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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Daimen Irizarry,  
Plaintiff,  
vs.  
City of Mesa; Town of Gilbert; Maricopa  
County; Arizona Department of Public  
Safety; John Does 1 through 15,  
Defendants.

No. CV 11-310-PHX-JAT

**ORDER**

Plaintiff has moved for reconsideration of this Court’s order granting summary judgment to Defendants. Plaintiff’s basis for reconsideration is that this case was based on a “legal theory of negligence,” and that negligence claims are not appropriate for summary judgment.<sup>1</sup> Doc. 71.

In the summary judgment order, this Court quoted the Arizona Supreme Court’s discussion of the elements of a negligence claim as follows:

The first element, whether a duty exists, is a matter of law for the court to

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<sup>1</sup> As the Court noted in its summary judgment order, Plaintiff never said in his complaint or in his response to the motions for summary judgment that his state law claim was based on a negligence theory. Doc. 69 at 6, lines 21-27. Nonetheless, the Court gave “Plaintiff the benefit of the doubt” and analyzed his claim as if he had brought a negligence claim. *Id.* at 7, lines 4-6. Plaintiff has now confirmed he was in fact bringing a negligence claim.

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decide. [citation omitted]. The other elements, including breach and causation, are factual issues usually decided by the jury. [citation omitted]. [However,] Although breach and causation are factual matters, summary judgment may be appropriate if no reasonable juror could conclude that the standard of care was breached or that the damages were proximately caused by the defendant's conduct. [citation omitted].

*Gipson*, 150 P.3d at 230 ¶ 9 & n. 1.

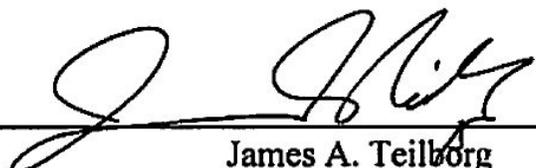
Doc. 69 at 7, n. 6.

In his three paragraph motion for reconsideration, Plaintiff never addresses this case. To the extent Plaintiff is arguing that merely by impliedly alleging negligence he is entitled to a jury trial, that argument is not a correct statement of the law and reconsideration on that theory is denied. Alternatively, to the extent Plaintiff is arguing that there is a disputed issue of fact that precluded summary judgment, this Court discussed its basis for granting summary judgment extensively in its Order at Doc. 69, and finds no basis for reconsideration in Plaintiff's pending motion.

Accordingly,

**IT IS ORDERED** that Plaintiff's motion for reconsideration (Doc. 71) is denied.

DATED this 13<sup>th</sup> day of November, 2013.

  
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James A. Teilborg  
Senior United States District Judge