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

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9 Steve Hillis and Diane Hillis, husband
and wife,)

No. CV-09-73-PHX-DGC

10

Plaintiffs,)

ORDER

11

vs.)

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13 Ronald E. Heineman and Barbara L.
Heineman, husband and wife; Barbara L.
Heineman, Trustee of the Year 2002
14 Revocable Trust Dated August 16, 2002;)
and Gregory Bartko,)

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Defendants.)

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17 Ronald E. Heineman and Barbara L.
Heineman, husband and wife; and
18 Gregory Bartko,)

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Counter-Plaintiffs and
Third-Party Plaintiffs,)

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vs.)

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22 Steve Hillis and Diane Hillis, husband
and wife; and John Raymond Fox,)

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Counter-Defendants and
Third-Party Defendant.)

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25 On July 23, 2009, the Court issued an order granting Defendants' motion to dismiss
26 for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure.
27 Dkt. #85. Plaintiffs have filed a motion for reconsideration of that order. Dkt. #87. For
28 reasons that follow, the Court will deny the motion.

1 Motions for reconsideration are disfavored and should be granted only in rare
2 circumstances. *See Ross v. Arpaio*, No. CV 05-4177-PHX-MHM (ECV), 2008 WL 1776502,
3 at *2 (D. Ariz. Apr. 15, 2008). A motion for reconsideration will be denied “absent a
4 showing of manifest error or a showing of new facts or legal authority that could not have
5 been brought to [the Court’s] attention earlier with reasonable diligence.” LRCiv 7.2(g)(1).
6 Mere disagreement with an order is an insufficient basis for reconsideration. *See Ross*, 2008
7 WL 1776502, at *2. Nor should reconsideration be used to make new arguments or to ask
8 the Court to rethink its analysis. *Id.*; *see N.W. Acceptance Corp. v. Lynnwood Equip., Inc.*,
9 841 F.2d 918, 925-26 (9th Cir. 1988).

10 Plaintiffs first argue that Defendants’ motion to dismiss should have been denied as
11 untimely because it was made after Defendants had filed answers to the complaint. Dkt. #87
12 at 4; *see* Dkt. #71 at 10. Courts do not, however, “mechanically or routinely deny any
13 motion made after a responsive pleading as untimely.” *Puckett v. United States*, 82 F. Supp.
14 2d 660, 663 (S.D. Tex. 1999). Instead, courts “have allowed untimely motions if the
15 defense has been previously included in the answer.” *Pope v. Elabo GmbH*, 588 F. Supp.
16 2d 1008, 1013 (D. Minn. 2008) (citation omitted); *see Udoewa v. Plus4 Credit Union*, No.
17 H-08-3054, 2009 WL 1856055, at *3 (S.D. Tex. June 29, 2009). Moreover, as Plaintiffs
18 recognize in their motion (Dkt. #87 at 4), Defendants’ motion to dismiss may properly be
19 construed as a timely motion for judgment on the pleadings under Rule 12(c). *See, e.g.*,
20 *Dorsey v. Ga. Dep’t of State Rd. & Tollway Auth.*, No. 1:09-CV-1182-TWT, 2009 WL
21 2477565, at *3 (N.D. Ga. Aug. 10, 2009); *Colo. Legal Servs. v. Legal Aid Nat’l Servs.*, No.
22 08-cv-00258-MSK-KMT, 2009 WL 347500, at *2 n.1 (D. Colo. Feb. 11, 2009); *Hester v.*
23 *United Healthcare Ins. Co.*, No. 1:08-cv-105, 2009 WL 128303, at *1 (E.D. Tenn. Jan. 16,
24 2009); *Thompson v. Rings*, No. 2:08-CV-230, 2008 WL 4981387, at *1 n.1 (S.D. Ohio Nov.
25 18, 2008).

26 Defendants specifically asserted the defense of improper venue in their respective
27 answers. Dkt. ##19 ¶ 53, 51 ¶ 54. Although the motion to dismiss on that ground technically
28 was untimely under Rule 12(b), *see Dorsey*, 2009 WL 2477565, at *3, the Court will

1 construe the motion as one for judgment on the pleadings under Rule 12(c). *See id.* Because
2 the standards for assessing a Rule 12(c) motion are the same as those for Rule 12(b) motions,
3 *see Colo. Legal Servs.*, 2009 WL 347500, at *2 n.1, the Court's conclusion that the complaint
4 should be dismissed for improper venue remains the same. The Court will deny the motion
5 for reconsideration to the extent Plaintiffs assert that Defendants' motion to dismiss should
6 have been denied as untimely.

7 Plaintiffs make several new arguments in their motion for reconsideration: that the
8 warrant agreement was not effective due to a failure of a condition precedent, that
9 Defendants are precluded from benefitting under the forum selection clause, that the
10 subscription and warrant agreements are illegal and void under state law, and that Plaintiffs'
11 claims are outside the scope of the forum selection clause. Dkt. #87. Plaintiffs do not
12 explain why they failed to assert these arguments in response to the motion to dismiss. The
13 Court will not consider them for the first time on a motion for reconsideration. *See* LRCiv
14 7.2(g)(1); *Ross*, 2008 WL 1776502, at *2.

15 Plaintiffs' argument that Defendants have waived the defense of improper venue was
16 explicitly rejected in the order of dismissal. *See* Dkt. #85 at 4, 6. Plaintiffs are precluded
17 from re-urging that argument in a motion for reconsideration. *See* LRCiv 7.2(g)(2).

18 Plaintiffs request leave to amend the complaint as to the civil conspiracy claim
19 asserted against Defendant Bartko. Dkt. #87 at 3. The Court will deny that request given
20 that the civil conspiracy claim has been dismissed for improper venue. *See* Dkt. #85 at 6.

21 **IT IS ORDERED** that Plaintiffs' motion for reconsideration (Dkt. #87) is **denied**.

22 DATED this 31st day of August, 2009.

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26 David G. Campbell
27 United States District Judge
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