

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAY 17 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

AREK FRESSADI; FRESSADI DOES I-III,

No. 15-15566

Plaintiffs-Appellants,

v.

D.C. No. 2:14-cv-01231-DJH  
District of Arizona,  
Phoenix

ARIZONA MUNICIPAL RISK  
RETENTION POOL, (AMRRP); et al.,

ORDER

Defendants-Appellees.

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Fressadi's motion to file oversized petitions (Docket Entry No. 137) is granted.

Fressadi's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 138) are denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OCT 26 2017  
MOLLY C. DWYER, CLERK  
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AREK FRESSADI; FRESSADI DOES I-III,

No. 15-15566

Plaintiffs-Appellants,

D.C. No. 2:14-cv-01231-DJH

v.

MEMORANDUM\*

ARIZONA MUNICIPAL RISK  
RETENTION POOL, (AMRRP); et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the District of Arizona  
Diane J. Humetewa, District Judge, Presiding

Submitted October 23, 2017\*\*

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

Arek Fressadi appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal on statute of limitations grounds. *Lukovsky v. City & County of San*

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*Francisco*, 535 F.3d 1044, 1047 (9th Cir. 2008). We affirm.

The district court properly dismissed Fressadi's § 1983 claims because Fressadi failed to file his action within the applicable two-year statute of limitations. *See id.* at 1048 (in § 1983 suits, federal courts use the forum state's statute of limitations for personal injury actions; § 1983 claims accrue when the plaintiff knows or has reason to know of the injury which is the basis of the action); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 974 (9th Cir. 2004) (Arizona provides two-year statute of limitations for personal injury claims).

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Fressadi's state law claims after dismissing Fressadi's federal claims. *See* 28 U.S.C. § 1337(c)(3) (permitting district court to decline supplemental jurisdiction if it has "dismissed all claims over which it has original jurisdiction"); *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1107 (9th Cir. 2010) (standard of review).

The district court did not abuse its discretion in declining to grant Fressadi leave to file an amended complaint. *See Chappel v. Lab. Corp.*, 232 F.3d 719, 725 (9th Cir. 2000) ("A district court acts within its discretion to deny leave to amend when amendment would be futile . . .").

In light of our disposition, we do not consider Fressadi's contentions regarding the merits of his claims.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

State defendant-appellees' request for judicial notice (Docket Entry No. 66) is granted.

Fressadi's motion seeking waiver of the requirement to submit hard copies of his opening brief and reply brief (Docket Entry No. 100) is granted.

Fressadi's motion to file an enlarged reply brief (Docket Entry No. 102) is granted. The Clerk shall file Fressadi's reply brief submitted at Docket Entry No. 103.

All other pending motions and requests (Docket Entry Nos. 38, 53, 54, 55, 56, 86, 101, 111, 119, and 120) are denied.

**AFFIRMED.**

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAY 17 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

AREK FRESSADI; FRESSADI DOES I-III,

No. 15-15566

Plaintiffs-Appellants,

D.C. No. 2:14-cv-01231-DJH  
District of Arizona,  
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v.

ARIZONA MUNICIPAL RISK  
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Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

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1 2 3 4 5

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

9 Arek Fressadi, et al., No. CV-14-01231-PHX-DJH  
10 Plaintiffs,  
11 v. **ORDER**  
12 Arizona Municipal Risk Retention Pool, et  
13 al.,  
14 Defendants.

15        This matter is before the Court on the Motions to Dismiss filed by Defendants  
16      Berk & Moskowitz, P.C. (Doc. 1-5), Cheifetz, Iannitelli Marcolini, P.C. (Doc. 19), Righi  
17      Law Group (Doc. 26), Salvatore and Susan DeVincenzo (Doc. 30), State of Arizona  
18      (Doc. 35), Michele O. Scott (Doc. 38), BMO Harris Bank (Doc. 40), Maricopa County  
19      (Doc. 42), Dickinson Wright PLLC and Mariscal Weeks McIntyre & Friedlander, P.A.  
20      (Doc. 47), Arizona Municipal Risk Retention Pool ("AMRRP") (Doc. 54), Town of Cave  
21      Creek (Doc. 56) and Linda Bentley (Doc. 59). Plaintiff has filed responses to seven of  
22      the motions to dismiss (Docs. 12, 32, 83, 84, 90, 93, and 102). Seven corresponding  
23      replies were filed. (Docs. 13, 41, 88, 89, 104, 106, and 108). A Motion for Summary  
24      Disposition (Doc. 110), Motion to Remand to Superior Court (Doc. 115) and Motion for  
25      Extension of Time to Reply (Doc. 128) are also pending.

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2 **I. Background**

3 Plaintiff Arek Fressadi<sup>1</sup> initiated this action by filing a Verified Complaint in  
4 Maricopa County Superior Court on April 24, 2014. (Doc. 1-1). Plaintiff alleges in the  
5 Complaint that he "constructively acquired" two adjoining parcels of land in the Town of  
6 Cave Creek, identified as parcels 211-10-010 and 211-10-003, which he intended to  
7 develop into several smaller lots. (Doc. 1-1 at 5). Plaintiff does not state when he  
8 acquired the parcels. He alleges that the Town of Cave Creek's Director of Planning  
9 "instigated a fraudulent scheme to cause injury to [his] property and business by telling  
10 [him] to develop the parcels by a series [of] lot splits in lieu of platting a 14-20 unit  
11 subdivision." (*Id.*). Plaintiff claims the Director's scheme provided an advantage to the  
12 Town in that it "avoided the cost and red tape associated with platting a subdivision."  
13 (*Id.*).

14 Plaintiff obtained approval from the Town for a lot split of parcel 211-10-010 into  
15 three smaller parcels but, as part of the approval process, the Town required that a  
16 twenty-five foot strip of land on the parcel be dedicated to it. (Doc. 1-5, Exh. A). The  
17 Town required dedication of an easement over the strip of land to allow for driveways to  
18 the subject lots and for sewer line extensions. (*Id.*). Plaintiff alleges the Town, as part of  
19 its fraudulent scheme, failed to comply with Arizona Revised Statutes (A.R.S.) §§ 9-  
20 500.12 and 9-500.13 in imposing these requirements. (Doc. 1-1 at 5). Those statutes  
21 pertain to appeals of municipal actions, including "[t]he requirement by a city or town of  
22 a dedication or exaction as a condition of granting approval for the use, improvement or  
23 development of real property." A.R.S. § 9-500.12(A). Plaintiff alleges the Town  
24 concealed its failure to comply with the statutes as part of the scheme to cause harm to  
25 Plaintiff's business, reputation and property. (*Id.* at 5-6). Plaintiff further alleges that in  
26 order "[t]o obtain favorable rulings and judgments in a variety of municipal, county, state  
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28 <sup>1</sup> "Fressadi Does I-III" are also listed as plaintiffs in this action, though none has  
been identified.

1 and federal courts (i.e. public agencies) in furtherance of the fraudulent schemes to  
2 control and convert Plaintiff's property, Defendants and their attorneys concealed  
3 material facts and/or law" in violation of legal ethics rules and Arizona criminal statutes.  
4 (Doc. 1-1 at 6).

5 Based on these general allegations, Plaintiff raises ten claims for relief. In his first  
6 claim for relief, Plaintiff requests "special action declaratory relief" and seeks, among  
7 other things, declarations that various acts taken by the Town with respect to the two  
8 parcels of land were in violation of Arizona law and are void, and that prior rulings in  
9 state court cases pertaining to these issues are void (Doc. 1-1 at 6-11).<sup>2</sup>

10 Plaintiff's second cause of action alleges a state law claim for breach of contract.  
11 (Doc. 1-1 at 11-12). Plaintiff claims the Town breached its agreement with him to split  
12 parcel 211-10-010 in to three lots and permit improvements to the lots.

13 In the third claim for relief, Plaintiff alleges federal and state constitutional  
14 violations. He alleges violations of the due process, equal protection and takings clauses  
15 of the United States Constitution pursuant to 42 U.S.C. § 1983, in addition to violations  
16 under the Arizona Constitution. He claims that actions taken by Defendants State of  
17 Arizona, Maricopa County, including several Maricopa County Superior Court judges,  
18 AMRRP, and the Town of Cave Creek were "under color of law." Among other  
19 allegations, he contends his property was taken without compensation and due process.  
20 (Doc. 1-1 at 12-14).

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22       <sup>2</sup> Although it has not been raised by any defendants, and the Court has not relied  
23 on it as a basis for its ruling, the *Rooker-Feldman* doctrine likely deprives this Court of  
24 jurisdiction over several of Plaintiff's claims. "The *Rooker-Feldman* doctrine instructs  
25 that federal district courts are without jurisdiction to hear direct appeals from the  
26 judgments of state courts." *Cooper v. Ramos*, 704 F.3d 772, 777 (9<sup>th</sup> Cir. 2012). The  
27 doctrine "forbids a losing party in state court from filing suit in federal district court  
28 complaining of an injury caused by a state court judgment, and seeking federal court  
review and rejection of that judgment." *Bell v. City of Boise*, 709 F.3d 890, 897 (9<sup>th</sup> Cir.  
2013) (citing *Skinner v. Switzer*, 131 S.Ct. 1289, 1297 (2011)). In his first claim for  
relief, for example, Plaintiff seeks declarations from this Court that several state court  
actions in which he received unfavorable rulings are "void or unlawful." (Doc. 1-1 at 9-  
13. Similarly, Plaintiff challenges the actions of Arizona judicial officers involved in his  
prior state court cases in his third, fourth and fifth claims for relief. (Doc. 1-1 at 15-16,  
21, and 24).

1        In the fourth claim for relief, Plaintiff alleges violations of several Arizona  
2 criminal statutes. He claims the Town of Cave Creek engaged in a fraudulent scheme in  
3 how it handled his lot split. This claim for relief contains numerous other allegations  
4 against several other defendants pertaining to the Town's alleged concealment of its  
5 actions and others' alleged efforts to facilitate the Town's fraudulent scheme. (Doc. 1-1 at  
6 14-22).

7        In the fifth claim for relief, Plaintiff alleges standard negligence. He contends the  
8 Town owed him a duty to comply with state statutes, town codes and ordinances, but  
9 breached its duty by violating them. (Doc. 1-1 at 22-23).

10       In the sixth claim for relief, Plaintiff alleges a breach of the covenant of good faith  
11 and fair dealing implicit in the contracts he had with various defendants. (Doc. 1-1 at 23-  
12 24).

13       In the seventh claim for relief, Plaintiff alleges fraud against several defendants.  
14 He claims they knowingly made material, false representations and failed to disclose  
15 material information. (Doc. 1-1 at 24-26).

16       In the eighth claim for relief, Plaintiff alleges negligent misrepresentation.  
17 Plaintiff alleges that several defendants acted negligently and unreasonably toward him in  
18 their representations to him and in failing to disclose material information to him. (Doc.  
19 1-1 at 26-27).

20       In the ninth claim for relief, Plaintiff seeks rescission and quiet title with respect to  
21 the two referenced parcels of land. He claims that he is the rightful owner and that any  
22 sales of the parcels were based on fraud and misrepresentation. (Doc. 1-1 at 27-30).

23       Lastly, in the tenth claim for relief, Plaintiff alleges that certain defendants  
24 intentionally published articles that portrayed him in a false light. He claims these  
25 actions were taken to damage his business and deprive him of his property. (Doc. 1-1 at  
26 31-32).

27       On June 4, 2014, Defendant BMO Harris Bank filed a Notice of Removal (Doc. 1)  
28 pursuant to 28 U.S.C. §§ 1441 and 1446. According to the Notice of Removal, "this

1 Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331" because  
2 some of Plaintiff's claims arise under the Constitution, laws, or treaties of the United  
3 States. The Notice further states that for those claims over which this Court does not  
4 have original jurisdiction, it has supplemental jurisdiction pursuant to 28 U.S.C. § 1337.

5 **II. Discussion**

6 **A. Plaintiff's Federal Constitutional Claims**

7 As referenced above, Plaintiff's third claim for relief alleges federal constitutional  
8 violations pursuant to 42 U.S.C. § 1983.<sup>3</sup> (Doc. 1-1 at 12-14). Specifically, Plaintiff  
9 appears to allege violations of procedural and substantive due process, equal protection,  
10 and the takings clause. He contends that Defendants State of Arizona, Maricopa County,  
11 including several Maricopa County Superior Court judges, AMRRP, and the Town of  
12 Cave Creek singled him out for disparate treatment, "physically invaded, occupied and  
13 converted [his] property to the Town of Cave Creek, to adjoining property owners, and  
14 Third Parties, falsely arrested [him], detained [him] against his will, issued warrants for  
15 his arrest, and physically injured [him]." (Doc. 1-1 at 13). Plaintiff further contends that  
16 the defendants "deprived [him] of substantive due process and equal protection as  
17 protected by the Constitutions of the United States and Arizona." (*Id.*).

18 **1. Legal Standards**

19 **a. Failure to State a Claim under Rule 12(b)(6)**

20 A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a  
21 complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9<sup>th</sup> Cir. 2003). A complaint  
22 must contain a "short and plain statement showing that the pleader is entitled to relief."  
23 Fed.R.Civ.P. 8(a). "All that is required are sufficient allegations to put defendants fairly  
24 on notice of the claims against them." *McKeever v. Block*, 932 F.2d 795, 798 (9<sup>th</sup> Cir.  
25 1991). The Rule 8 standard reflects a presumption against rejecting complaints for  
26 failure to state a claim and, therefore, motions seeking such relief are disfavored and  
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28 <sup>3</sup> As noted, the third claim for relief also alleges violations of the Arizona Constitution and Arizona statutes. (Doc. 1-1 at 12-14).

1 rarely granted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248-49 (9<sup>th</sup> Cir. 1997). Rule  
2 8, however, requires “more than an unadorned, the-defendant-unlawfully-harmed-me  
3 accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009) (citing *Bell Atlantic Corp. v.*  
4 *Twombly*, 550 U.S. 544, 555 (2007)).

5 A complaint need not contain detailed factual allegations to avoid a Rule 12(b)(6)  
6 dismissal; it simply must plead “enough facts to state a claim to relief that is plausible on  
7 its face.” *Twombly*, 550 U.S. at 570. “A complaint has facial plausibility when the  
8 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
9 the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949 (citing  
10 *Twombly*, 550 U.S. at 556).

11 “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for  
12 more than a sheer possibility that defendant has acted unlawfully.” *Iqbal*, 129 S. Ct. at  
13 1949 (citation omitted). “Where a complaint pleads facts that are ‘merely consistent  
14 with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility  
15 of entitlement to relief.’” *Id.* (citation omitted).

16 In addition, the Court must interpret the facts alleged in the complaint in the light  
17 most favorable to the plaintiff, while also accepting all well-pleaded factual allegations as  
18 true. *Shwarz v. United States*, 234 F.3d 428, 435 (9<sup>th</sup> Cir. 2000). That rule does not  
19 apply, however, to legal conclusions. *Iqbal*, 129 S.Ct. at 1949. A complaint that  
20 provides “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
21 action will not do.” *Twombly*, 550 U.S. at 555. Nor will a complaint suffice if it presents  
22 nothing more than “naked assertions” without “further factual enhancement.” *Id.* at 557.

23 **b. Standards for § 1983 Claims**

24 42 U.S.C. § 1983 allows individuals to recover damages and other relief for  
25 deprivations of constitutional rights that occur under color of state law. *Parratt v. Taylor*,  
26 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S.  
27 327, 330-31 (1986). The elements required to establish a civil rights claim under 42  
28 U.S.C. § 1983 are: “(1) a violation of rights protected by the Constitution or created by

1 federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color  
2 of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991). To state a valid  
3 constitutional claim, a plaintiff must allege that he suffered a specific injury as a result of  
4 the conduct of a particular defendant and he must allege an affirmative link between the  
5 injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377  
6 (1976); *see also Trice v. Modesto City Police Dept.*, 2009 WL 102712, at \*8 (E.D. Cal.  
7 Jan. 14, 2009) (“In order to state a claim for relief under section 1983, plaintiff must link  
8 each named defendant with some affirmative act or omission that demonstrates a  
9 violation of plaintiff’s federal rights.”). A plaintiff must show that a defendant’s  
10 affirmative act, participation in another’s affirmative acts, or omission of an act which he  
11 is legally required to do caused the deprivation of which the plaintiff complains. *Leer v.  
12 Murphy*, 844 F.2d 628, 633 (9<sup>th</sup> Cir. 1988).

13 Municipalities and other local government units are persons to whom § 1983  
14 applies. *Monell v. New York City Dept. of Social Serv.*, 436 U.S. 658, 690 (1978).  
15 However, a local governmental unit may not be held responsible for the acts of its  
16 employees under a *respondeat superior* theory of liability. *See Board of County  
17 Commissioners v. Brown*, 520 U.S. 397, 403 (1997); *Monell*, 436 U.S. at 691. To  
18 establish municipal liability, a plaintiff must go beyond the *respondeat superior* theory of  
19 liability and show that the alleged constitutional deprivation was the product of a policy  
20 or custom of the local governmental unit. *Monell*, 436 U.S. at 690-91. A suit against  
21 municipal employees in their official capacities is simply another way of pleading an  
22 action against the municipal entity. *See Monell*, 436 U.S. at 691 n. 55.

23 **c. Statute of Limitations for § 1983 Claims**

24 A defendant may raise an affirmative defense in a motion to dismiss when the  
25 defense is obvious on the fact of the complaint. *Rivera v. Peri & Sons Farms, Inc.*, 735  
26 F.3d 892, 902 (9<sup>th</sup> Cir. 2013); *see also* 5B Charles Alan Wright & Arthur R. Miller,  
27 Federal Practice and Procedure: Civil § 1357 (3d ed. 1998) (“A complaint showing that  
28 the governing statute of limitations has run on the plaintiff’s claim for relief is the most

1 common situation in which the affirmative defense appears on the face of the pleading  
2 and provides a basis for a motion to dismiss under Rule 12(b)(6)...."). In § 1983 actions,  
3 federal courts borrow the statute of limitations of the forum state for personal injury  
4 actions. *Wallace v. Kato*, 549 U.S. 384, 387; *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th  
5 Cir. 1999). In Arizona, the statute of limitations for personal injury actions is two years  
6 from when the cause of action accrues. *See A.R.S. § 12-542, held unconstitutional for*  
7 *wrongful death actions by Anson v. American Motors Corp.*, 155 Ariz. 420, 426, 747  
8 P.2d 581, 587 (App. 1987); *Madden-Tyler v. Maricopa County*, 189 Ariz. 462, 464, 943  
9 P.2d 822, 824 (App. 1997). “[A] claim generally accrues when a plaintiff knows or has  
10 reason to know of the injury which is the basis of his action.” *Cabrera v. City of*  
11 *Huntington Park*, 159 F.3d 374, 379 (9th Cir. 1998); *see also Manzanita Park, Inc. v.*  
12 *Insurance Co. of North America*, 857 F.2d 549, 557 (9<sup>th</sup> Cir. 1988) (holding that in  
13 Arizona, a cause of action for negligence accrues when the plaintiff knows or should  
14 have known of the defendant's negligent conduct and after plaintiff has suffered actual  
15 injury or damage).

16 **2. Application**

17 Defendants Town of Cave Creek, AMRRP and Maricopa County each argue in  
18 their motions to dismiss that Plaintiff's § 1983 claims should be dismissed for failure to  
19 state a claim and because they are barred by the statute of limitations. (Docs. 42 at 8-9  
20 and 12-15; 54-1 at 5-9; and 56-1 at 10-16). The Court first addresses the statute of  
21 limitations defense.

22 Although Plaintiff conspicuously omits dates from his Complaint, including from  
23 his § 1983 claims, it is clear from the state court actions cited in the Complaint, that his  
24 claims accrued more than two years before he filed the Complaint. As Defendant  
25 Maricopa County asserts in its motion to dismiss, Plaintiff's "Section 1983 claims arising  
26 out of the recordation, assessment and taxation of the lot splits 'as if they [were] lawfully  
27 subdivided' accrued no later than February 10, 2009, and likely much earlier." (Doc. 42  
28 at 9). February 10, 2009 is the date Plaintiff filed a Verified Complaint in Maricopa

1 County Superior Court in Case No. CV2009-050821. (Doc. 42-2). In that Verified  
2 Complaint, Plaintiff claimed the Town of Cave Creek and other defendants violated his  
3 rights by classifying the division of his parcels as a "subdivision" rather than a "lot split."  
4 (Doc. 42-2 at 8, 11-12). Moreover, in the Arizona Court of Appeals decision affirming  
5 the Superior Court's ruling to grant summary judgment for the defendants on statute of  
6 limitations grounds, the factual and procedural history explains how issues surrounding  
7 the division of Plaintiff's parcels of land first arose back in 2002. (Doc. 42-2 at 20-25).  
8 The Court of Appeals explains that in August 2002, the Town of Cave Creek denied  
9 Plaintiff's request to split the second parcel, 211-10-003, because of concerns that a split  
10 of that parcel, combined with the previously approved lot split of the adjacent first parcel,  
11 211-10-010, would result in the creation of a "subdivision," for which Plaintiff had not  
12 met the qualifications. (Doc. 42-2 at 21).

13 Thus, Plaintiff has been disputing the Town of Cave Creek's actions pertaining to  
14 the division of his parcels since as far back as 2002. Plaintiff has therefore known about  
15 the actions that form the basis for his § 1983 claims for years, and even challenged those  
16 actions in at least one prior state court action, as referenced here. The Court has no  
17 difficulty concluding that Plaintiff's § 1983 claims in this lawsuit, all of which pertain to  
18 disagreements over the division of his parcels, are barred by the two year statute of  
19 limitations applicable to such claims.

20 Regardless, even if Plaintiff could somehow establish that any of his § 1983  
21 claims accrued no more than two years before he filed this action, the claims are subject  
22 to dismissal for failure to state a claim. First, throughout most of his third claim for  
23 relief, Plaintiff's allegations are against the "3<sup>rd</sup> Claim Defendants," which Plaintiff  
24 identifies as the State of Arizona, "State Actors of the Judicial Branch of the State of  
25 Arizona," Maricopa County, AMRRP, and the Town of Cave Creek "or its state actors."  
26 By asserting allegations against the "3<sup>rd</sup> Claim Defendants" generally, Plaintiff fails to  
27 link a specifically named defendant with an act or omission that demonstrates a violation  
28 of his constitutional rights. Plaintiff must indicate which defendant committed an act that

1 caused the deprivation of his rights. He has not done so.

2 Moreover, Plaintiff's conclusory allegations of constitutional violations are wholly  
3 unsupported by facts, providing nothing more than "naked assertions" without "further  
4 factual enhancement." *See Twombly*, 550 U.S. at 555. For example, with respect to his  
5 claims for substantive due process and equal protection, Plaintiff simply asserts, "Under  
6 color of law, 3<sup>rd</sup> Claim Defendants deprived [him] of substantive due process and equal  
7 protection as protected by the Constitutions of the United States and Arizona." (Doc. 1-1  
8 at 15). The Court is unable to identify a single federal constitutional claim that is  
9 adequately pled with supporting facts. For these reasons, Plaintiff's federal constitutional  
10 claims pursuant to 42 U.S.C. § 1983, as alleged in his third claim for relief, will be  
11 dismissed from this action.

12 **B. Supplemental Jurisdiction and Remand**

13 As noted above, this case was removed to federal court based on federal question  
14 jurisdiction as a result of Plaintiff's § 1983 claims, and supplemental jurisdiction over the  
15 remaining state law claims pursuant to 28 U.S.C. § 1337. (Doc. 1). However, a district  
16 court may decline to exercise supplemental jurisdiction if it "has dismissed all claims  
17 over which it has original jurisdiction." 28 U.S.C. § 1337(c)(3). The Supreme Court has  
18 recognized that "in the usual case in which all federal-law claims are eliminated before  
19 trial, the balance of factors to be considered under the pendent jurisdiction doctrine –  
20 judicial economy, convenience, fairness, and comity – will point toward declining to  
21 exercise jurisdiction over the remaining state law claims." *Carnegie-Mellon University v.*  
22 *Cohill*, 484 U.S. 343, 350 n.7 (1988).

23 Here, in light of the Court's dismissal of Plaintiff's § 1983 claims, the basis for  
24 federal question jurisdiction no longer exists. The Court therefore finds that this action  
25 should be remanded. Plaintiff's federal claims represent only a small fraction of the  
26 overall number of claims. Because the remaining claims address alleged violations of  
27 Arizona law, Arizona courts have a greater interest and expertise in resolving the claims.  
28 In addition, "remand will benefit the federal system by allowing this Court to devote its

1 scarce resources to resolving federal issues." *See Power Road-Williams Field LLC v.*  
2 *Gilbert*, 14 F.Supp.3d 1304, 1313 (D.Ariz. 2014).

3 Accordingly,

4 **IT IS ORDERED** that the Motions to Dismiss filed by Defendants State of  
5 Arizona (Doc. 35), Maricopa County (Doc. 42), Arizona Municipal Risk Retention Pool  
6 (Doc. 54), and Town of Cave Creek (Doc. 56) are **GRANTED in part** to the extent that  
7 Plaintiff's federal constitutional claims pursuant to 42 U.S.C. § 1983 are **DISMISSED**.

8 **IT IS FURTHER ORDERED** that this case is remanded to Maricopa County  
9 Superior Court.

10 **IT IS FINALLY ORDERED** that Plaintiff's Motion to Remand to Superior Court  
11 (Doc. 115) and Motion for Extension of Time to Reply (Doc. 128) are **DENIED** as moot.

12 Dated this 6th day of February, 2015.

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16 Honorable Diane J. Humentewa  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

9 Arek Fressadi, et al., No. CV-14-01231-PHX-DJH  
10 Plaintiffs,  
11 v. **ORDER**  
12 Arizona Municipal Risk Retention Pool, et  
13 al.,  
14 Defendants.

15 This matter is before the Court on Plaintiff's Motion to Reconsider Court Orders  
16 (Doc. 138). Plaintiff seeks reconsideration of the Court's Order (Doc. 131) dismissing  
17 the § 1983 claims from his Complaint. The Court dismissed the claims because they  
18 were filed after the two year statute of limitations expired and because they failed to state  
19 a claim for relief. The Court then declined to exercise supplemental jurisdiction over the  
20 remaining state law claims and remanded the case to Maricopa County Superior Court.

21 Motions for reconsideration are governed by LRCiv 7.2(g)(1), which provides:

1 argument made by the movant in support of or in opposition  
2 to the motion that resulted in the Order. Failure to comply  
3 with this subsection may be grounds for denial of the motion.

4 Motions for reconsideration should be granted only in rare circumstances.  
5 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995).  
6 “Reconsideration is appropriate if the district court (1) is presented with newly  
7 discovered evidence, (2) committed clear error or the initial decision was manifestly  
8 unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “The purpose of  
9 a motion for reconsideration is to correct manifest errors of law or fact or to present  
10 newly discovered evidence.” *Harsco Corp. v. Zlotnicki* , 779 F.2d 906, 909 (3d  
11 Cir.1985), *cert. denied*, 476 U.S. 1171 (1986). Such motions should not be used for the  
12 purpose of asking a court ““to rethink what the court had already thought through -  
13 rightly or wrongly.”” *Defenders of Wildlife*, 909 F.Supp. at 1351 (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

14  
15 The Court has reviewed Plaintiff's argument that the statute of limitations for his §  
16 1983 claims has not expired. Plaintiff contends the Court erroneously relied on a 2009  
17 state court action to determine when the § 1983 claims accrued. According to Plaintiff,  
18 the rulings in that state court action were obtained by "fraud on the court" and are  
19 therefore void. Plaintiff also disputes the Court's determination that his allegations of  
20 constitutional violations in the Third Claim for Relief were "wholly unsupported by  
21 facts." He argues the Court should have considered facts alleged in other sections of the  
22 Complaint that he says supported his constitutional claims.  
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24 The Court finds Plaintiff has failed to satisfy the standards for reconsideration.  
25 Plaintiff has not presented newly discovered evidence, shown the Court committed clear  
26 error or the initial decision was manifestly unjust, or revealed an intervening change in  
27 controlling law. The Court already considered the issues Plaintiff addresses in his motion  
28 for reconsideration and found that his § 1983 claims are barred by the statute of

1 limitations and that they fail to allege sufficient facts to state claims for relief. Plaintiff  
2 has not demonstrated that this is one of the rare circumstances where a motion for  
3 reconsideration should be granted.

4 Accordingly,

5 **IT IS ORDERED** that Plaintiff's Motion to Reconsider Court Orders (Doc. 138)  
6 is **DENIED**.

7 Dated this 16th day of March, 2015.

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12 Honorable Diane J. Hustedtwa  
13 United States District Judge  
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