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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Terry Fowler,

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No. CV-06-2285-PHX-SMM

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Plaintiff,

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ORDER

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vs.

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Honeywell International, Inc.

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Defendant.

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Currently before the Court is Plaintiff’s Motion for Reconsideration (Dkt. 32), whereby Plaintiff seeks reconsideration of this Court’s Order of April 10, 2008 (Dkt. 30) granting Defendant’s Motion for Summary Judgment on all three claims. On October 27, 2008, Defendant submitted a Response to Plaintiff’s Motion for Reconsideration.¹ (Dkt. 33). For the reasons stated below, Plaintiff’s Motion for Reconsideration is denied.

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BACKGROUND

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Plaintiff initiated a pro se action in Maricopa County Superior Court on August 22, 2006, alleging “breach of contract for failure to rehire.” (Dkt. 1, Notice of Removal, Ex. 2). Defendant subsequently removed the action to this Court based on diversity of citizenship.

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¹Defendant’s Response to Plaintiff’s Motion for Reconsideration is stricken because Defendant did not receive the Court’s permission to file it. See LRCiv 7.2(g)(2). Local Rule 7.2(g)(2) states that “[n]o response to a motion for reconsideration and no reply to the response may be filed unless ordered by the Court.” Accordingly, Defendant’s request for an award of reasonable attorney’s fees for costs associated with responding to Plaintiff’s Motion for Reconsideration is denied.

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1 (Dkt. 1, Notice of Removal). Plaintiff filed an Amended Complaint which alleged sex
2 discrimination, retaliation, and age discrimination. (Dkt. 10 at 4-6). In the Amended
3 Complaint, Plaintiff stated that Manpower Professional Services (“Manpower”) would be
4 added as a party (see id. at 2), but Plaintiff failed to properly add and service Manpower. On
5 Plaintiff’s first claim for discrimination based on sexual orientation, this Court ruled that
6 “[d]iscrimination based on sexual orientation therefore does not fall within the purview or
7 prohibitions of Title VII.” (Dkt. 30 at 6, Order dated April 10, 2008). On his second claim
8 of retaliation, this Court ruled that Plaintiff “has failed to establish the existence of an
9 essential element of his retaliation claim.” (Id. at 7). Plaintiff’s third claim of age
10 discrimination also failed because he presented no evidence that “[he] applied for a position
11 with Honeywell, or that Honeywell refused to hire him.” (Id. at 10). Nor did the Court find
12 that he presented “any evidence that his age has played any role in this matter.” (Id.) Thus,
13 this Court granted Defendant’s Motion for Summary Judgment on all three claims.

14 Plaintiff now seeks relief from this Court’s summary judgment order under Federal
15 Rule of Civil Procedure Rule 60(b)(3). Plaintiff argues that “Defendant’s attorneys made a
16 material misrepresentation before the Court during the Preliminary Pretrial Conference [sic]
17 Defendant’s attorneys made an offer for a remedy to the litigation at hand.” (Dkt. 32 at 2).
18 Specifically, Plaintiff alleges that during this conference, Defendant’s attorneys said “that
19 if Plaintiff, through acceptable channels, applied to them, they in fact would give said
20 application consideration.” (Id.). Plaintiff claims that he applied directly to Defendant’s
21 website on October 25, 2007 and January 15, 2008, but his applications were not considered
22 by Defendant. (Id.). Accordingly, Plaintiff asserts that “[b]y non-consideration of
23 applications, Defendant(s) materially misrepresented remedy to Plaintiff and this Court” (id.)
24 and thus, the Court should “vacate ruling for Summary Judgment dated 4/10/08, reopen the
25 case and . . . allow Plaintiff to proceed with further settlement hearings and/or trial.” (Id. at
26 3).

1 first time and the reasons they were not presented earlier, and any specific modifications
2 being sought in the Court's Order." Id.

3 **DISCUSSION**

4 Plaintiff does not allege "new facts . . . that could not have been brought to [the
5 Court's] attention earlier." Id. Specifically, Plaintiff alleges that he attempted to apply to
6 Honeywell but his application was not considered. These alleged incidents occurred on
7 October 25, 2007 and on January 14, 2008 but were not brought to the Court's attention
8 before it issued the original order on April 10, 2008. Although these events occurred some
9 six and four months prior to issuance of the order respectively, Plaintiff provides no reasons
10 why he did not present them to the court earlier. Thus, under Local Rule 7.2(g)(1), Plaintiff's
11 order must be denied.

12 Although Plaintiff alleges that Defendant's attorneys made a material
13 misrepresentation to him in a Preliminary Pretrial Conference, this argument does not
14 warrant reconsideration because none of the three factors that make reconsideration
15 appropriate are present in Plaintiff's motion. Plaintiff did not present to the Court "newly
16 discovered evidence;" nor is there any record that this Court committed "clear error or the
17 initial decision was manifestly unjust." See School Dist. No. 1J, 5 F.3d at 1263.
18 Additionally, there has been no "intervening change in controlling law." Id.

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20 First, Plaintiff has not presented newly discovered evidence. The Court granted
21 summary judgment in favor of Defendant because Plaintiff presented no evidence to support
22 his claims. Plaintiff's allegations that Defendant's attorneys made a material
23 misrepresentation could have been presented to the Court prior to its original order.
24 Moreover, he provides no evidence to support the allegations. Even if Plaintiff's allegations
25 were true, the conciliatory statements made by Defendant's counsel during the Preliminary
26 Pretrial Conference had no bearing on the Court's order regarding summary judgment.

27 Second, Plaintiff has not proved that this Court "committed clear error or the initial
28 decision was manifestly unjust." Because Plaintiff failed to support his original complaint

1 with any pertinent Rule 56(c) evidentiary materials, the Court's order granting Defendant's
2 Motion for Summary Judgment on all three claims was not clear error. Third, Plaintiff
3 presented no intervening change in controlling law that warrants a different outcome in this
4 case. Moreover, the Court is unaware of new controlling law that applies to Plaintiff's case.

5 Thus, Plaintiff's Motion for Reconsideration is denied because he did not prove "by
6 clear and convincing evidence that the verdict was obtained through fraud, misrepresentation,
7 or other misconduct and the conduct complained of prevented the losing party from fully and
8 fairly presenting the defense." De Saracho, 206 F.3d at 880.

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10 **CONCLUSION**

11 Accordingly,

12 **IT IS HEREBY ORDERED** denying Plaintiff's Motion for Reconsideration.
13 (Dkt. 32). Additionally, Defendant's request for attorneys' fees is denied.

14 DATED this 12th day of November, 2008.

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18 Stephen M. McNamee
United States District Judge