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7 UNITED STATES DISTRICT COURT
 8 DISTRICT OF ARIZONA

9 **MARTIN H. ESCOBAR,**
 10 **Plaintiff,**

11 **vs.**

12 **JAN BREWER, Governor of the**
 13 **State of Arizona, in her Official and**
 14 **Individual Capacity; and THE CITY**
 15 **OF TUCSON, a municipal**
 16 **corporation,**

17 **Defendants.**

18 **THE CITY OF TUCSON, a municipal**
 19 **corporation,**

20 **Cross-plaintiff,**

21 **vs.**

22 **THE STATE OF ARIZONA, a body**
 23 **politic; and JAN BREWER, in her**
 24 **capacity as Governor of the State**
 25 **of Arizona,**

26 **Cross-defendants.**

No. CV 10-249 TUC DCB

DEFENDANT/CROSS-CLAIMANT
CITY OF TUCSON'S REPLY IN
SUPPORT OF PLAINTIFF'S
REQUEST FOR TRANSFER AND
CONSOLIDATION

No. CV 10-249 TUC DCB

No. CIV 10-951 PHX ROS

25 Defendant/Cross-claimant, City of Tucson (hereafter the "City"),
 26 submits the following reply in support of Plaintiff's Request for Transfer and
 27 Consolidation.

1 Defendant Brewer's Response to the Plaintiff's Request does not
2 dispute that it is appropriate for this case to be consolidated with the case of
3 *Salgado, et. al. v. Brewer, et al.*, CIV 10-951 PHX ROS. Instead, Defendant
4 Brewer argues that no decision should be made by this Court until there is a
5 decision in one of the other cases filed with the Phoenix courts.
6

7 The City submits that it is a false dichotomy to require a decision by
8 one or the other of the courts. This case will almost inevitably be transferred
9 to Phoenix where the four other cases are located and which is the seat of
10 government for the State.
11

12 That is, however, a separate and distinct issue from the consolidation
13 of this case with the *Salgado* case. This case and *Salgado* have the same
14 attorneys for the plaintiffs and virtually identical complaints with identical legal
15 issues. Both cases have a plaintiff who is a city police officer and cities as
16 defendants. Flagstaff, Arizona, and several other towns have voted to
17 intervene. Tucson expects that motion to be filed in the *Salgado* case which
18 is the appropriate venue for those other cities. These are parallels that do
19 not exist with the other cases and by granting the consolidation there will be a
20 single case that includes all the Arizona cities and towns that are directly
21 involved in the litigation.
22

23
24 These are also parallels that make consolidation as opposed to
25 transfer appropriate. Local Rule 42 recognizes that these are different
26 requests and here consolidation is not as appropriate with the other three
27

1 Phoenix cases as it is with the *Salgado* case. That will remain the case
2 regardless of which judge ultimately handles all of the cases.

3 The consolidation also has real and immediate practical value. A
4 reduction of cases from five to four is still a reduction of cases and reduction
5 in duplication of pleadings and filings. There is also an order for a briefing
6 schedule in *Salgado* on the Plaintiff's brief, which was filed the about the
7 same time as the Plaintiff's brief in this case. Defendant City's and
8 Defendant Brewer's response to that brief essentially be the same as it will
9 be for this case. There is no reason either to duplicate that brief with a
10 different plaintiff's name or delay the filing of the duplicate briefs. There is a
11 short period of time until SB 1070 is scheduled to take effect on July 29,
12 2010. Providing a briefing schedule for even part of the five cases at least
13 establishes some order in the process of reaching a determination on the
14 validity of the law before that date.
15
16
17

18 As noted above, Defendant Brewer does not dispute that the
19 consolidation of this case and *Salgado* is appropriate based upon the
20 common attorneys, facts and defendants.
21

22 The City submits that granting the consolidation of this case with the
23 *Salgado* case will simplify the proceedings in all the cases without prejudging
24

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26 . . .

27 . . .

1 how the cases ultimately should be heard by a single judge. The request for
2 consolidation should therefore be granted.

3
4 Respectfully submitted this 10th day of June, 2010.

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7 MICHAEL G. RANKIN
8 City Attorney

9 By: /s/ Michael W.L. McCrory
10 Michael W.L. McCrory
11 Principal Assistant City Attorney

12 Copies of the foregoing mailed on
13 this 10th day of June, 2010, to:

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8 /s/ Michelle Gensman