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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>DAVID TOMASELLO,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>NORTH ARKANSAS WHOLESale, INC.; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p> |
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No. 07-16704

D.C. No. CV-06-00779-SMM

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted April 15, 2008 **

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

This is an appeal from the district court's order granting defendants' motion to dismiss plaintiff's complaint for failure to state a claim pursuant to Federal Rule

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

of Civil Procedure 12(b)(6).

The court has received and reviewed appellant's response to the court's February 15, 2008 order to show cause and appellees' response thereto. A review of the record and these responses indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we affirm the district court's judgment.

All pending motions are denied as moot.

AFFIRMED.