffs motion for reconsideration does not specify whether it is brought under Rule 59(e) or Rule 60(b). To the extent it is brought under Rule 60(b) to seek relief from judgment, it is also timely. *See Fed. R. Civ. P. 60(c)*.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 20-2534-DMG (SK:x)** Date March 31, 2022

Title *Marcelo Hernandez v. Hassan Alamaddine, et al.*

Page 1 of 2

On its merits, however, Plaintiff's motion fails. Determination of a party's motion for reconsideration rests within the Court's discretion. *See United States v. Brobst*, 558 F.3d 982, 994 (9th Cir. 2009); *see also United States v. Hobbs*, 31 F.3d 918, 923 (9th Cir. 1994). Under this district's Local Rules, the Court cannot reconsider a previous ruling unless the party requesting reconsideration meets the following standard:

A motion for reconsideration of an Order on any motion or application may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was entered, or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered. No motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion. . . .

C.D. Cal. Local Rule 7-18; *see also Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (motion for reconsideration is not a vehicle to reargue the motion, present arguments which could reasonably have been raised earlier, or present evidence which should have been raised before). “Motions for reconsideration are disfavored, however, and are not the place for parties to make new arguments not raised in their original briefs. Nor is reconsideration to be used to ask the Court to rethink what it has already thought.” *Motorola, Inc. v. JB. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003) (citation omitted).

Plaintiff’s motion fails to meet the aforementioned standard for reconsideration and, for that reason alone, must be denied. Plaintiff’s motion is hardly a model of clarity, but appears to rehash arguments previously considered, and rejected, by this Court in deciding Defendants’ motion to dismiss. *See* C.D. Cal. Local Rule 7-18; *see also Carroll*, 342 F.3d at 945. Much of Plaintiff’s motion also takes issue, and disagrees, with the Court’s order, which is not a proper basis for reconsideration. *See id.* To the extent that Plaintiff appears to raise a new argument by contending that the trailers on his property were used for religious worship (and implicate the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et seq.* (“RLUIPA”) [*see Doc. # 74 at 6*]), Plaintiff does not show how these facts could not have been raised in his initial briefing, and thus he fails to meet the reconsideration standard. *See* C.D. Cal. Local Rule 7-18.

III. CONCLUSION

For the foregoing reasons, Plaintiff’s motion for reconsideration is respectfully **DENIED**.

IT IS SO ORDERED.