

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>AMY CHARRON,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>Civil Case No.: 4:17-cv-3618</b>
	§	
<b>KENNETH TROOST, HOUSTON</b>	§	
<b>POLICE DEPARTMENT, ART</b>	§	
<b>ACEVEDO, CHIEF OF POLICE,</b>	§	
<b>CITY OF HOUSTON, SYLVESTER</b>	§	
<b>TURNER, MAYOR, and UNNAMED</b>	§	
<b>DEFENDANTS,</b>	§	
<b>Defendants.</b>	§	

**DEFENDANTS HOUSTON POLICE DEPARTMENT, ART ACEVEDO,  
SYLVESTER TURNER AND CITY OF HOUSTON’S RESPONSE TO  
PLAINTIFF’S LETTER REQUESTING RECONSIDERATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants HOUSTON POLICE DEPARTMENT, ART ACEVEDO, SYLVESTER TURNER and CITY OF HOUSTON (collectively “City Defendants”) file this their Response to Plaintiff’s Letter Requesting Reconsideration of the Dismissal of her case [Doc. #36]. In support of said response, City Defendants respectfully show the Court as follows:

**I. FACTUAL BACKGROUND**

1. This case involved allegations of violations of civil rights stemming from Plaintiff’s arrest for DWI by Defendant Troost on or about November 18, 2015. The case was filed on the eve of limitations in state court and timely removed to federal court by City Defendants [Doc. #1]. At the time of the filing of this lawsuit, Plaintiff was represented by counsel. However, said counsel withdrew from the case after Plaintiff threatened him with criminal charges [Doc. #4].

2. City Defendants filed a motion to dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure [Doc. #3], prior to Plaintiff’s counsel withdrawing from the case. Plaintiff was aware

of this pending motion as such was discussed at the initial scheduling conference on or about January 18, 2018, which she was present at. Nonetheless, Plaintiff failed to respond to the motion to dismiss.

3. A scheduling order was entered by the Court on or about January 18, 2018 [Doc. #14] and City Defendants have complied with such. Plaintiff, however, failed to comply with all deadlines in the scheduling order and claims that it is because she is the victim of retaliation, criminal activities or similar words [Docs. #18, 23, 24 and 34]. At every stage of this lawsuit, her blatant failure to comply with Court orders and/or deadlines is attributable to her dilatory conduct only.

4. On or about June 1, 2018, City Defendants filed a motion for judgment pursuant to Rule 12(c), Federal Rules of Civil Procedure [Doc. #27]. Again, Plaintiff failed to file a response to said motion. Local Rule 7.4, Local Rules for the Southern District of Texas, states that “failure to respond to a motion will be taken as a representation of no opposition.” LR7.4, Local Rules for Southern District of Texas.

5. On or about July 25, 2018, this Court denied without prejudice the City Defendants’ pending motions referenced above [Doc. #31]. In this order, the Court ordered Plaintiff to “file an amended complaint that is compliant with Rule 8 within twenty-one days from the date of this order.” The Court gave Plaintiff notice that failure to comply would result in dismissal of this case [Doc. #31]. The deadline to amend her pleadings was on or about August 15, 2018. Again, Plaintiff failed to comply with this Court order and the Court dismissed the case without prejudice on or about August 17, 2018 [Doc. #33].

6. Plaintiff has repeatedly failed to comply with the relevant local or federal rules as well as Court orders in this case. The record of her failure is clear, and her conduct was not a mistake. Plaintiff filed her letter requesting reconsideration five months after the entry of the dismissal order

[Doc. #36]. She has not discovered any new evidence and is simply rehashing old matters that are unrelated to the events at issue in this lawsuit. Therefore, the Court's motion to dismiss was proper and her reconsideration motion should be denied.

## II. ARGUMENT AND AUTHORITIES

### A. Standard of Review

7. Rule 59(e) governs motions to alter or amend final judgments and allows a “party to correct manifest errors of law or fact or to present new evidence.” *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)(internal quotation marks and citation omitted). A motion for reconsideration, which calls the correctness of a judgment into question, is appropriate under Rule 59(e). See *Hernandez v. Helix Energy Solutions Group, Inc.*, 2019 WL 126904, \*2 (S.D. Tex January 8, 2019)(citing *Templet v. HydroChem Inc.*, 367 F.3d 473, 478-479 (5th Cir. 2004). However, a “reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.” *Templet*, 367 F.3d at 479(citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th 1990).

8. The trial court has considerable discretion in addressing a motion for reconsideration. However, “given the narrow purpose [of Rule 59(e)], the movant must show either (1) a clear error; (2) newly discovered evidence; (3) a change in the pertinent law; or (4) a manifest injustice.” *Id.*; *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-864 (5th Cir. 2003). “If the movant presents newly discovered evidence, that evidence must be of ‘such a nature that they would probably change the outcome.’” *Infusion Res., Inc. v. Minimed, Inc.*, 351 F.3d 688, 696 (5th Cir. 2003). Therefore, a reconsideration motion “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 (1995); *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d

563, 568 (5th Cir. 2003)(affirming denial of reconsideration because the movant “failed to offer a reasonable explanation regarding why it was unable to present this purported newly discovered evidence before the district court’s final judgment.”)

**B. Plaintiff’s Letter Requesting Reconsideration Should Be Denied**

9. **Plaintiff has failed to establish that the dismissal was done in error.** Plaintiff has not evidence that the dismissal entered by the Court on August 17, 2018 was done in error. Rather, she attempts to garner sympathy from the Court by reiterating that she is a victim of various crimes that are unrelated to the lawsuit and as such, was unable to comply with the Court’s order to amend. This is not sufficient and is a frivolous reason for her non-compliance. As such, she has failed to carry her burden and to re-instate the case would be prejudicial to the City Defendants.

10. **Plaintiff Fails to Produce Newly Discovered Evidence.** As stated above, Plaintiff has produce no new evidence to support her motion for reconsideration. She has continuously claimed that all of her failures to file responses or comply with Court deadlines is the result of being a victim of various crimes unrelated to this case [Docs. #18, 23, 24 and 34]. Thus, she failed to carry her burden to overturn the dismissal.

11. Without waiving the foregoing argument, City Defendants inform the Court that Plaintiff filed an amended complaint (1-month after the dismissal) and such is void of new evidence sufficient to overturn the dismissal [Doc. #35]. Even if the allegations stemming from events in 2009 qualified as newly discovered, which it does not, such only shows that Plaintiff knew about this information and failed to raise it before judgment was entered in this case. Further, the events from 2009 are irrelevant and would not change the outcome of the case. Thus, she has failed to carry her burden and her motion for reconsideration should be denied by the Court. *See Infusion Res., Inc.*, 351 F.3d at 696; *Baker*, 554 U.S.at 485; *Schiller*, 342 F.3d at 568.

12. The 2009 events do not establish identify a policy or custom; fail to connect the policy or custom to the City of Houston itself, and fail to show that her injuries resulted from the application of a specific municipal policy or custom. Further, the 2009 events do not and cannot establish (a) standing for Houston Police Department to be sued in this lawsuit; or (b) personal involvement of Chief Acevedo or Mayor Turner in her arrest in 2015. Because this purported new evidence is largely irrelevant, it would not change the outcome and thus, does not compel the Court to reconsider its order dismissing the case. Plaintiff has failed to carry her burden and City Defendants request that the Court deny her request for reconsideration of the dismissal of this lawsuit.

13. **Plaintiff's Reconsideration Request is Not Timely.** Rule 59(e) dictates that motions to alter judgment, like a reconsideration motion, "must be filed no later than 28-days after the entry of the judgment." Fed. R. Civ. P. 59(e). Plaintiff filed her request for reconsideration about five months after the entry of the dismissal order [Docs. #33 and 36]. Therefore, her reconsideration is not timely and City Defendants request that the Court deny her motion.

WHEREFORE, PREMISES CONSIDERED, Defendants Houston Police Department, Chief of Police Art Acevedo, Mayor Sylvester Turner and City of Houston request that the Court deny Plaintiff's request for reconsideration and enter an order dismissing Plaintiff's claims against them with prejudice, award them their costs and attorneys' fees, and grant all other relief to which they are entitled.

Respectfully submitted,

RONALD C. LEWIS  
City Attorney

DONALD J. FLEMING  
Section Chief, Labor, Employment, & Civil Rights

Date: January 31, 2019

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ATTORNEYS FOR CITY DEFENDANTS

**CERTIFICATE OF SERVICE**

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this certificate is attached was filed with the clerk of the court using CM/ECF system, which will send electronic notification for those listed of record who receive electronically filed documents.

- There are no parties listed in this case who receive electronically filed documents at this time.

I further certify that a copy of this instrument to which this certificate is attached was served via certified mail on the following party, who is not receiving filed documents per CM/ECF notification:

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