

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

LISA MARIE BETZ, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 08-cv-01475-DLR-MJW
)	
DENVER POLICE OFFICER)	
THOMAS BOGERT, et al.,)	
)	
Defendants.)	

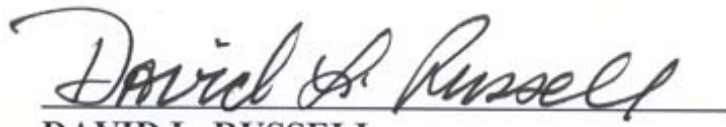
ORDER

Before the Court is Plaintiff’s opposed motion for the Court to amend its August 11, 2009 Order granting in part and denying in part Defendants’ motion for summary judgment. By the motion, Plaintiff seeks an order pursuant to Rule 54(b) certifying that the Court’s Order to the extent it granted the motion for summary judgment of Defendant City and County of Denver is a final order and that there is no just reason to delay review of that order until resolution of the claim against Defendant Thomas Bogert. *See* F.R.Civ.P. 54(b); *Oklahoma Turnpike Authority v. Bruner*, 259 F.3d 1236, 1247 (10th Cir. 2001). Defendant Bogert objects to Plaintiff’s motion.

Plaintiff’s motion for Rule 54(b) certification is DENIED. A “claim comprises ‘all factually or legally connected elements of a case.’” *Jordan v. Pugh*, 425 F.3d 820, 827 (10th Cir. 2005)(*quoting Bruner*, 259 F.3d at 1242). Plaintiff’s claims against Defendant City and County of Denver and Defendant Bogert arise out of the same facts and are both factually and legally connected because the acts or omissions of Defendant City and County of Denver are alleged to have been the cause of an alleged violation of Plaintiff’s constitutional rights

by Defendant Bogert. Hence, the Order granting the summary judgment motion of Defendant City and County of Denver is not final because it did not finally resolve a distinct and separable claim from that unresolved. *See Jordan v. Pugh*, 425 F.3d at 826 (citations omitted). Secondly, there is a just reason for delay. Trial of Plaintiff's § 1983 claim for excessive force against Defendant Bogert is set for October 28, 2009. If Plaintiff's claim against Defendant Bogert is resolved in Defendant Bogert's favor, Plaintiff's claim against Defendant City and County of Denver will be moot.

IT IS SO ORDERED this 22nd day of September, 2009.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE