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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kirk Lankford,

10 Plaintiff,

11 v.

12 Joseph Taylor, et al.,

13 Defendants.
14

No. CV-17-02797-PHX-DWL (JZB)

ORDER

15 On September 23, 2019, the Court issued an order that granted in part, and denied
16 in part, Defendants’ motion for summary judgment. (Doc. 58.) With respect to Count
17 Seven of the complaint—Plaintiff’s claim under Article 2, Section 6 of the Arizona
18 Constitution—the Court noted that the claim as to Defendant Griego was likely improper
19 because the Arizona Supreme Court has never held that a private right of action for
20 damages exists under that provision and because federal courts may decline, in any event,
21 to exercise supplemental jurisdiction over novel issues of state law. (*Id.* at 16-17.)
22 Nevertheless, the Court afforded the parties an opportunity to submit supplemental
23 briefing. (*Id.*)

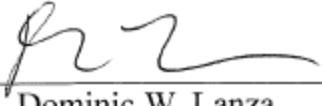
24 Defendant Griego has now submitted a supplemental brief arguing the Court should
25 “decline to exercise supplemental jurisdiction over Count Seven and dismiss it with
26 prejudice.” (Doc. 60 at 2.) Plaintiff did not submit a supplemental brief after receiving
27 several extensions. (Docs. 61, 63.)

28 The Court agrees with Defendant Griego that it should decline to exercise

1 supplemental jurisdiction over Count Seven due to the novelty of the state-law claim.
2 Thus, Count Seven will be dismissed as it pertains to Defendant Griego. However, the
3 Court disagrees with Defendant Griego that the dismissal should be “with prejudice.” A
4 dismissal for lack of jurisdiction is always without prejudice. *Freeman v. Oakland Unified*
5 *Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (“Dismissals for lack of jurisdiction should
6 be without prejudice so that a plaintiff may reassert his claims in a competent court.”)
7 (quotation marks and ellipsis omitted); Fed. R. Civ. P. 41(b) (dismissal for lack of
8 jurisdiction is not “an adjudication on the merits”).

9 Accordingly, **IT IS ORDERED** that Count Seven of the complaint, as it pertains to
10 Defendant Griego, is dismissed for lack of jurisdiction.¹

11 Dated this 10th day of January, 2020.

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16 Dominic W. Lanza
17 United States District Judge
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28 ¹ The Court previously withdrew the reference to the magistrate judge with respect to
Defendants’ motion for summary judgment (Doc. 58 at 20) and this order constitutes a
continuation of the Court’s summary judgment ruling.