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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Roberto Valencia,

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No. CV-10-02194-PHX-NVW

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Plaintiff,

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ORDER

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vs.

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Sergeant David W. Austin et al.,

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Defendants.

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Before the Court is Defendants’ Motion to Dismiss. (Doc. 6.) This lawsuit alleges police brutality in violation of Arizona state law and 42 U.S.C. § 1983. The police officer defendants and their wives (“Individual Defendants”) argue that Plaintiff cannot sue them individually for assault and battery, negligence per se, and willful or wanton negligence (Plaintiff’s state-law causes of action) because Plaintiff failed to comply with Arizona’s notice-of-claim statute, A.R.S. § 12-821.01. Plaintiff, in response, concedes this argument and consents to dismissal of his state-law causes of action with respect to the Individual Defendants. The Court will therefore grant Defendants’ motion in this respect.

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The Individual Defendants further argue that they cannot be liable for punitive damages under Plaintiff’s state-law causes of action, and Defendant City of Phoenix argues that it cannot be liable for punitive damages under any of Plaintiff’s causes of action. Plaintiff again concedes both arguments, noting that he requested punitive damages only

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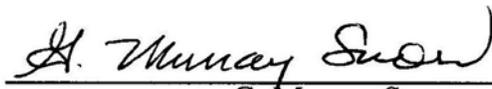
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1 from the Individual Defendants, and recognizing that he could not request punitive damages
2 from the City of Phoenix. Plaintiff therefore consents to “dismissal” of his prayer for
3 punitive damages against the Individual Defendants except with respect to his § 1983 cause
4 of action. Punitive damages, however, are a remedy, not a cause of action. Thus, there is
5 nothing for the Court to dismiss. Nor will the Court strike Plaintiff’s prayer for punitive
6 damages given that it remains in effect with respect to his § 1983 cause of action against the
7 Individual Defendants.

8 **IT IS THEREFORE ORDERED** that Defendants’ Motion to Dismiss (Doc. 6) is
9 GRANTED in part and DENIED in part, for the reasons stated above.

10 DATED this 2nd day of November, 2010.

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14 G. Murray Snow
15 United States District Judge
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