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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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Jabari Overstreet,

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No. CV-12-125-PHX-SMM

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Plaintiff,

)

11

v.

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**MEMORANDUM OF DECISION AND ORDER**

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City of Phoenix et al.,

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Defendants.

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Before the Court is Defendants Phoenix Union High School District’s, Luis Lemus’,  
16 Craig Pletenik’s and Lee Fernwault’s (the “District” Defendants) Motion for Summary  
17 Judgment. (Doc. 70.) For the reasons that follow, the District Defendants’ motion is granted  
18 in part, denied in part, and the case is dismissed.<sup>1</sup>

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**BACKGROUND**

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This case arises from a January 19, 2011, altercation between Plaintiff Jabari  
21 Overstreet, school security guards, and City of Phoenix Police Officer George Pizarro. (Doc.  
22 1.) On January 19, 2012, Plaintiff’s parents<sup>2</sup> filed the instant 42 U.S.C. § 1983 action against  
23 the City of Phoenix, the Phoenix Union High School District, Daniel Mendez, Luis Lemus,  
24 George Pizarro, Craig Pletnik, and Lee Fernwault. (*Id.*) The complaint sought relief on three

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<sup>1</sup> The District Defendants’ request for oral argument is denied. There was an adequate  
27 opportunity to present written argument, and oral argument will not aid the Court’s decision.  
LRCiv. 7.2(f); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

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<sup>2</sup> Jabari Overstreet was a minor at the time of filing, but was substituted as Plaintiff  
in place of his parents once he reached the age of majority. (Doc. 78.)

1 § 1983 causes of action and six state-law causes of action: (1) unreasonable search and  
2 seizure and excessive force; (2) equal protection; (3) substantive due process; (4) false  
3 arrest/imprisonment; (5) assault; (6) battery; (7) negligent hiring, retention, and supervision;  
4 (8) defamation and false light; and (9) intentional infliction of emotional distress. (Id. at 9-  
5 16.) Count 2 was dismissed with prejudice pursuant to stipulation (Doc. 39), and Count 3 was  
6 dismissed with prejudice upon the District Defendants’ unanswered motion (Doc. 62).

7 Judge Campbell entered an Order granting the City of Phoenix judgment on the  
8 pleadings regarding Counts 3, 7, 8, and 9; dismissing Officer Pizarro without prejudice; and  
9 dismissing the City of Phoenix from Counts 1 and 4. (Doc. 63.) The parties subsequently  
10 stipulated to dismissing the City of Phoenix and Officer Pizarro from the action with  
11 prejudice. (Doc. 68.) Thereafter, Plaintiff served his initial disclosure on the day discovery  
12 closed. (Docs. 45; 69.)

13 The District Defendants’ present motion for summary judgment seeks: dismissal of  
14 the entire case pursuant to Federal Rule of Civil Procedure 41(b); dismissal of Defendant  
15 Daniel Mendez for lack of service; dismissal of the Phoenix Union High School District from  
16 Counts 1 and 4 for legal insufficiency; and dismissal of Count 8 for legal insufficiency. (Doc.  
17 70.) Plaintiff’s response opposed dismissal under Rule 41(b), but consented to dismissal of  
18 Defendant Mendez and also consented to dismissal of Counts 1 and 8. (Doc. 75 at 4-5.) The  
19 District Defendants’ reply reiterated their earlier arguments, but also noted that with the  
20 dismissal of Count 1, all the federal causes of action have been dismissed. (Doc. 77 at 3-4.)

## 21 LEGAL STANDARDS

22 “Federal courts are courts of limited jurisdiction.” Kokkonen v. Guardian Life Ins. Co.  
23 of Am., 511 U.S. 375, 377 (1994). “The district courts may decline to exercise supplemental  
24 jurisdiction [if] . . . the district court has dismissed all claims over which it has original  
25 jurisdiction . . . .” 28 U.S.C. § 1367(c)(3). “A district court’s decision whether to exercise  
26 [supplemental] jurisdiction after dismissing every claim over which it had original  
27 jurisdiction is purely discretionary.” Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639  
28 (2009). This discretion is guided by “considerations of judicial economy, convenience and



1 adjudication on the merits of his remaining claims. Even though the limitations period has  
2 run on Plaintiff's state-law claims, he will be able to reinstate those claims in state court if  
3 the action is dismissed involuntarily for reasons—other than abatement or lack of  
4 prosecution—unrelated to its merits. See Janson ex rel. Janson v. Christensen, 167 Ariz. 470,  
5 472-74, 808 P.2d 1222, 1224-26 (1991) (quoting Gaines v. City of New York, 215 N.Y. 533,  
6 539, 109 N.E. 594, 596 (1915) (Cardozo, J.)) (“[T]he saving statute’s ‘broad and liberal  
7 purpose is not to be frittered away by any narrow construction.’ ”); Templer v. Zele, 166  
8 Ariz. 390, 391, 803 P.2d 111, 112 (App. 1990) (holding A.R.S. § 12-504 applies to actions  
9 commenced outside of Arizona). As a result, Plaintiff will not be denied an adjudication on  
10 the merits of his remaining state-law claims if the Court declines to exercise supplemental  
11 jurisdiction over those claims. Therefore, dismissal is not unfair to Plaintiff and “the balance  
12 of factors does not tip in favor of retaining the state-law claims.” Sanford, 625 F.3d at 561.  
13 The Court declines to exercise supplemental jurisdiction and dismisses Plaintiff’s state-law  
14 claims without prejudice.

15 Accordingly,

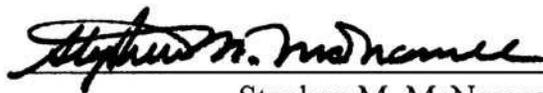
16 **IT IS HEREBY ORDERED granting in part** the District Defendants’ Motion for  
17 Summary Judgment solely on the dismissal with prejudice of Count 1. (Doc. 70.)

18 **IT IS FURTHER ORDERED dismissing without prejudice** all remaining claims  
19 against all remaining Defendants pursuant to the Court’s discretion to decline supplementary  
20 jurisdiction under 28 U.S.C. § 1367(c)(3).

21 **IT IS FURTHER ORDERED denying as moot** the District Defendants’ Motion for  
22 Summary Judgment in all other regards.

23 **IT IS FURTHER ORDERED** that the Clerk shall terminate the case.

24 DATED this 11<sup>th</sup> day of March, 2014.

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27 Stephen M. McNamee  
28 Senior United States District Judge