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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

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No. CV 06-926-PHX-SMM

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**ORDER**

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Plaintiff,

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v.

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AUTOZONE, INC., a Nevada  
corporation,

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Defendant.

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Before the Court is Defendant Autozone Inc. (“Defendant”)’s Motion for Partial Reconsideration, filed December 2, 2009 (Doc. 261). Defendant asks the Court to reconsider a portion of its November 9, 2009 Order granting in part Plaintiff Equal Employment Opportunity Commission (“Plaintiff”)’s Motion to Amend Judgment to Add Equitable Relief (Doc. 258). Pursuant to Local Rule 7.2(g)(2),<sup>1</sup> the Court allowed Plaintiff the opportunity to file a response (Doc. 262). Plaintiff responded on December 18, 2009 (Doc. 263), and Defendant did not file a reply. After consideration of the parties’ briefing, the Court finds as follows.

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<sup>1</sup>Under LRCiv 7.2(g)(2), “no response to a motion for reconsideration and no reply to the response may be filed unless ordered by the Court . . .”

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## BACKGROUND

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2 On June 10, 2009, the jury returned a verdict in Plaintiff's favor on the hostile work  
3 environment claim but found against Plaintiff on the retaliation claim. The jury awarded  
4 Plaintiff \$15,000 in compensatory damages and \$50,000 in punitive damages (Doc. 216).  
5 On June 11, 2009, judgment was entered (Doc. 217). On June 25, 2009, Plaintiff filed a  
6 motion to amend the judgment to include various forms of equitable relief (Doc. 232).

7 On November 9, 2009, the Court granted that motion in part, as it related to Plaintiff's  
8 request for training of employees and displaying of posters (Doc. 258). The Court ordered  
9 that a training program be established for Defendant's Phoenix Region employees, including  
10 supervisors, managers, and Human Resource officials (Id. 8:4-6). Through trial testimony  
11 and briefing, it was readily apparent that Defendants' work force, including supervisors, turn  
12 over frequently. As such, employees need to be trained on a yearly basis as a means of  
13 educating those in management positions about sexual harassment under Title VII, and  
14 particularly, how to deal with harassment complaints (Id. 8:11-13). Additionally, the Court  
15 ordered Defendants to post at all its Phoenix Region stores a poster that "shall explain  
16 Defendant's responsibilities and the employees' rights under Title VII, including the  
17 employees' right to complain about or oppose sexual harassment, and shall provide contact  
18 information for the Phoenix office of the Equal Employment Opportunity Commission and  
19 the Arizona Civil Rights Division." (Id. 8:16-20). The Court's Order also required the  
20 posters to be displayed in a prominent location in the store frequented by employees (Id.  
21 8:15-16). An Amended Judgment was entered on November 10, 2009, reflecting the  
22 equitable relief granted by the Court (Doc. 259). Defendant seeks reconsideration of the  
23 portion of the Court's Order addressing the displaying of posters (Doc. 261).

## STANDARD OF REVIEW

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25 A district court can "reconsider" final judgments pursuant to Federal Rules of Civil  
26 Procedure 59(e) (governing motions to alter or amend judgments) and 60(b) (governing  
27 motions for relief from a final judgment). See Balla v. Idaho State Bd. of Corr., 869 F.2d  
28 461, 466-67 (9th Cir. 1989). However, "[m]otions to reconsider are appropriate only in rare

1 circumstances.” Defenders of Wildlife v. Browner, 909 F.Supp. 1342, 1351 (D. Ariz. 1995).  
2 Mere disagreement with an order is an insufficient basis for reconsideration. Leong v. Hilton  
3 Hotels Corp., 689 F.Supp. 1572, 1573 (D. Haw. 1988). Nor should reconsideration be used  
4 to make new arguments or to ask the Court to rethink its analysis. United States v.  
5 Rezzonico, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998); see also Marlyn Nutraceuticals, Inc.  
6 v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

7 As a general principle, motions to reconsider are appropriate only if the Court “(1) is  
8 presented with newly discovered evidence, (2) committed clear error or the initial decision  
9 was manifestly unjust, or (3) if there is an intervening change in controlling law.” School  
10 Dist. No. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). If a  
11 party seeks to base a motion for reconsideration on newly discovered evidence, the party  
12 must also show that “at the time of the Court’s decision, the party moving for reconsideration  
13 could not have known of the factual or legal differences through reasonable diligence[.]”  
14 Motorola, Inc. v. J.B. Rodgers Mech. Contractors, 215 F.R.D. 581, 586 (D. Ariz. 2003).  
15 “There may also be other, highly unusual, circumstances warranting reconsideration.”  
16 ACandS Inc., 5 F.3d at 1263.

17 Under the specific rules of this District, “[t]he Court will ordinarily deny a motion for  
18 reconsideration of an Order absent a showing of manifest error or a showing of new facts or  
19 legal authority that could not have been brought to its attention earlier with reasonable  
20 diligence.” LRCiv 7.2(g)(1). “Any such motion shall point out with specificity the matters  
21 that the movant believes were overlooked or misapprehended by the Court, any new matters  
22 being brought to the Court’s attention for the first time and the reasons they were not  
23 presented earlier, and any specific modifications being sought in the Court’s Order.” Id.  
24 “Failure to comply with this subsection may be grounds for denial of the motion.” Id.  
25 Additionally, “[a]bsent good cause shown, any motion for reconsideration shall be filed no  
26 later than ten (10) days after the date of the filing of the Order that is the subject of the  
27 motion.” LRCiv 7.2(g)(2).  
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## DISCUSSION

### A. Timeliness of Motion for Reconsideration

As Defendant acknowledges, the reconsideration motion was untimely filed under the Local Rules of this District (Doc. 261, p.2, n.1). Under Local Rule 7.2(g)(2) and Federal Rule of Civil Procedure 59(e), motions for reconsideration must be filed within 10 days of the order. Defendant filed the Motion for Reconsideration on December 2, 2009, fifteen (15) days after the Court's Order was filed on November 9, 2009. Consequently, Defendant filed the motion after the deadline specified by the Local Rules and Federal Rule 59.

Federal Rule of Civil Procedure 60(b) also provides parties with the opportunity to file a motion seeking relief from a final judgment, order, or proceeding. Rule 60(b) permits reconsideration of a district court order based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b)(1)-(b)(6). A Rule 60(b) motion must be brought within a "reasonable" time, which cannot be more than one year if the motion is based on mistake, newly-discovered evidence, or fraud. See Fed. R. Civ. P. 60(b). Defendant's reconsideration motion can be construed as a Rule 60 motion for relief from a final judgment. So considered, the motion falls within the final ground in Rule 60, "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(6).

### B. Defendant's Motion for Reconsideration

Defendant seeks reconsideration because it already has posters in its Phoenix Region stores that comply with nearly all of the Court's mandates. Defendant states that two posters are displayed on its bulletin board in the manager's office, a prominent store location:

1 (1) Equal Employment Opportunity Is The Law; and (2) Arizona Law Prohibits  
2 Discrimination in Employment. Federal and Arizona law require these posters to be  
3 displayed. Specifically, the Equal Employment Opportunity is the Law poster contains the  
4 following information: (1) that it is prohibited to engage in discrimination based on sex (as  
5 well as other protected classifications outlined in Title VII); (2) that employees have a right  
6 to complain about any employment discrimination; (3) that employees can report  
7 discrimination to the EEOC; and (4) retaliation against employees who report or participate  
8 in discrimination investigations is prohibited (Doc. 261, Ex. A). The poster also provides the  
9 contact information for the EEOC's headquarters in Washington, D.C., as well as the  
10 telephone number and website to obtain contact information for any of the EEOC's field  
11 offices (Id.). Additionally, the Arizona Law Prohibits Discrimination in Employment poster  
12 states that discrimination is prohibited based on sex as well as other protected classes, and  
13 provides contact information for all offices of the Arizona Civil Rights Division, including  
14 the Phoenix office (Doc. 261, Ex. B).

15 Defendant states that the only information required by the Court's November 9, 2009  
16 Order that is not given is the address and telephone number for the Phoenix EEOC field  
17 office. However, the poster provides both a telephone number and website where this  
18 information can be obtained.

### 19 **C. Plaintiff's Response**

20 Plaintiff responds that the posters do not comply with the Court's November 9, 2009  
21 Order for several reasons. First, Plaintiff objects to the content of the two posters.  
22 According to Plaintiff, the "Equal Employment Opportunity is the Law" poster is general in  
23 nature and directed at all types of discrimination complaints, rather than only sexual  
24 harassment. It does not "explain ...the employees' right to complaint about or oppose sexual  
25 harassment" as required by the Court, and does not contain the current address and telephone  
26 number for the EEOC's field office in Phoenix. Plaintiff also points out that the version  
27 currently posted by Defendant is from 2002, and thus, is outdated. A revised version of the  
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1 poster was made available in November 2009.<sup>2</sup> As to the other poster, “Arizona Law  
2 Prohibits Discrimination in Employment”, Plaintiff argues that it is deficient too because it  
3 does not “explain Defendant’s responsibilities and the employees’ rights under Title VII,  
4 including the employees’ right to complain about or oppose sexual harassment.”

5 Second, Plaintiff objects to the placement of the posters. The Court’s November 9,  
6 2009 Order required that the posters be “displayed in a prominent location in the store  
7 frequented by Defendant’s employees.” Defendant has provided the affidavit of current  
8 Regional Human Resources Manager, Randy Walton, which states that the posters are  
9 displayed on a bulletin board in the managers’ offices, “a location . . . frequented by store  
10 employees.” (Doc. 261, Ex. 1). Plaintiff objects that there is no indication whether this is  
11 a prominent location. Also, Plaintiff raises its concern that the posters’ location in  
12 management offices is “likely to discourage employees from consulting the posters for fear  
13 of being observed doing so by their managers and subsequently suffering retaliation.” (Doc.  
14 263, 4:12-14). Plaintiff argues that this location could have a “chilling effect” on employees’  
15 right to complain about sexual harassment (*Id.* 4:14-16). Finally, Plaintiff argues that  
16 Defendant’s motion is untimely under Local Rule 7.2(g)(2) because it was not filed within  
17 ten (10) days after the date of the filing of the Order subject to the reconsideration motion.

#### 18 **D. Analysis**

19 After examining the posters provided by Defendant, the Court finds that while the  
20 posters address the Court’s underlying concerns, deficiencies remain. The two posters in  
21 Defendant’s Phoenix Region Stores — Equal Employment Opportunity is the Law and  
22 Arizona Law Prohibits Discrimination in Employment — provide substantially the same  
23 information outlined in the Court’s November 9, 2009 Order regarding the right to complain  
24 about harassment and the means to report harassment complaints. Thus, the Court will grant  
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27 <sup>2</sup>Plaintiff states that the updated “Equal Employment Opportunity is the Law” poster  
28 can be found at [www1.eeoc.gov/employers/poster.cfm](http://www1.eeoc.gov/employers/poster.cfm)

1 Defendant's motion to the extent that Defendant requests the use of the two posters as a  
2 foundation, rather than creating entirely new posters from scratch.<sup>3</sup>

3 However, there are several deficiencies with the posters that prevent the Court from  
4 granting Defendant's motion in full. First, the Court finds that the Equal Employment  
5 Opportunity is the Law poster submitted by Defendant is outdated. A revised version of the  
6 poster was made available in November 2009. The Court will order that Defendant display  
7 the most recent version of the Equal Employment Opportunity is the Law poster as found on  
8 the EEOC's website, [www1.eeoc.gov/employers/poster.cfm](http://www1.eeoc.gov/employers/poster.cfm).

9 Additionally, the Court finds that the Equal Employment Opportunity is the Law  
10 poster fails to contain the contact information for the EEOC's Phoenix field office. The  
11 Court will order that the Equal Employment Opportunity is the Law poster be modified to  
12 include the address and telephone number of the EEOC's Phoenix field office. Employees  
13 seeking to report harassment should not have the additional hurdle of contacting the EEOC  
14 headquarters in order to obtain the local field office's address and telephone number.

15 Finally, the Court finds that the placement of the Equal Employment Opportunity is  
16 the Law and Arizona Law Prohibits Discrimination in Employment posters is inadequate.  
17 While the manager's offices may be a location frequented by employees, this location may  
18 discourage employees from consulting the posters for fear of being observed by their  
19 supervisor, and thus, have a chilling effect on harassment complaints. Therefore, the Court  
20 will order both posters to be displayed in a prominent location frequented by employees other  
21 than the manager's office.

22 As to Plaintiff's arguments regarding the timeliness of Defendant's motion, the Court  
23 has addressed the timeliness issue above and rules on the merits of the motion.

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25 <sup>3</sup>Defendant arguably could have produced the two posters earlier, and thus, conserved  
26 judicial resources. Defendant states that it did not produce the posters earlier because the  
27 Court only asked Defendant to provide a copy of the current "problem solving" poster  
28 displayed in its Phoenix Region stores (Doc. 241). While technically correct, the Court's  
prior Order was aimed at determining what posters already existed in the Phoenix Region  
stores in response to Plaintiff's request for the displaying of posters.

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Accordingly,

**IT IS HEREBY ORDERED** that Defendant Autozone Inc.'s Motion for Partial Reconsideration is granted in part and denied in part (Doc. 261).

**IT IS FURTHER ORDERED** that Defendant display the most recent version of the Equal Employment Opportunity is the Law poster as found on the EEOC's website in its Phoenix Region stores. Additionally, the Equal Employment Opportunity is the Law poster shall be modified to include the contact information for the EEOC's Phoenix field office, including its address and telephone number. The Equal Employment Opportunity is the Law and Arizona Law Prohibits Discrimination in Employment posters shall be displayed in a prominent location frequented by employees other than the manager's office.

DATED this 6<sup>th</sup> day of January, 2010.

  
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Stephen M. McNamee  
United States District Judge