

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-050888

09/03/2021

HONORABLE SARA J. AGNE

CLERK OF THE COURT  
J. Holguin  
Deputy

R L WHITMER

R L WHITMER  
6333 N SCOTTSDALE RD # 21  
SCOTTSDALE AZ 85250

v.

HILTON CASITAS HOMEOWNERS  
ASSOCIATION

TIMOTHY D BUTTERFIELD

JUDGE AGNE

MINUTE ENTRY

The Court has received and reviewed Plaintiff's Verified Motion for Reconsideration of the Court's Order to Dismiss, filed September 3, 2021.

As an initial matter, motions for reconsideration are disfavored. *See, e.g., Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003). They are to be granted only in highly unusual circumstances. *See, e.g., Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A motion for reconsideration will be denied unless there is a showing of new facts or legal authority that, despite reasonable diligence, could not have been brought to the Court's attention before its decision. *See Motorola, Inc.*, 215 F.R.D. at 586; *see generally Lemons v. Superior Ct.*, 141 Ariz. 502, 504 (1984) (stating that the reconsideration of a ruling is warranted only if "new circumstances are demonstrated").

Additionally, motions for reconsideration are not to be used to make new arguments or to present additional evidence. *Carroll*, 342 F.3d at 945; *Motorola, Inc.*, 215 F.R.D. at 582; *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 57 n.2, ¶17 (App. 2007). Nor is a motion for reconsideration to be used to ask the court merely to rethink what it has already thought

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through, rightly or wrongly. *United States v. Rezzonico*, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998); *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1259 (N.D. Ga. 2003) (stating that a motion for reconsideration should not be used “to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind”).

And arguments that the Court committed error should be directed to the court of appeals. *See, e.g., Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995); *see also Preserve Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995) (recognizing that “[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court ‘could have done it better’ the first time”), *aff’d*, 87 F.3d 1242 (11th Cir. 1996). No circumstances warranting reconsideration exist in this case.

Particularly, Plaintiff’s Verified Motion admits that he seeks only relief that cannot be granted. Regarding Count One of his claims, Plaintiff cites provisions of law that provide for judicial review of administrative decisions within *thirty-five days* of their issuance (the ALJ decision here was issued January 7, 2015, and Plaintiff filed this action in 2021), and requests an order for contempt and that Defendant comply with A.R.S. § 33-1243(D) in the future (Verif. Mot., at 3). The Court has no basis for a contempt finding—the law provides no relief of that sort on Plaintiff’s claims as discussed in the Court’s ruling, and Defendant is already required to follow the law. *See NLRB v. Express Pub. Co.*, 312 U.S. 426, 435-36 (1941).

Again, regarding Count Two, Plaintiff states that the only relief sought is an order that Defendant fully comply with A.R.S. § 33-1255 in the future. (Verif. Mot., at 3.) And again, Defendant is already required to follow the law. *See NLRB v. Express Pub. Co.*, 312 U.S. at 435-36. Further, Plaintiff admits that Count Three is moot (Verif. Mot., at 4). Therefore,

**IT IS ORDERED** denying Plaintiff’s Verified Motion in full.

**NOTE:** Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.