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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Kent Terry, et al.,

9 Plaintiff,

10 v.

11 William Newell, et al.,

12 Defendants.

No. CV-12-02659-PHX-DGC

ORDER

13 On November 15, 2013, the Court granted a motion to dismiss for lack of
14 jurisdiction filed by Defendant Emory Hurley (Doc. 52) and a motion to dismiss for lack
15 of jurisdiction filed by Defendants William Newell, George Gillett, David Voth, Hope
16 McAllister, Tonya English, and William McMahan (Doc. 53). Doc. 68. In light of
17 *Janicki Logging Co. v. Mateer*, 42 F.3d 561 (9th Cir. 1994), the Court concludes that the
18 case should not have been dismissed for lack of jurisdiction. The Court's conclusions
19 regarding the lack of a viable *Bivens* claim were correct, and the claim was properly
20 dismissed, but it should have been dismissed for failure to state a claim. *See id.* at 563
21 (finding that the inability to state a cause of action under *Bivens* does not deprive a
22 district court of jurisdiction). The Court will therefore retain jurisdiction over the
23 remaining state and federal claims and cross-claims asserted by the parties.

24 **IT IS ORDERED** that the Court's order granting Defendants' motions to dismiss
25 (Doc. 68) shall be amended as set forth above.

26 Dated this 7th day of April, 2014.

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David G. Campbell
United States District Judge