IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CLIVE B. HILGERT, Plaintiff, V. GEORGE S. MAY INTERNATIONAL COMPANY, Defendant.	§ § § § § § § § § §	CASE NO. 7:07-cv-00094 consolidated with 7:09-cv-00154

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CLIVE B. HILGERT, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
V.	§	CASE NO. 7:07-cv-00094
	§	consolidated with 7:09-cv-00154
GEORGE S. MAY INTERNATIONAL COMPANY,	§	
	§	
	§	
Defendant.	§	

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Defendant George S. May International Company ("May") files this response to Hilgert's Motion for reconsideration, showing in support as follows:

I. PROCEDURAL BACKGROUND

On October 9, 2009, the Court granted summary judgment against Hilgert on his Title VII retaliation claim, his hostile work environment claim, and his claim for "public policy" discrimination. On October 19, 2009, Hilgert filed a motion requesting that the Court reconsider its rulings regarding the Title VII retaliation claim and the hostile work environment claim.[1]

II. LEGAL STANDARD

The Federal Rules of Civil Procedure do not recognize a "motion for reconsideration" by that name. *See Lavespere v. Niagra Mack & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir.1991). However, the Fifth Circuit has held that a motion for reconsideration should be treated as a motion to alter or amend judgment under Rule 59(e). *Sheppard v. Int'l Paper Co.*, 372 F.3d 326,

[1] *See* Docket Entry No. 60.

327 n. 1 (5th Cir. 2004). A district court has considerable discretion to grant or deny a motion under Rule 59(e). *See Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 355 (5th Cir. 1993).

In order to prevail on a Rule 59(e) motion, the movant must show at least one of the following: (1) an intervening change in controlling law; (2) new evidence not previously available; (3) the need to correct a clear or manifest error of law or fact; or (4) a manifest injustice. *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002).

III. ARGUMENT AND AUTHORITIES

Hilgert's motion fails for several reasons. First, there was not an intervening change in controlling law between October 9, 2009 (the date of the Court's ruling) and October 19, 2009 (the date of Hilgert's motion). Second, Hilgert does not present "new evidence not previously available." *Id.* Third, the Court did not make a "clear or manifest error of law or fact." Indeed, Hilgert merely reiterates his mistaken belief that Congress meant to create a cause of action under Title VII for individuals who are adversely affected by an employer's alleged discrimination against the employer's customer or client. And Fourth, Hilgert presents no argument or evidence to suggest that disposal of his claims amounts to a manifest injustice. *See, e.g., Arnold v. City of San Antonio*, slip op., 2009 WL 3247979, at *3 (W.D. Tex., Oct. 2, 2009) (denying motion for reconsideration for all of these reasons), attached at Tab 1.

Accordingly, Defendant George S. May International Company respectfully prays that the Court deny Clive Hilgert's motion for reconsideration, and grant Defendant all other relief to which it is justly entitled.

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ with permission Dennis A. Clifford
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the fore going document was served upon the counsel of record listed below by the Southe rn District of Texas ECF m ethod or by certified mail, return receipt requested on the 22nd day of October, 2009.

Clive B. Hilgert
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s/ Dennis A. Clifford
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