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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
89 Advocates for Individuals with Disabilities
10 Foundation Incorporated,

11 Plaintiff,

12 v.

13 Trailside Center Incorporated,

14 Defendant.

No. CV-16-02427-PHX-JJT

ORDER

15 At issue is Plaintiff's Notice of Voluntary Dismissal of Federal Claims Without
16 Prejudice and Motion to Remand (Doc. 11). Plaintiff purports to use Federal Rule of
17 Civil Procedure 41(a)(1)(A)(i) to dismiss its federal claims under the Americans with
18 Disabilities Act, 42 U.S.C. §§ 12101, et seq. ("ADA"). With the basis for this Court's
19 federal question jurisdiction thus eliminated, Plaintiff asks the Court to remand this case
20 to state court. *Id.*

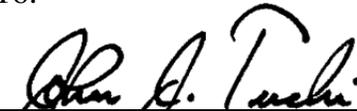
21 The Ninth Circuit has held that Rule 41(a)(1) "does not allow for piecemeal
22 dismissals." *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th
23 Cir. 2005). "Instead, withdrawals of individual claims against a given defendant are
24 governed by [Rule] 15, which addresses amendments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

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

8 The Court will disregard Plaintiff’s attempted dismissal of its ADA claim and
9 deny its Motion to Remand.

10 **IT IS THEREFORE ORDERED** denying Plaintiff’s Notice of Voluntary
11 Dismissal of Federal Claims Without Prejudice and Motion to Remand (Doc. 11).

12 Dated this 5th day of August, 2016.

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15 Honorable John J. Tuchi
16 United States District Judge
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27 ¹ The Ninth Circuit has held that Rule 41(a)(1) permits a plaintiff to dismiss *all*
28 claims against a particular defendant, even if other defendants remain in the case,
Pedrina v. Chun, 987 F.2d 608, 609 (9th Cir. 1993), but that is not what Plaintiff attempts
to do here.