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

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10 Wesley Simmons and Sharon Simmons,)
husband and wife,)
11)
12 Plaintiffs,)
13 vs.)
14 Navajo County, et al.,)
15 Defendants.)
16 _____)

No. CV-06-701-PCT-DGC

ORDER

17 In an order dated February 6, 2008, the Court granted summary judgment in favor of
18 Defendants. Doc. 196. The Clerk entered judgment the same day. Doc. 197. Plaintiffs
19 appealed (Doc. 199), and in an opinion filed June 23, 2010, the Ninth Circuit vacated this
20 Court’s summary judgment order as to the state claims but affirmed in all other respects
21 (Doc. 205-1). The mandate issued July 15, 2010. Doc. 205.

22 Plaintiffs have filed a motion to set aside judgment. Doc. 206. The motion is fully
23 briefed. Docs. 207, 208. Oral argument has not been requested. For reasons stated below,
24 the Court will vacate the judgment as to the state claims and remand the case to state court.

25 Plaintiffs claim that negligence and civil rights violations caused their son’s death
26 while he was detained at the Navajo County Jail. Plaintiffs filed suit in state court against
27 Navajo County and its Board of Supervisors, the County Sheriff, nine officers employed at
28 the jail, and jail medical staff personnel. Doc. 1 at 8-28. Counts one through six of the

1 complaint assert state law negligence claims (*id.* ¶¶ 88-99), counts seven through nine assert
2 constitutional violations under 42 U.S.C. § 1983 (*id.* ¶¶ 100-06), and counts ten and eleven
3 assert claims of disability discrimination under the ADA and state law (*id.* ¶¶ 107-14).
4 Defendants removed the case to this Court on the basis of federal question jurisdiction.
5 Doc. 1 at 1-3.

6 The Court granted summary judgment in favor of Defendants Stump, Robinson,
7 Ratcliff, Nabors, Crandell, and Peterson on the ground that Plaintiffs had made no showing
8 of a triable issue with respect to the alleged liability of those officers. Doc. 196 at 2-3.
9 Plaintiffs did not appeal this aspect of the Court’s order, nor do they argue that the judgment
10 should be vacated in this regard. *See* Docs. 207 at 2, 208 at 2.¹

11 The Ninth Circuit affirmed the grant of summary judgment on the section 1983 claims
12 (Doc. 205-1 at 8-15) and the ADA disability discrimination claim (*id.* at 15-18). The
13 judgment in favor of Defendants on those claims will not be vacated.

14 The Court granted summary judgment on the remaining state law claims on the
15 ground that Plaintiffs’ notice of claim was legally deficient under A.R.S. § 12-821.01 in that
16 it failed to provide sufficient facts supporting the request for \$20,000,000. Doc. 196 at 4-6.
17 After the Court’s decision, the Arizona Supreme Court clarified the standard for determining
18 whether a plaintiff’s notice of claim has sufficiently alleged factual support for the claimed
19 amount. *See Backus v. State of Arizona*, 203 P.3d 499, 505 (Ariz. 2009) (en banc). The
20 Ninth Circuit, therefore, vacated the Court’s summary judgment order as to the state claims
21 and remanded for reconsideration in light of *Backus*. Doc. 205-1 at 20. The Court concludes
22 that the corresponding judgment should likewise be vacated. The Court will vacate the
23 judgment to the extent it applies to the state claims.

24 In remanding the case, the Ninth Circuit stated that should the Court “decline to
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26 ¹The Ninth Circuit opinion does not address this part of the summary judgment order,
27 noting instead that “Officers Stump, Robinson, Ratcliff, Nabors, Crandell, and Peterson . . .
28 were initially named in the complaint but dismissed from suit prior to summary judgment.”
Doc. 205-1 at 6 n.1.

1 exercise supplemental jurisdiction over the state law claims, it may remand those claims to
2 state court for further proceedings, including the application of *Backus* in the first instance.”
3 *Id.* With the elimination of federal claims, the basis for this Court’s federal question
4 jurisdiction no longer exists. Under the relevant statute, 28 U.S.C. § 1367(c)(3), the Court
5 may decline to exercise supplemental jurisdiction over the remaining state claims. The
6 Supreme Court has instructed that “in the usual case in which all federal-law claims are
7 eliminated before trial, the balance of factors . . . will point toward declining to exercise
8 jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S.
9 343, 350 n. 7 (1988) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726
10 (1966)).

11 The Court concludes that this action should be remanded. Only state law claims
12 remain. Resolution of those claims will require application of the Arizona Supreme Court’s
13 decision in *Backus*. Arizona state courts have a greater interest and expertise in resolving
14 state law claims and applying state court decisions. Additionally, remand will benefit the
15 federal system by allowing this Court to devote its scarce resources to resolving federal
16 issues.

17 **IT IS ORDERED:**

- 18 1. Plaintiffs’ motion to set aside judgment (Doc. 206) is **granted in part** and
19 **denied in part.**
- 20 2. The judgment entered on February 6, 2010 (Doc. 197) is **vacated** to the extent
21 it applies to the state law claims asserted by Plaintiffs.
- 22 3. The Clerk is directed to **remand** this action to state court.

23 DATED this 15th day of September, 2010.

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David G. Campbell
28 United States District Judge