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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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DOROTHY O'CONNELL,

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No. CV 07-0198-PHX-SMM

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Plaintiff,

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**Order**

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v.

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DAVID R. SMITH, et al.,

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Defendant.

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In preparing the certification of questions to the Arizona Supreme Court, the Court has reviewed the docket in its entirety, as well as analyzed, in depth, the applicable authority cited by both parties. Due to the nature of this case, there have been motions dismissed without prejudice, with leave to refile at a later date, including a Motion to Dismiss (Doc. 13) filed by Defendants addressing the issue of notice of claim. Despite an earlier decision by this Court that the issues pertaining to notice of claim and A.R.S. § 12-282.01 would be better left undecided until this Court was able to certify questions to the Arizona Supreme Court, the Court finds that waiting for such certification is unnecessary on this issue. Indeed, the Court has determined that the notice of claim issue must be decided prior to the submission of questions to the Arizona Supreme Court, because the potential dispositive nature of this issue renders it necessary to decide as a preliminary matter.

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Since Defendant filed the Motion to Dismiss, additional case law citing Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490 (Ariz. 2007) has arisen and has led this Court to conclude that the notice of claim issue now has been adequately addressed by the

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1 state courts.<sup>1</sup> As a result, the notice of claim issue previously set aside by the Court has  
2 become pertinent and must be resolved. Consequently, this Court has determined that the  
3 pending matters are best addressed through the traditional briefing previously completed by  
4 the parties.

5 Accordingly,

6 **IT IS HEREBY ORDERED** that Defendants shall have until **Friday, November 7,**  
7 **2008** to re-file their Motion to Dismiss (Doc. 13). The motion will be considered fully  
8 briefed on the date the Motion to Dismiss is filed.

9 DATED this 14<sup>th</sup> day of October, 2008.

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13 Stephen M. McNamee  
14 United States District Judge  
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26 <sup>1</sup> These cases include Yollin v. City of Glendale, 191 P.3d 1040, 1044 (Ariz. Ct.  
27 App. 2008); Lee v. State, 182 P.3d. 1169, 1173 (Ariz. 2008); State v. Mabery Ranch, Co.,  
28 165 P.3d 211, 223 (Ariz. Ct. App. 2007).