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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Equal Employment Opportunity  
Commission,

No. CV-11-00383-PHX-JAT

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Plaintiff,

**ORDER**

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v.

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13 Gala AZ holdings, Inc., d/b/a Del Taco, a  
California corporation,

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Defendant.

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Pending before the Court is Plaintiff's Motion for Reconsideration of the Court's August 8, 2012 Order (Doc. 39). The Court now rules on the Motion.

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**I. BACKGROUND**

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On May 8, 2012, the parties submitted a Joint Motion to Approve Consent Judgment (Doc. 37) to the Court. On August 8, 2012, the Court denied the Joint Motion to Approve Consent Judgment without prejudice to the parties re-filing without the language requiring the entry of an injunction. (See Doc. 38).

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Specifically, the Court found that it could grant the consent decree if the following language was removed:

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**Injunction**

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1. Defendant and its officers, agents, employees, successors, assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from (a) discriminating against any employee on the basis of sex and gender and (b) retaliating against any employee because s/he (i) opposed discriminatory conduct believed to be unlawful under Title VII , (ii) reported

1 conduct to be unlawful under Title VII to managers of  
2 Defendant [sic] (iii) filed a charge or assisted or participated  
3 in the filing of a charge of sex or gender discrimination, or  
4 (iv) assisted or participated in an investigation or proceeding  
5 resulting from any of the preceding items.

6 (Doc. 37-1 at 2:16-26).

7 In denying the injunction, the Court specifically found that “[t]he proposed  
8 injunction appears to enjoin activity that is already prohibited by federal employment law  
9 and, thus, the entry of an injunction would be duplicative and unnecessary.” (Doc. 38).

10 Plaintiff now seeks reconsideration of the Court’s Order.

## 11 **II. LEGAL STANDARD**

12 The Court will grant reconsideration of its prior non-appealable interlocutory  
13 order<sup>1</sup> if the party seeking reconsideration makes a showing that:

14 1) There are material differences in fact or law from that  
15 presented to the Court and, at the time of the Court’s decision,  
16 the party moving for reconsideration could not have known of  
17 the factual or legal differences through reasonable diligence;

18 (2) There are new material facts that happened *after* the  
19 Court’s decision;

20 (3) There has been a change in the law that was decided or  
21 enacted *after* the Court’s decision; or

22 (4) The movant makes a convincing showing that the  
23 Court failed to consider material facts that were presented to  
24 the Court *before* the Court’s decision.

25 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 586 (D. Ariz. 2003).  
26 (emphasis added).

27 “A motion for reconsideration under Rule 59(e) should not be granted, absent  
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29 <sup>1</sup> The Court notes that, under certain circumstances, the denial of a consent  
30 judgment may be an appealable interlocutory order. *See Sierra Club, Inc. v. Electronic*  
31 *Controls Design, Inc.*, 909 F.2d 1350, 1353 (9th Cir. 1990). If the denial of a consent  
32 judgment is an appealable interlocutory order, the Court applies the test set forth in  
33 Federal Rule of Civil Procedure 59. If the denial of a consent judgment is not an  
34 appealable interlocutory order, the Court applies the test set forth in *Motorola*. Rather  
35 than specifying which standard it is moving under, Plaintiff has cited to cases applying  
36 both the *Motorola* and Rule 59(e) standards. In analyzing Plaintiff’s Motion for  
37 Reconsideration, the Court will apply both standards.

1 highly unusual circumstances, unless the district court is presented with newly discovered  
2 evidence, committed clear error, or if there is an intervening change in the controlling  
3 law.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (internal quotation  
4 and citations omitted).

### 5 III. ANALYSIS

6 Plaintiff argues that the Court’s rejection of the injunction language in the parties’  
7 consent judgment is “not in accord with binding Ninth Circuit law.” (Doc. 39 at 2).  
8 Plaintiff specifically relies on the decision of the Ninth Circuit Court of Appeals in *Equal*  
9 *Employment Opportunity Commission v. Goodyear Aerospace Corp.*, 813 F.2d 1539 (9th  
10 Cir. 1987) to support its position.

11 In *Goodyear*, an employee of Goodyear Aerospace Commission (“Goodyear”)  
12 filed a charge with the EEOC alleging racially discriminatory promotion practices. 813  
13 F.2d at 1541. The EEOC subsequently reached a settlement under which Goodyear  
14 promised to consider the employee for promotion without regard to her race and not to  
15 retaliate against her. *Id.* Thereafter, the employee filed a second EEOC charge alleging  
16 that Goodyear failed to promote her because of her race and in retaliation for her first  
17 EEOC charge. *Id.* After Goodyear refused to agree to a proposed consent decree, the  
18 EEOC filed a charge in federal district court. *Id.* Thereafter, the employee signed a  
19 settlement agreement, which provided that, in consideration for Goodyear’s promise not  
20 to retaliate, Goodyear was released from any and all actions and the employee requested  
21 that the EEOC dismiss the lawsuit. *Id.* at 1541-42.

22 Goodyear then moved for summary judgment arguing that the settlement mooted  
23 the EEOC’s power to maintain the litigation. *Id.* at 1542. The district court granted  
24 Goodyear’s motion for summary judgment, finding that the settlement was fair and  
25 reasonable, private recovery beyond that obtained in the settlement was unavailable, an  
26 injunction against retaliation was unnecessary because Title VII provided that protection,  
27 summary judgment furthered Title VII’s policy favoring voluntary settlements, liability  
28 for discrimination was questionable, further litigation was not in the public interest and

1 would waste the court's time, and summary judgment would permit the employee to  
2 pursue her career without the appearance of forced compliance with the promotion. *Id.* at  
3 1542.

4 The Ninth Circuit Court of Appeals reversed, finding that the EEOC's right of  
5 action is independent of the employee's private action rights. *Id.* at 1542. The Court of  
6 Appeals also reversed and remanded on the question of whether the requested injunctive  
7 relief should be entered. *Id.* at 1544. The Court of Appeals explained that permanent  
8 injunctions are available as relief under section 706(g) of Title VII, which provides in  
9 relevant part:

10 *If the court finds* that the respondent has intentionally engaged in or is intentionally engaging in an unlawful  
11 employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful  
12 employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to,  
13 reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor  
14 organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the  
15 court deems appropriate.

16 42 U.S.C.A. § 2000e-5(g)(1) (emphasis added).

17 The Court of Appeals held that the district court erred because the district court  
18 assumed liability for the purposes of the summary judgment order. *Goodyear*, 813 F.2d  
19 at 1544. Because a finding on liability was necessary before the Court could grant or  
20 deny the injunction, the Court of Appeals remanded for the district court to make a  
21 finding on liability. *Id.* at 1545. The Court of Appeals instructed that, if the district court  
22 made a finding that Goodyear was liable for discrimination and retaliation, it should enter  
23 the requested injunction. *Id.*

24 The Court of Appeals also found that the district court erred in finding that an  
25 injunction against retaliation was superfluous because Title VII already prohibits that  
26 conduct. *Id.* at 1544. In reasoning that an injunction was not superfluous, the Court of  
27 Appeals found that:

28 An injunction would (1) instruct Goodyear that it must

1           comply with federal law, (2) subject it to the contempt power  
2           of the federal courts if it commits future violations, and (3)  
3           reduce the chilling effect of its alleged retaliation on its  
4           employees' exercise of their Title VII rights. Section 706(g)  
5           specifically gives courts the power to enjoin an "unlawful  
6           employment practice."

7           *Id.* In support of its decision that the district court could enjoin conduct already made  
8           unlawful under Title VII, the Court of Appeals also relied on cases enjoining specific  
9           employment practices, not already specifically prohibited by the law, such as an  
10          injunction against the use of sex-segregated annuity tables. *Id.*

11          In this case, Plaintiff relies on the Court of Appeals' reasoning in *Goodyear* to  
12          support its contention that this Court must enter the injunction to which the parties in this  
13          case have consented. The Court disagrees.

14          "[A] federal court is more than 'a recorder of contracts' from whom parties can  
15          purchase injunctions; it is 'an organ of government constituted to make judicial decisions  
16          . . . .'" *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO, C.L.C.*, 478 U.S. 501, 525  
17          (1986) (ellipsis in original) (internal citation omitted). In evaluating whether to enter an  
18          injunction pursuant to a consent judgment, this Court has a duty to consider the  
19          implications and the Court's own enforcement power of such an injunction. The Court is  
20          not obligated to blindly enter an injunction without the Court's and the parties'  
21          understanding of the parameters of such an injunction.

22          *Goodyear* is distinguishable from this case because, in that case, the Ninth Circuit  
23          Court of Appeals remanded for the district court to determine Goodyear's liability for  
24          discrimination and retaliation and, if the district court found such liability, it was to then  
25          enter the injunction. This outcome comports with the plain language of 706(g) which  
26          allows for an injunction "[i]f the court *finds* that the respondent has intentionally engaged  
27          in or is intentionally engaging in an unlawful employment practice charged in the  
28          complaint." 42 U.S.C.A. § 2000e-5(g)(1) (emphasis added). In this case, the Court has  
29          made no such finding and the parties have not stipulated to such a finding. In fact, the  
30          proposed consent judgment in this case specifically notes that Defendant denies the

1 EEOC's allegations that Defendant subjected its employee to unlawful sexual harassment  
2 and retaliation, including termination in violation of Title VII. (*See* Doc. 37-1 at 1-2). In  
3 such a circumstance, the Court questions the necessity and the propriety of entering an  
4 injunction.

5 Further, in *Goodyear*, the Ninth Circuit Court of Appeals did not address this  
6 Court's primary concern in entering an injunction that does not differ from current  
7 federal law. Because the injunction is precisely duplicative of federal law, it appears that  
8 enforcement of the injunction could give this Court jurisdiction over all future cases  
9 alleging that Defendant Gala AZ Holdings, Inc. d/b/a Del Taco discriminated against any  
10 employee on the basis of sex or gender or retaliated against any employee who opposed  
11 discriminatory conduct, reported unlawful conduct, filed a charge or participated in filing  
12 a charge of sex or gender discrimination, or assisted or participated in an investigation or  
13 proceeding resulting from any of the preceding items.

14 It is not clear from the injunction, as currently proposed, whether any future  
15 employee of Defendant would be deprived of his/her right to choose the jurisdiction in  
16 which to bring his/her case or if he/she would be forced to bring such an employment  
17 action in this Court. Such an inequitable result would certainly violate many public  
18 policy considerations in favor of allowing would-be plaintiffs to choose their own forum  
19 and could possibly implicate issues of personal jurisdiction and venue. Further, this  
20 Court simply does not have the resources to assert jurisdiction over all allegations of  
21 discriminatory conduct against Defendant, who conducts business in more than ten states.

22 Moreover, even if the injunction did not purport to give this Court jurisdiction  
23 over all future cases of discriminatory conduct by Defendant, it is unclear from the  
24 injunction, as currently proposed, whether Defendant has consented to multiple  
25 proceedings on the issue of whether Defendant has violated Title VII in a particular  
26 instance. Further, it is unclear to the Court what the effect on the litigation would be if  
27 there were inconsistent results arising from a contempt decision in this Court and a merits  
28 decision in another Court. It is with these policy considerations in mind that the Court

1 refused the original request for an injunction in the consent judgment and these  
2 considerations have not been alleviated by the Court of Appeal's decision in *Goodyear*.

3 **IV. CONCLUSION**

4 Based on the foregoing,

5 **IT IS ORDERED** that Plaintiff's Motion for Reconsideration of the Court's  
6 August 8, 2012 Order (Doc. 39) is granted in part and denied in part as follows:

7 If the parties choose to resubmit their Joint Motion to Approve Consent Judgment  
8 with language requiring this Court to enter an injunction, such proposed injunction shall  
9 address the considerations set forth herein.

10 Otherwise, the parties may resubmit their Joint Motion to Approve Consent  
11 Judgment as set forth in the Court's Order of August 8, 2012 (Doc. 38).

12 Dated this 27th day of August, 2012.

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17 James A. Teilborg  
18 United States District Judge  
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