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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 David Bryant and Andrea Bryant,  
11 individually and as husband and wife,

NO. CV-12-00319-PHX-JAT

12 Plaintiffs,

13 vs.

14 The City of Goodyear; William R. Newman,  
15 Jr. and Jane Doe Newman, husband and  
16 wife; Mark Brown and Jane Doe Brown,  
17 husband and wife; Ralph McLaughlin and  
18 Jane Doe McLaughlin, husband and wife;  
19 and Jeff Rogers and Jane Doe Rogers,  
20 husband and wife,

21 Defendants.

22 Pending before the Court are: (1) Defendants' Motion to Stay Discovery and  
23 Dispositive Motion Deadline (Doc. 90) and (2) Plaintiffs' Motion for Reconsideration of  
24 the Court's May 6, 2013 Order or alternatively Rule 60(b) Motion for Relief Reinstating  
25 Some State Claims Against Newman, McLaughlin (Doc. 85). The Court now rules on the  
26 Motions.

27 **I. Background**

28 On February 15, 2012, Plaintiffs filed a complaint against Defendants (Doc. 1). On  
June 5, 2012, Plaintiffs filed an amended complaint against Defendants (Doc. 6). On June  
7, 2012, the Amended Complaint was served on all Defendants, except for Defendant

1 Brown, who waived service on June 13, 2012. (Doc. 7-15). On September 14, 2012,  
2 Defendants filed a Motion to Dismiss (Doc. 30) and a Motion for Summary Judgment  
3 (Doc. 31). On May 6, 2013, the Court granted Defendants' motion for summary judgment  
4 in part and denied it in part and granted Defendants' motion to dismiss Plaintiffs'  
5 amended complaint. (Doc. 81). In that Order, the Court gave Plaintiffs leave to amend  
6 their Amended Complaint and extended the discovery deadline to August 1, 2013 and the  
7 dispositive motion deadline to August 30, 2013. (*Id.*).

8 On May 28, 2013, Plaintiffs filed a Second Amended Complaint. On June 19,  
9 2013, Defendants moved to dismiss twenty-three of the twenty-five counts of the Second  
10 Amended Complaint. (Doc. 89).

11 **II. Defendants' Motion to Stay Discovery and Dispositive Motion Deadline**

12 Defendants seek a stay of the discovery and dispositive motions deadlines until the  
13 Court has ruled on their Motion to Dismiss the Second Amended Complaint. Plaintiffs  
14 object to a stay and an open-ended discovery extension and argue that further delay in the  
15 case would be unfair.

16 Defendants' request that this case be stayed is denied. However, in order to give  
17 the Court time to analyze Defendants' Motion to Dismiss, which has only been fully  
18 briefed since August 1, 2013, the Court will extend the discovery and dispositive motion  
19 deadlines as follows: all discovery, including depositions of parties, witnesses, and  
20 experts, answers to interrogatories, and supplements to interrogatories must be completed  
21 by October 30, 2013 and all dispositive motions shall be filed no later than December 6,  
22 2013. Such motions must be, in all respects, in full compliance with the Civil Local Rules.

23 **III. Plaintiff's Motion for Reconsideration of the Court's May 6, 2013**  
24 **Order or alternatively Rule 60(b) Motion for Relief Reinstating Some**  
25 **State Claims Against Newman, McLaughlin**

26 Plaintiffs seek reconsideration of part of the Court's May 6, 2013 Order. In their  
27 Motion for Summary Judgment, Defendants argued that Plaintiffs' state law claims should  
28 be dismissed against Defendants Newman and Brown because Plaintiffs failed to properly  
comply with Arizona's Notice of Claim Statute, Arizona Revised Statutes section 12-

1 821.01(A). In its May 6, 2013 Order, the Court granted Defendants’ Motion for Summary  
2 Judgment on that argument because Plaintiffs filed their complaint prior to serving their  
3 Notice of Claim on Defendants Newman and Brown. The Court specifically found:

4 Plaintiffs filed their original complaint on February 15,  
5 2012. Plaintiffs served their notice of claim on Defendants  
6 Newman and McLaughlin on March 6, 2012. Plaintiffs argue  
7 that “[t]he original complaint in this matter was filed on  
8 February 15, 2012 as a placeholder to avoid potential statute  
9 of limitations issues while the Bryants finalized their Notice of  
10 Claim.” (Doc. 40 at 3). In Reply, Defendants argue that  
11 section 12-821.01 requires that the claim be submitted and  
12 rejected before a lawsuit is filed.

13 Indeed, “[b]efore initiating an action for damages  
14 against a public entity, a claimant must provide a notice of  
15 claim to the entity in compliance with Arizona Revised  
16 Statutes (A.R.S.) section 12–821.01 (2003).” *Deer Valley  
17 Unified School Dist. No. 97 v. Houser*, 152 P.3d 490,  
18 491 (Ariz. 2007). “The statutory requirements serve several  
19 important functions: They ‘allow the public entity to  
20 investigate and assess liability, . . . permit the possibility of  
21 settlement prior to litigation, and . . . assist the public entity in  
22 financial planning and budgeting.” *Id.* at 492 (internal  
23 citations omitted) (alterations in original).

24 Compliance with the notice provision of §  
25 12–821.01(A) is a mandatory and essential  
26 prerequisite to such an action. Failure to comply  
27 with the statute is not cured by actual notice or  
28 substantial compliance. Rather, plaintiff’s  
failure bars *any* claim against the entity or  
employee.

*Harris v. Cochise Health Systems*, 160 P.3d 223, 230 (Ariz.  
Ct. App. 2007) (internal quotations and citations omitted)  
(emphasis in original).

Accordingly, because Plaintiffs filed suit before serving  
their notice of claim, Plaintiffs did not comply with Arizona  
Revised Statutes section 12-821.01 and, thus, their state law  
claims are barred. *See Andress v. City of Chandler*, 115, 7  
P.3d 121, 124 (Ariz. Ct. App. 2000) (finding that allowing

1 plaintiff to file their lawsuit before serving public entities or  
2 their employee defendants with a notice of claim “would  
3 clearly defeat the pre-litigation notification and settlement  
4 purposes of the notice of claim statute”); *Arizona Dep’t. of*  
5 *Revenue v. Dougherty*, 29 P.3d 862, 867 (Ariz. 2001) (stating  
6 that “the general claim statute requires exhaustion before  
7 action by making clear that no action may be maintained  
8 against a public entity without first filing a notice of claim.”)  
9 (internal citation omitted).FN1

10  
11 FN1 The following unpublished opinions from  
12 the Arizona Court of Appeals have all reached  
13 the same conclusion: *Goldwater v. Parzych*, No.  
14 CA-CV 07-0060, 2007 WL 5471738, at \*2  
15 (Ariz. Ct. App. Oct. 23, 2007) (holding that  
16 where notice of claim was served after Plaintiff  
17 filed his complaint, Plaintiff’s notice of claim  
18 was untimely as a matter of law and barred by  
19 section 12-821.01 because “Arizona courts have  
20 interpreted the claims statute, in accordance with  
21 the purpose of the statute, to require that a notice  
22 of claim must be filed and rejected by the public  
23 entity or public employee *before* a lawsuit can  
24 be filed.”) (internal citation omitted) (emphasis  
25 in original); *Desert Heritage Ltd. Partnership v.*  
26 *City of Tucson*, No. CA-CV 2009-0176, 2010  
27 WL 1931682, at \*5 (Ariz. Ct. App. May 13,  
28 2010) (reasoning that reading of section 12-  
821.01 that would require parties to file claim  
notices after litigation had begun would  
“render[] meaningless the purpose of § 12-  
821.01”); *Smith v. Johnston*, Nos. 2 CA-CV  
2007-0145, 2 CA CV 2007-0061, 2008 WL  
4292735, at \*3 (Ariz. Ct. App. Sept. 19, 2008)  
(finding that “permitting a plaintiff to use his  
complaint as a notice of claim would wholly  
defeat the [purposes of the] statute”) (internal  
citation omitted).

Although the Court is not permitted to  
rely on these opinions under the Arizona Rules  
of Civil Procedure, the Court adopts the  
underlying reasoning in those opinions as an  
accurate statement of Arizona law.

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2 Accordingly, the state law claims as asserted against  
3 Defendants McLaughlin and Newman for malicious  
4 prosecution, defamation, abuse of process, false light/invasion  
5 of privacy, intentional infliction of emotional distress,  
6 negligent infliction of emotional distress, negligence per se,  
7 and negligence are dismissed.

8 (Doc. 81 at 8-9).

9 Plaintiffs argue that the Court should reconsider its ruling because the “basis for  
10 the Court’s ruling only arose in Defendants’ Reply [and] Plaintiffs had no opportunity to  
11 provide all applicable facts.” (Doc. 85 at 2).

12 While Plaintiffs overstate the extent to which Defendants’ argument was raised for  
13 the first time in reply, the exact nuance of Defendants’ argument that the Court’s ruling  
14 was based on was raised by Defendants as a reply to an argument Plaintiffs made in their  
15 response. Accordingly, the Court will consider Plaintiffs’ arguments that the Court erred  
16 in finding that they did not properly comply with Arizona Revised Statutes section 12-  
17 821.01(A).

18 Plaintiffs argue that they complied with Arizona Revised Statutes section 12-  
19 821.01(A) because they did not serve their original complaint and only served their  
20 amended complaint after their notice of claim was denied. Plaintiffs argue that the plain  
21 language of Arizona Revised Statutes section 12-821.01(A) does not require that the  
22 notice of claim be served and disallowed before a complaint is filed. Plaintiffs further  
23 argue that, by filing an amended complaint after the notice of claim was denied, the  
24 amended complaint superseded the original complaint and, thus, this lawsuit was not  
25 “filed” until the amended complaint was filed. Plaintiffs also argue that the legislative  
26 intent and purpose of the statute were met in this case because Defendants were given  
27 more than 60 days to consider the Bryant’s demand, investigate, budget if necessary, and  
28 settle with the Bryants prior to engaging in any litigation.

29 In Response, Defendants argue that Arizona case law has interpreted the Notice of  
30 Claim statute as requiring that a notice of claim be served and disallowed before a lawsuit

1 is filed. Defendants further argue that there is no substantive difference between  
2 Plaintiffs' original complaint and the amended complaint and, regardless of any  
3 difference, this case was filed before the notice of claim was served and disallowed as  
4 required by Arizona case law.

5 In Reply, Plaintiffs argue that this case is exceptional and they should not be held  
6 to the requirement that a claim must be filed and disallowed before a lawsuit may be  
7 maintained.

8 As noted above, Plaintiffs argue that, by filing an amended complaint after the  
9 notice of claim was denied, the amended complaint superseded the original complaint and,  
10 thus, this lawsuit was not "filed" until the amended complaint was filed. While it is true  
11 that, under federal law, the amended complaint superseded the original complaint, an  
12 amended complaint does not change the filing date of the lawsuit. To hold otherwise  
13 would mean that every time an amended complaint is filed, the Court would have to do a  
14 new statute of limitations analysis for claims asserted in the original complaint and  
15 reasserted in the amended complaint. Plaintiff has cited to no case law, and the Court can  
16 find no case law, where the filing date of the lawsuit is recalculated based on the filing of  
17 an amended complaint. Moreover, Plaintiffs' argument that the date of the lawsuit is  
18 recalculated based on the filing of an amended complaint is belied by their argument that  
19 they filed their original complaint as a placeholder to avoid potential statute of limitations  
20 issues. Accordingly, the date of the filing of the original complaint is the day this lawsuit  
21 was filed.

22 Plaintiffs' argument that the Arizona notice of claim statute does not by its terms  
23 require that the notice of claim be served and disallowed before a lawsuit may be filed is  
24 similarly unpersuasive. As discussed at length in the Court's May 6, 2013 Order,  
25 numerous Arizona cases, including Arizona Supreme Court cases, have interpreted  
26 Arizona's notice of claim statute as requiring a claim to be filed and disallowed before a  
27 lawsuit may be filed. Even if this Court were to disagree with that interpretation, this  
28 Court cannot replace its own opinion for that of the opinion of the Arizona Supreme Court  
interpreting an Arizona statute.

1 Although Plaintiff argues that this case should be an exception to the general rule  
2 that a notice of claim must be served and disallowed before a lawsuit is filed because it  
3 does not implicate the policy reasons behind requiring a notice of claim to be served and  
4 disallowed before filing a lawsuit, as noted in the Court's May 6, 2013 Order, Arizona  
5 courts have been clear that "[f]ailure to comply with the statute is not cured by actual  
6 notice or substantial compliance. Rather, plaintiff's failure bars *any* claim against the  
7 entity or employee." *Harris v. Cochise Health Systems*, 160 P.3d 223, 230 (Ariz. Ct. App.  
8 2007) (internal quotations and citations omitted) (emphasis in original). Accordingly,  
9 Plaintiffs are not entitled to a special exception to the requirements of Arizona Revised  
10 Statutes section 12-821.01(A) in this case.

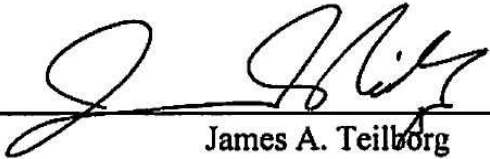
11 **IV. Conclusion**

12 Based on the foregoing,

13 **IT IS ORDERED** that Defendants' Motion to Stay Discovery and Dispositive  
14 Motion Deadline (Doc. 90) is granted in part and denied in part as follows: Defendants'  
15 Motion to Stay this case is denied. **IT IS ORDERED** amending the Court's Scheduling  
16 Order (Doc. 23) as follows: **IT IS ORDERED** that all discovery, including depositions  
17 of parties, witnesses, and experts, answers to interrogatories, and supplements to  
18 interrogatories must be completed by October 30, 2013. **IT IS FURTHER ORDERED**  
19 that all dispositive motions shall be filed no later than December 6, 2013. Such motions  
20 must be, in all respects, in full compliance with the Civil Local Rules.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Reconsideration of the  
22 Court's May 6, 2013 Order or alternatively Rule 60(b) Motion for Relief Reinstating  
23 Some State Claims Against Newman, McLaughlin (Doc. 85) is denied.

24 Dated this 6th day of August, 2013.

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27 James A. Teillborg  
28 Senior United States District Judge