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

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9 Southwest Fair Housing Council  
10 Incorporated, et al.,  
11 Plaintiffs,  
12 v.  
13 Maricopa Domestic Water Improvement  
14 District, et al.,  
15 Defendants.

No. CV-17-01743-PHX-DWL  
**ORDER**

16 Pending before the Court is Plaintiffs' Rule 60(b) motion. (Doc. 114.) As explained  
17 below, the Court is inclined to deny the motion, because it appears unnecessary to achieve  
18 the outcome that Plaintiffs desire, but will allow Plaintiffs to file a supplemental brief by  
19 **April 8, 2020.**

20 **BACKGROUND**

21 Plaintiffs initiated this action in June 2017. (Doc. 1.) They ultimately sued two  
22 defendants, the Maricopa Domestic Water Improvement District ("MDWID") and Pinal  
23 County. (Doc. 40.)

24 In February 2019, Plaintiffs informed the Court they had reached a settlement with  
25 Pinal County. (Doc. 79.)

26 On February 21, 2020, the Court granted MDWID's motion for summary judgment.  
27 (Doc. 111.) Because the Court was under the impression that Plaintiffs' previously  
28 announced settlement with Pinal County disposed of all other claims in the case (*id.* at 16),

1 the Court directed the Clerk to enter judgment and terminate this action. The Clerk did so  
2 the same day. (Doc. 112.)

3 On March 10, 2020, Plaintiffs filed a motion for relief under Rule 60(b). (Doc.  
4 114.) The motion states that Plaintiffs and Pinal County didn't actually finalize their  
5 settlement agreement until March 5, 2020—that is, about two weeks after judgment was  
6 entered—and the settlement agreement contains a clause allowing Plaintiffs to file an  
7 application for attorneys' fees against Pinal County within 35 days of execution (*i.e.*, by  
8 April 9, 2020). (*Id.* at 2-3.) The motion also notes that (1) under the settlement agreement,  
9 Plaintiffs aren't required to formally dismiss their claims against Pinal County until seven  
10 days after resolution of the fee litigation, and (2) the settlement agreement contains a clause  
11 requiring the Court to retain jurisdiction over Pinal County and Plaintiffs for the limited  
12 purpose of enforcing the settlement agreement. (*Id.* at 3.) Thus, Plaintiffs ask the Court to  
13 “reopen[] this case and temporarily set[] aside the judgment . . . to enable plaintiffs and  
14 defendant Pinal County to complete the terms of their settlement.” (*Id.* at 1.)

15 Although Pinal County doesn't oppose Plaintiffs' motion, MDWID does. In a  
16 response filed on March 25, 2020, MDWID argues that (1) Plaintiffs cannot satisfy the  
17 applicable standard for relief under Rule 60(b)(1) (“mistake, inadvertence, surprise, or  
18 excusable neglect”) or Rule 60(b)(6) (“any other reason that justifies relief”), which are the  
19 only two potentially applicable subdivisions of Rule 60(b), because Plaintiffs “delayed for  
20 more than a year to finalize their settlement” with Pinal County and thus knowingly took  
21 on the risk “that the Court would grant the District's motion for summary judgment and  
22 terminate the case,” and (2) granting the motion would cause MDWID to suffer prejudice  
23 in the form of uncertainty as to how long the appellate proceedings may be delayed. (Doc.  
24 118.)

25 In reply, Plaintiffs argue they are entitled to relief under Rule 60(b)(1) and/or Rule  
26 60(b)(6) because “the settlement between plaintiffs and Pinal County was not finalized  
27 until Pinal County exhausted its attempts to reach an agreement with MDWID to reform  
28 its public housing policies, a requirement of the settlement between plaintiffs and Pinal

1 County. For several months, MDWID led plaintiffs and Pinal County to believe that such  
2 a reform agreement was not only acceptable to MDWID, but imminent – until MDWID  
3 disavowed that intention on January 7, 2020.” (Doc. 120 at 2-6.) On this point, Plaintiffs  
4 conclude:

5 Th[e] history of the settlement negotiations amongst the parties reflects that  
6 plaintiffs did not sit on their rights or fail to complete the settlement with  
7 Pinal County because of a lack of diligence. Rather, both plaintiffs and Pinal  
8 County believed that Pinal County could reach agreement with MDWID as  
9 part of their settlement with plaintiffs. The fact that plaintiffs and Pinal  
10 County’s reasonable belief proved mistaken does not support denying  
11 plaintiffs’ motion to reopen the judgment to allow plaintiffs and Pinal County  
12 to conclude the terms of their settlement agreement.

13 (*Id.* at 6.) Finally, as for MDWID’s prejudice argument, Plaintiffs argue that mere delay  
14 in the resolution of proceedings doesn’t constitute cognizable prejudice and it will suffer  
15 real harm if its motion is denied. (*Id.* at 6-7.)

#### 16 **REQUEST FOR SUPPLEMENTAL BRIEFING**

17 Rule 60(b)(6) of the Federal Rules of Civil Procedure provides that “the court may  
18 relieve a party or its legal representative from a final judgment, order, or proceeding  
19 for . . . any other reason that justifies relief.” *Id.* Although “Rule 60(b) vests wide  
20 discretion in courts, . . . relief under Rule 60(b)(6) is available only in ‘extraordinary  
21 circumstances.’ In determining whether extraordinary circumstances are present, a court  
22 may consider a wide range of factors. These may include, in an appropriate case, ‘the risk  
23 of injustice to the parties’ and ‘the risk of undermining the public’s confidence in the  
24 judicial process.’” *Buck v. Davis*, 137 S.Ct. 759, 777-78 (2017) (citations omitted).

25 Here, on the one hand, the Court is inclined to grant relief to Plaintiffs to the extent  
26 judicial action is necessary to avoid injustice and effectuate the settlement agreement. The  
27 Court was under the misimpression at the time it issued its February 21, 2020 order that  
28 Plaintiffs’ settlement with Pinal County was already finalized, Plaintiffs have established  
they were diligently working to finalize the settlement for much of 2019, and, most  
important, MDWID isn’t even a party to the settlement agreement and wouldn’t suffer any

1 cognizable prejudice (beyond, perhaps, some delay in the appellate proceedings) if  
2 Plaintiffs’ motion were granted. Thus, the equities favor Plaintiffs.

3 On the other hand, it’s not entirely clear that the Court needs to vacate the judgment  
4 in order to effectuate the settlement agreement. The primary reason why Plaintiffs seek to  
5 vacate the judgment is so they can litigate their entitlement to attorneys’ fees against Pinal  
6 County. However, attorney-fee litigation typically occurs after the entry of judgment. *See*  
7 Fed. R. Civ. P 54(d)(2)(B) (noting that “the motion [for attorneys’ fees] must . . . be filed  
8 no later than 14 days after the entry of judgment” and must “specify the judgment and the  
9 statute, rule, or other grounds entitling the movant to the award”); LRCiv 54.2(b)(2) &  
10 (c)(1) (same). *See generally Oskowis v. Sedona Oak-Creek Unified Sch. Dist. No. 9*, 2019  
11 WL 1894719, \*3 (D. Ariz. 2019) (stating that because Rule 54(b) requires a party seeking  
12 attorneys’ fees to specify the judgment entitling it to relief, and “[a] movant can’t specify  
13 a judgment that doesn’t exist yet . . . , the best interpretation of Rule 54(d)(2) is that a  
14 motion for attorneys’ fees is premature if a judgment hasn’t been entered”). Thus, even if  
15 the existing judgment remains in place, it doesn’t bar Plaintiffs from moving for attorneys’  
16 fees against Pinal County.<sup>1</sup> Also, although Rule 54(b) and the Local Rules contemplate  
17 that a motion for attorneys’ fees will be filed within 14 days of entry of judgment—  
18 meaning the deadline here was March 6, 2020—those deadlines can be extended and the  
19 Court is willing to extend the deadline here to April 9, 2020 (to match the deadline set forth  
20 in the settlement agreement).

21 The other two reasons why Plaintiffs seek vacatur of the judgment are (1) the  
22 settlement agreement provides that Plaintiffs won’t formally dismiss their claims against

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23 <sup>1</sup> The judgment states that “pursuant to the Court’s Order filed February 21, 2020,  
24 which granted the Motion for Summary Judgment, judgment is entered in favor of  
25 defendant and against plaintiff. Plaintiff to take nothing, and the complaint and action are  
26 dismissed.” (Doc. 112.) At first blush, this wording might suggest that judgment was  
27 entered against Plaintiffs on all of their claims. However, when read in conjunction with  
28 the summary judgment order (which the judgment incorporates by reference), it only  
constitutes an adverse judgment against Plaintiffs as to their claims against MDWID. In  
contrast, the judgment reflects that Plaintiffs’ claims against Pinal County were dismissed  
pursuant to a settlement agreement. *Cf. Barrios v. Cal. Interscholastic Fed’n*, 277 F.3d  
1128, 1134 (9th Cir. 2002) (“Under applicable Ninth Circuit law, a plaintiff ‘prevails’ [for  
purposes of fee litigation] when he or she enters into a legally enforceable settlement  
agreement against the defendant.”).

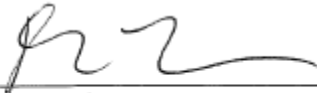
1 Pinal County until after the fee litigation is complete, and (2) Plaintiffs and Pinal County  
2 wish for the Court to retain jurisdiction over them, following settlement, to enforce the  
3 terms of the settlement agreement. The first reason is not compelling. The dispute between  
4 Plaintiffs and Pinal County is effectively over, except for fees, and the usual practice, as  
5 noted above, is to litigate fees after judgment has been entered. It is therefore unclear why  
6 vacating the judgment now—so that Plaintiffs can, weeks or months later, formally move  
7 to re-dismiss the claims that have been already dismissed pursuant to the judgment—is  
8 necessary to avoid injustice and maintain the public’s confidence in the judicial process.

9 As for the second reason, although it’s true that a federal court may retain  
10 jurisdiction over a case that has settled, this is not the usual approach. *Kokkonen v.*  
11 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994) (“[A]utomatic jurisdiction  
12 over such contracts is in no way essential to the conduct of federal-court business. If the  
13 parties *wish* to provide for the court’s enforcement of a dismissal-producing settlement  
14 agreement, they can seek to do so.”). Thus, “if parties wish to have a district court retain  
15 jurisdiction to enforce a settlement, they must apply for that relief and allow the court to  
16 make a reasoned determination as to whether retention is appropriate.” *Cross Media Mktg.*  
17 *Corp. v. Budget Mktg., Inc.*, 319 F. Supp. 2d 482, 483 (S.D.N.Y. 2004). A district court  
18 may “properly decline to retain jurisdiction where the administration of a settlement  
19 threatened to impose undue burdens on it.” *Id.* See also *Camacho v. City of San Luis*, 359  
20 Fed. App’x 794, 798 (9th Cir. 2009) (“[I]t was the court’s prerogative not to retain  
21 jurisdiction over any disputes raised by the [settlement].”). Here, Plaintiffs have not  
22 attempted to explain why the Court’s continued jurisdiction is required, how long they  
23 expect such jurisdiction to be necessary, or why they would be unable to achieve adequate  
24 relief in state court—which is the traditional avenue for seeking relief following the breach  
25 of a contract—should Pinal County renege on its contractual responsibilities under the  
26 settlement agreement. Cf. *Brass Smith, LLC v. RPI Indus., Inc.*, 827 F. Supp. 2d 377, 380-  
27 82 (D.N.J. 2011) (emphasizing that “[a] settlement agreement is a contract, and a dispute  
28 over the settlement agreement is governed by state contract law,” that “[t]he Federal Rules

1 of Civil Procedure and federal case law . . . establish that a court is under no obligation to  
2 retain jurisdiction over a settlement agreement,” and that even if a court chooses in its  
3 discretion to retain jurisdiction, “there is no authority that states that a court shall exercise  
4 jurisdiction indefinitely”). Thus, it is doubtful that this rationale supports relief under Rule  
5 60(b)(6).

6 For all of these reasons, the Court is inclined to deny Plaintiffs’ Rule 60(b) motion,  
7 to the extent it seeks vacatur of the judgment entered on February 21, 2020, but clarify that  
8 Plaintiffs have until **April 9, 2020** to file an application for attorneys’ fees against Pinal  
9 County. Nevertheless, because this order addresses some topics and considerations that  
10 weren’t addressed in the parties’ motion papers, the Court will afford Plaintiffs an  
11 opportunity to respond. Plaintiffs may file an optional supplemental brief by **April 8, 2020**.  
12 If no such brief is filed, the Court will enter an order denying the Rule 60(b) motion but  
13 clarifying that the deadline for Plaintiffs’ application for attorneys’ fees against Pinal  
14 County has been extended to April 9, 2020.

15 Dated this 3rd day of April, 2020.

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20 Dominic W. Lanza  
21 United States District Judge

22 Cc: 9th Circuit Court of Appeals  
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