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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Billy Taylor,

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No. CV-07-1984-PHX-DGC

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Plaintiff,

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ORDER

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vs.

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Horizon Distributors, Inc.,

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Defendant.

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Plaintiff has filed a motion for reconsideration pursuant to Local Rule 7.2(g)(1).
Dkt. #123. Plaintiff requests that the Court reconsider its June 23, 2009 order granting
summary judgment to Defendant on Plaintiff’s Title VII and 42 U.S.C. § 1981 claims.
Dkt. #120. For the reasons that follow, the Court will deny Plaintiff’s motion.

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I. Background.

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In August of 2007, Plaintiff applied to be a Credit Manager with Defendant. After
several interviews and communications, Defendant made Plaintiff a conditional offer of
employment and requested that Plaintiff submit to a background check. Dkt. #109 ¶¶ 184-85.
When Plaintiff was advised that his background check required further investigation, Plaintiff
for the first time disclosed that there were twelve felony charges pending against him in
Maricopa County Superior Court for accepting unemployment payments while he was
employed. *Id.* ¶ 186. Plaintiff explained that he had accepted the payments on the basis of

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1 inaccurate information given to him by a Department of Economic Security employee. *Id.*
2 ¶ 187. On September 25, 2007, Plaintiff was told that his job offer was being rescinded
3 based on the information he had provided about receiving unemployment checks while
4 working. *Id.* ¶ 191.

5 Plaintiff sued Defendant alleging race discrimination and retaliation claims. Dkt. #6.
6 On June 23, 2009, the Court entered an order granting Defendant's motion for summary
7 judgment on Plaintiff's remaining discrimination claims because Plaintiff failed to
8 demonstrate that the legitimate, non-discriminatory reason proffered by Defendant for
9 terminating Plaintiff's offer of employment was actually a pretext for race discrimination.
10 Dkt. #120. Plaintiff requests that the Court reconsider this ruling on the basis of issues that
11 were "grossly overlooked and misapprehended" by the Court. Dkt. #123.

12 **II. Legal standard.**

13 Motions for reconsideration are disfavored and should be granted only in rare
14 circumstances. *See Ross v. Arpaio*, No. CV 05-4177-PHX-MHM (ECV), 2008 WL 1776502,
15 at *2 (D. Ariz. April 15, 2008) (citing *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342,
16 1351 (D. Ariz. 1995)). Mere disagreement with an order is an insufficient basis for
17 reconsideration. *See id.* (citing *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D.
18 Haw. 1988)). Nor should reconsideration be used to make new arguments or to ask the Court
19 to rethink its analysis. *See id.* (citing *United States v. Rezzonico*, 32 F. Supp. 2d 1112, 1116
20 (D. Ariz. 1998)); *see also N.W. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918,
21 925-26 (9th Cir. 1988).

22 Courts in this district have identified four circumstances where a motion for
23 reconsideration will be granted: (1) the moving party has discovered material differences in
24 fact or law from those presented to the Court at the time of its initial decision, and the party
25 could not previously have known of the factual or legal differences through the exercise of
26 reasonable diligence, (2) material factual events have occurred since the Court's initial
27 decision, (3) there has been a material change in the law since the Court's initial decision,
28 or (4) the moving party makes a convincing showing that the Court failed to consider

1 material facts that were presented to the Court at the time of its initial decision. *See, e.g.,*
2 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003).

3 **III. Analysis.**

4 Plaintiff first asserts that the Court should have submitted this case to a jury because
5 Plaintiff demonstrated pretext by showing that Defendant’s proffered explanation for the
6 termination of his job offer is unworthy of credence. Dkt. #123 at 3. Plaintiff contends that
7 he met his burden because Defendant’s legitimate, non-discriminatory explanation is “so
8 incredible that only a jury can decide” whether it is credible. Plaintiff claims the Court
9 overlooked evidence of pretext by failing to mention that Plaintiff’s conduct in accepting
10 unemployment payments occurred twelve years before the job offer was revoked. The Court
11 is aware that the conduct occurred in 1995. This fact does not amount to the specific and
12 substantial evidence of pretext needed to create a triable issue with respect to whether the
13 employer intended to discriminate. Dkt. #120 at 6 (citing *Godwin v. Hunt Wesson, Inc.*, 150
14 F.3d 1217, 1222 (9th Cir. 1998)).

15 Plaintiff also asserts that the Court failed to consider his statistical evidence in support
16 of pretext. Plaintiff’s response to the motion for summary judgment, however, used the
17 statistical evidence to support a prima facie case of discrimination outside of the *McDonnell*
18 *Douglas* context, not in support of pretext. Dkt. #108 at 7; *see also* Dkt. #120 at 5 n. 3. The
19 Court assumed that Plaintiff established a prima facie case. *Id.* at 5. Plaintiff’s argument that
20 the statistics support a finding of pretext is a new argument not permitted in a motion for
21 reconsideration. Moreover, even if the Court were to consider the statistical evidence on the
22 question of pretext it would at most be circumstantial evidence. None of it relates to the
23 events at issue in this case or the reasons provided by Defendant for withdrawing Plaintiff’s
24 offer – concern for Plaintiff’s judgment in accepting unemployment checks while employed,
25 leading to a 12-count indictment. As circumstantial evidence of pretext, the statistics do not
26 constitute the specific and substantial evidence needed to create a triable issue of fact. *See*
27 *Godwin*, 150 F.3d at 1222.

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1 In the remaining sections of his motion, Plaintiff reiterates arguments and facts
2 presented in his brief in opposition to the motion for summary judgment. Plaintiff states
3 numerous facts that he alleges demonstrate that Defendant did not have proper procedures
4 in place to prevent discrimination. Dkt. #123 at 7-9. Plaintiff claims that the Court failed
5 to recognize that Defendant asserts the job offer was revoked because of Plaintiff's poor
6 decision-making skills, not because of the twelve pending felony charges. *Id.* at 9. Plaintiff
7 further quotes sections of the Court's June 23, 2009 order and explains why Plaintiff believes
8 they are incorrect. Plaintiff fails to address new facts or law. All of the information cited by
9 Plaintiff was provided in Plaintiff's summary judgment brief and considered by the Court.

10 Plaintiff further argues that the Court should not have stricken his surreply filed
11 without leave of Court and should not have denied his motion for sanctions. Dkt. #123 at 14-
12 15. The Court will not alter its ruling on either matter.

13 **IT IS ORDERED** that Plaintiff's motion for reconsideration (Dkt. #123) is **denied**.

14 DATED this 6th day of August, 2009.

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19 David G. Campbell
20 United States District Judge
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