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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bobby A. Ervin,

Plaintiff,

vs.

Lisa M. Estopare,

Defendant.

No. CV 09-8024-PCT-NVW

ORDER

Before the Court is Defendant’s Motion to Reconsider Dismissal Without Prejudice (doc. #69) and the Response (doc. #76). There is no need to await a reply. The Motion is a timely motion under Fed. R. Civ. P. 59 and the Court will treat it as such. Defendant had filed her own Motion to Dismiss (doc. #64), which the Court had not seen when it granted Plaintiff’s own motion for voluntary dismissal on October 27, 2009. In particular, in light of the effort and expense Defendant has expended in defending this action, it was inappropriate to allow Plaintiff to voluntarily dismiss this action without considering Defendant’s Motion to Dismiss on the merits.

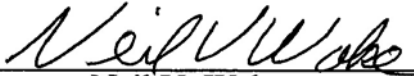
IT IS THEREFORE ORDERED that Defendant’s Motion to Reconsider Dismissal Without Prejudice (doc. #69) is granted.

IT IS FURTHER ORDERED that the Order of dismissal of October 27, 2009, (doc. #63) is vacated, and this action is reinstated.

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IT IS FURTHER ORDERED that the Order of October 27, 2009, (doc. #65) is vacated, and Defendant's Motion to Dismiss (doc. #64) is reinstated. Plaintiff shall file a response to Defendant's Motion to Dismiss (doc. #64) by January 8, 2010, and Defendant may file a reply within ten calendar days of the mailing of Plaintiff's response.

DATED this 22nd day of December, 2009.



Neil V. Wake
United States District Judge