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UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Advocates for Individuals with
Disabilities Foundation, Inc.,

No.: CV16-02426-PHX DGC

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Plaintiff,

ORDER

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v.

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Gilbert Plaza Inc.,

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Defendant.

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Plaintiff has filed a Notice of Voluntary Dismissal of Federal Claims Without Prejudice and Motion to Remand. Doc. 8. Plaintiff purports to use Federal Rule of Civil Procedure 41(a)(1)(A)(i) to dismiss its federal claims under the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. (“ADA”). With the basis for this Court’s federal question jurisdiction thus eliminated, Plaintiff asks the Court to remand this case to state court. *Id.*

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The Ninth Circuit has held that Rule 41(a)(1) “does not allow for piecemeal dismissals.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005). “Instead, withdrawals of individual claims against a given defendant are governed by [Rule] 15, which addresses amendments to pleadings.” *Id.* (citing *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988)); *see also Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995) (“[W]e have held that Rule 15, not Rule 41, governs the situation when a party dismisses

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1 some, but not all, of its claims.”) (citations omitted). Thus, ““a plaintiff may not use
2 [Rule 41(a)(1)] to dismiss, unilaterally, a single claim from a multi-claim complaint.””
3 *Hells Canyon*, 403 F.3d at 687 (quoting *Ethridge*, 861 F.2d at 1392). Other circuits
4 agree. See *id.* n.4 (collecting cases); see also S. Gensler, Federal Rules of Civil
5 Procedure, Rules and Commentary, at 1014 (Thomson Reuters 2016) (“[I]f a plaintiff
6 has multiple claims against a defendant and wishes to dismiss one or more – but not all
7 – of those claims, the appropriate procedural mechanism is to file an amended
8 complaint under Rule 15(a).”).¹

9 The Court will disregard Plaintiff’s attempted dismissal of its ADA claim and
10 deny its motion to remand.

11 **IT IS ORDERED** that Plaintiff’s Notice of Voluntary Dismissal of Federal
12 Claims Without Prejudice and Motion to Remand (Doc. 8) is **denied**.

13 Dated this 5th day of August, 2016.

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16 David G. Campbell
17 United States District Judge

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24 ¹ The Ninth Circuit has held that Rule 41(a)(1) permits a plaintiff to dismiss *all* claims
25 against a particular defendant, even if other defendants remain in the case, *Pedrina v.*
26 *Chun*, 987 F.2d 608, 609 (9th Cir. 1993), but that is not what Plaintiff attempts to do
here.