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18 *Attorneys for Defendant Janice K. Brewer,*
19 *Governor of the State of Arizona*

20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE DISTRICT OF ARIZONA**

22 Martin H. Escobar,
23
24 Plaintiff,

25 v.

26 Jan Brewer, Governor of the State of
27 Arizona, in her Official and Individual
28 Capacity; the City of Tucson, a
municipal corporation,
Defendants.

The City of Tucson,
Cross-plaintiff,

v.

The State of Arizona, a body politic; and
Jan Brewer, in her capacity as Governor
of the State of Arizona,
Cross-defendants.

Case No. CV10-00249-TUC-DCB

**DEFENDANT JANICE K. BREWER'S
MOTION TO DISMISS**

(All Claims in Her Individual Capacity)

(Oral Argument Requested)

1 Pursuant to Fed. R. Civ. P. 12(b)(6), defendant Janice K. Brewer moves to dismiss
2 all claims plaintiff has asserted against her in her individual capacity.

3 In the First Amended Complaint, plaintiff has sued Ms. Brewer both individually
4 and in her capacity as Governor of Arizona. While Ms. Brewer is a proper defendant in
5 her official capacity as Governor, she should be dismissed as a defendant in her
6 individual capacity because plaintiff's allegations relate only to the Governor acting in
7 her official capacity pursuant to Arizona law. *See* First Am. Compl. ¶¶ 11-19. Plaintiff
8 has not alleged that Ms. Brewer has or will directly participate in any of the alleged
9 constitutional violations, nor has plaintiff alleged any connection between Ms. Brewer's
10 actions outside of her official role as Governor and the issues set forth in the First
11 Amended Complaint.

12 Even if plaintiff had alleged a basis to assert his claims against Ms. Brewer in her
13 individual capacity, Ms. Brewer is entitled to immunity as to plaintiff's claims. *See*
14 *Pearson v. Callahan*, 129 S. Ct. 808, 816, 818 (2009) (qualified immunity is proper in a
15 Section 1983 case if "the facts that a plaintiff has alleged or shown [do not] make out a
16 violation of a constitutional right" *or* if "the right at issue was [not] 'clearly established'
17 at the time of defendant's alleged misconduct") (internal citations omitted). For these
18 reasons, Ms. Brewer respectfully moves the Court to dismiss all claims asserted against
19 her in her individual capacity.
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Respectfully submitted this 23rd day of June, 2010.

SNELL & WILMER L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2010, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record:

s/John J. Bouma

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