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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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10 Tamara Sue DeBinder, et al.)

No. CV 06-1804-PCT-PGR

11 Plaintiffs,)

12 vs.)

ORDER

13 Albertson's, Inc.,dba Sav-On)
14 Drugs, et al.)

15 Defendants.)
16 _____)

17 Currently before the Court is Defendants Clevinger, Vaughan, and City of Bullhead
18 City's (collectively the "Bullhead Defendants") Motion for Rule 54(b) Entry of Judgment.
19 (Doc. 118.) On March 25, 2008, the Court granted the Bullhead Defendants' Motion for
20 Summary Judgment on Plaintiffs' 42 U.S.C. § 1983 claims (Doc. 60) and granted the
21 Bullhead Defendants' Motion to Dismiss state law claims (Doc. 62), thereby disposing of all
22 pending claims against the Bullhead Defendants in their favor.

23 The state law¹ claims against the Bullhead Defendants were resolved as a result of the
24 state statute requiring that Plaintiff serve upon each Bullhead Defendant an effective notice

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26 ¹ As to the federal constitutional claims, it was only against the Bullhead Defendants
27 that such claims were asserted, therefore those claims are necessarily separable. Thus, there
is no just reason for delay for the entry of a final judgment as to the federal claims against
the Bullhead Defendants.

1 of claim. None of the remaining Defendants have any related issues. Rule 54(b) of the
2 Federal Rules of Civil Procedure provides:

3 When an action presents more than one claim for relief — whether as a claim,
4 counterclaim, crossclaim, or third-party claim — or when multiple parties are
5 involved, the court may direct entry of a final judgment as to one or more, but
6 fewer than all, claims or parties **only if the court expressly determines that
7 there is no just reason for delay.** Otherwise, any order or other decision,
however designated, that adjudicates fewer than all the claims or the rights and
liabilities of fewer than all the parties does not end the action as to any of the
claims or parties and may be revised at any time before the entry of a judgment
adjudicating all the claims and all the parties' rights and liabilities.

8 (Emphasis added).

9 It is undisputed that the dismissal of the Bullhead Defendants is a decision that
10 constitutes the “disposition of an individual claim entered in the course of a multiple claims
11 action.” Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 7
12 (1980)(quoting, in part, Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436 (1955). In the
13 event that the Court finds that its Orders of March 25, 2008, resolving the claims against the
14 Bullhead Defendants was final, and there is no cause for just delay, the Court may enter Rule
15 54(b) judgment. Curtiss-Wright, 446 U.S. at 7-8; Fed.R.Civ.P. 54(b).

16 The Curtiss-Wright Court set forth two factors to consider when determining whether
17 to enter Rule 54(b) judgment: (1) whether the claims under review are separable from other
18 claims remaining in the case that have yet to be adjudicated, and (2) whether the nature of
19 the claim already determined was such that no appellate court would be at risk of having to
20 decide the same issue(s) more than once, if a subsequent appeal is filed. Curtiss-Wright, 446
21 U.S. at 8; AmerisourceBergin Corp. V. Dialysist West, Inc., 465 F.3d 946, 954 (9th Cir.
22 2006). It is clear from the Court’s March 25, 2008 Order of dismissal, that the claims under
23 review are separable from the claims remaining in the case. The claims against the Bullhead
24 Defendants were dismissed based on the Arizona notice of claim statute. Under applicable
25 Arizona law, “[b]efore initiating an action for damages against a public entity, a claimant
26 must provide a notice of claim to the entity in compliance with the Arizona Revised Statutes
27

1 section 12-821.01.” Deer Valley Unified School District No. 97 v. Houser, 152 P.3d 490, 491
2 (Ariz. 2007). A.R.S. § 12-821.01(A) states in pertinent part:

3 Persons who have claims against a public entity or a public employee shall file
4 claims with the person or persons authorized to accept service for the public
5 entity or public employee as set forth in the Arizona Rules of Civil Procedure
6 within one hundred eighty days after the cause of action accrues.

7 Failure to comply with the statute bars a plaintiff from pursuing the underlying cause
8 of action. Id.; see Salerno v. Espinoza, 115 P.3d 626, 627-28 (Ariz. Ct. App. 2005)
9 (compliance with the notice of claim statute is mandatory and essential to maintaining an
10 action against a public employee); Crum v. Superior Court, 922 P.2d 1097, 1101 (Ariz. Ct.
11 App. 1996); State v. Barnum, 118 P.2d 1097, 1101 (Ariz. 1941)(state cannot be sued except
12 upon its own terms and conditions). The aforementioned statute is not applicable to the
13 remaining Defendants as they are neither public entities nor public employees. Therefore,
14 the state claims previously dismissed against the Bullhead Defendants, all of which were
15 based on the notice of claim statute, are unequivocally separable from the claims remaining
16 in the case.

17 Furthermore, the state law claims against the Bullhead Defendants were dismissed
18 based on a state statute inapplicable to the remaining Defendants, and the federal claims were
19 asserted solely against the Bullhead Defendants. Consequently, there is no risk that the Court
20 of Appeals will have to decide the same issue more than once, should the Court enter final
21 judgment as to the claims previously dismissed against the Bullhead Defendants, and an
22 appeal is taken. Therefore, the Court finds no just reason for delaying the entry of final
23 judgment as to the Bullhead Defendants.

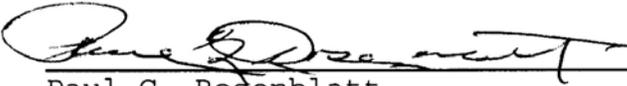
24 Accordingly, the Court will now enter final judgment as to the Bullhead Defendants,
25 as the claims are distinct and separable from the claims against the remaining Defendants and
26 **there is no just reason for delay.**

27 IT IS HEREBY ORDERED **GRANTING** the Bullhead Defendants’ Motion for Rule
54(b) Entry of Judgment. (Doc. 118.)

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IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment accordingly.

DATED this 12th day of November, 2008.



Paul G. Rosenblatt
United States District Judge