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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiff; v. Town of Colorado City, Arizona, *et al.*, Defendants.	No. 3:12cv8123-HRH

UNITED STATES' RESPONSE TO HILDALE DEFENDANTS' MOTION TO DISMISS COMPLAINT OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT

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I. INTRODUCTION

Defendants City of Hildale Utah, Twin City Power, and Twin City Water Authority ("the Hildale Defendants") have collectively moved this Court to dismiss all three of the United States' claims. In the alternative, they move for a more definite statement. The Defendants' motion should be denied in its entirety.

II. BACKGROUND

The United States set forth the procedural background of this action in detail in its response to Defendant Colorado City's similar motion to dismiss and for a more definite statement. United States' Response to Colorado City's Motion for More Definite Statement and Motion to Dismiss at 1-2 ("Response to Colorado City"), ECF No. 26. For brevity's sake, it will not be restated here. The Hildale Defendants also advance many arguments identical to those presented by Colorado City. The United States addressed arguments regarding (1) the absence of an administrative-exhaustion requirement under the Fair Housing Act, (2) title to the Cottonwood Park and Cottonwood Zoo, and (3) the need for a more definite statement, in its Response to Colorado City. The United States incorporates those responses here. *See* Parts III(C)(2), (D) & (E), *infra*.

The Hildale Defendants, however, additionally challenge whether the United States' Complaint alleges sufficient facts under Rule 8. *See Aschcroft v. Iqbal*, 556 U.S. 662 (2009). As detailed below, the United States' 50-paragraph Complaint amply satisfies Rule 8.

The Complaint alleges that Colorado City and Hildale ("the Twin Cities") are two adjoining communities populated primarily by members of the Fundamentalist Church of Jesus Christ of Latter-day Saints ("FLDS"), and that non-FLDS members constitute a

distinct minority. Complaint ¶ 10. It further alleges that the FLDS members are followers of self-proclaimed prophet Warren Jeffs, who is currently incarcerated, and that the FLDS Church, through Mr. Jeffs and other Church leaders, directs the Twin Cities in nearly every aspect of municipal government, including the provision of policing services and housing, and in determining who has access to public facilities. *Id.* at ¶¶ 10, 15. The Complaint describes how the Church's control over the municipalities, their joint police force, the Colorado City Marshal's Office ("CCMO"), and the two utility companies, has led to a range of discriminatory and otherwise unconstitutional practices.

The Complaint divides the Defendants' conduct according to the three counts: (1) the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141(a) ("Section 14141"); (2) the Fair Housing Act, 42 U.S.C. §§ 3601-3619 ("FHA"); and (3) Title III of the Civil Rights Act of 1964, 42 U.S.C. § 2000b ("Title III"). For the Section 14141 claim, the Complaint details practices and incidents that, taken together, comprise a pattern or practice of misconduct by the CCMO in violation of the First, Fourth, and Fourteenth Amendments. These practices include that the CCMO: (1) fails to provide policing services to non-FLDS individuals; (2) selectively enforces laws against non-FLDS individuals; (3) serves as the enforcement arm of the Church; (4) enforces FLDS edicts; (5) fails to cooperate with law enforcement efforts by other offices investigating crimes by FLDS members; (6) arrests non-FLDS individuals without probable cause; (7) deprives individuals of property without due process; and (8) disregards legal rulings that guarantee the rights of non-FLDS individuals. *Id.* at ¶¶ 16-32.

For each practice asserted, the Complaint includes an explanation of how the practice operates. For example, in describing the CCMO's practice of selectively enforcing laws against non-FLDS individuals, the Complaint explains that the CCMO applies trespass and traffic laws differently depending on the religion of the individuals involved. *Id.* at ¶ 17. Additionally, with respect to the allegation that the CCMO serves as the enforcement arm of the Church, the Complaint explains how the CCMO engages in surveillance of non-FLDS individuals on the FLDS Church's behalf; provides training to the FLDS to aid in surveillance of non-FLDS individuals; gives law-enforcement information such as emergency-call information to members of the FLDS security; and runs license-plate information through law-enforcement databases for the FLDS Church. *Id.*

In addition to detailing each of the unconstitutional practices that the CCMO engages in, the Complaint provides support for these factual allegations through the use of specific examples. For instance, in support of the allegation that the CCMO enforces FLDS religious edicts, the Complaint describes an occurrence in 2000 when CCMO deputies were involved in assisting in the return of an underage bride who had fled from her FLDS-husband, and another in 2001, when CCMO deputies participated in the mass slaughter of domestic dogs at the direction of the FLDS leadership. *Id.* at ¶¶ 22-23.

In support of Count Two, the FHA claim, the Complaint alleges that Colorado City engages in a pattern or practice of making housing unavailable to non-FLDS individuals on the basis of religion. *Id.* at ¶ 36. The Complaint describes how the Cities and the utility companies: (1) refuse or delay providing utility services to non-FLDS individuals, while falsely claiming that there is water shortage and providing these

services to similarly-situated FLDS residents, *id.* at ¶¶ 39, 41; and (2) refuse to grant requests to subdivide property because doing so would result in promoting non-FLDS individuals' access to housing, *id.* at ¶ 40.

Finally, to support Count Three, the Title III claim, the Complaint describes how the Cities denied non-FLDS individuals equal access to the Cottonwood Park and Zoo, both of which are public facilities in that the Cities are involved in their operations. *Id.* at ¶¶ 42-43. The Complaint describes a specific incident in which several non-FLDS children were threatened with arrest for playing in the public park. *Id.* at ¶ 45. The Complaint further alleges that since around 2008, the CCMO had a practice of instructing non-FLDS children that they may not play in the public park. *Id.* at ¶ 46. And the Complaint describes how non-FLDS individuals were harassed at the Zoo. *Id.* at ¶ 49.

III. ARGUMENT

A. The Rule 12(b)(6) Standard.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 667 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court accepts "all well-pleaded allegations of material fact as true and construe[s] them in the light most favorable to the nonmoving party." *Sateriale v. R.J. Reynolds Tobacco Co.*, 687 F.3d 1132, 1138 (9th Cir. 2012); *see also Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). The Ninth Circuit summarized the standard after *Iqbal*:

> First, to be entitled to the presumption of truth, allegations in a complaint . . . may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief . . .

1 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). A claim is plausible if "[t]here is no
2 'obvious alternative explanation'" for the misconduct. *Id*. "Plaintiff's complaint may be
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4 dismissed only when defendant's plausible alternative explanation is so convincing that
5 plaintiff's explanation is *im*plausible." *Id.*

6 **B. The United States Stated a Claim Under 42 U.S.C. § 14141.**

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8 The Hildale Defendants move to dismiss the United States' claim under 42 U.S.C.
9 § 14141. They argue that the United States failed to allege sufficient facts that, accepted
10 as true, make out a claim that is plausible on its face. *See* Defendants' Motion at 4-7,
11 ECF No. 21. This Court should reject this argument. The Complaint goes well beyond
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13 conclusory allegations; it provides factual details that, accepted as true, establish that the
14 Hildale Defendants violated Section 14141.

15 Section 14141 makes it unlawful:

16 for any governmental authority, or any agent thereof, or any person acting
17 on behalf of a governmental authority, to engage in a pattern or practice of
18 conduct by law enforcement officers or by officials or employees of any
governmental agency with responsibility for the administration of juvenile
19 justice[1] or the incarceration of juveniles that deprives persons of rights,

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21 [1] Defendants peripherally assert a frivolous argument that Section 14141 applies only
to law-enforcement agencies with responsibility for the administration of juvenile justice.
22 Defendants misread the obvious plain language making it unlawful for "any
23 governmental authority, or any agent thereof . . . to engage in a pattern or practice of
conduct by law enforcement officers *or* by officials . . . with responsibility for the
24 administration of juvenile justice . . . that deprives persons" of rights protected by the
25 Constitution. 42 U.S.C. § 14141(a) (emphasis added). Congress plainly worded Section
14141 in the disjunctive, making it applicable to police officers ***or*** juvenile justice
26 officials. *See also* H.R. Rep. No. 102-242, pt. 1, at 137-39 (1991) (legislative history
explaining Section 14141's purpose was to, among other things, authorize suit against
27 "police departments" for "police misconduct").

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> privileges, or immunities secured or protected by the Constitution or laws of the United States.

42 U.S.C. § 14141(a).

To establish that Hildale violated Section 14141, the United States must show that Hildale, through the CCMO, engaged in a pattern or practice of depriving persons of rights protected by the Constitution or laws of the United States. To establish such a pattern or practice, the United States may show that, through the activities of the CCMO, Hildale's regular practice, or standard operating procedure, was to deny persons such rights. *See*, *e.g.*, *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977) (Title VII) (holding that a pattern or practice is established where there is evidence that discrimination was defendant's standard operating procedure). In establishing a pattern or practice through evidence of instances of discrimination, there is no minimum number of incidents necessary to establish a pattern; even two or three incidents can support a finding of a pattern or practice of unlawful discrimination. *See*, *e.g.*, *United States v. Pelzer Realty Co., Inc.*, 484 F.2d 438, 445 (5th Cir. 1973) (FHA) (finding a pattern or practice of discrimination based on defendants' treatment of two African-American purchasers during the course of one transaction). In the alternative, the United States can establish Section 14141 liability by showing that Hildale had a practice or policy, written or otherwise, that deprives persons of constitutional or federal rights. *See, e.g.*, *Int'l Bhd. of Teamsters*, 431 U.S. at 360 (The United States' initial burden in a pattern or practice

case "is to establish a prima facie case that such a [discriminatory] *policy* existed." (emphasis added)).[2]

The United States has pled sufficient facts that, accepted as true, establish that the City of Hildale, through the CCMO, has engaged in a pattern or practice of misconduct in violation of the First, Fourth, and Fourteenth Amendments and federal law.[3] The Complaint does not "simply recite the elements" of those claims. *Starr*, 652 F.3d at 1216. Rather, it alleges sufficient and detailed facts that establish the particular bases supporting the claim that Defendants violated the Constitution and federal law.

First, the factual allegations are sufficient to state a claim that the Defendants, through the CCMO, violated the First Amendment. The United States alleges that the CCMO violated both the Establishment and Free Exercise Clauses of the First Amendment. Government actions or polices that have the purpose or effect of endorsing or advancing religion violate the Establishment Clause. *See McCreary Cnty. v. ACLU of Kentucky*, 545 U.S. 844, 858-60 (2005); *Trunk v. City of San Diego*, 629 F.3d 1099, 1106 (9th Cir. 2011); s*ee also, e.g.*, *Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982) (invalidating law that delegated veto power to churches over liquor licenses near their premises).

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[2] *See also Johnson v. Hale*, 13 F.3d 1351, 1354 (9th Cir. 1994) (FHA) (finding that the defendant's single statement that she would not rent to black plaintiffs because of their race was "itself confess[ing] a pattern of discrimination"); *Firefighters Inst. for Racial Equal. v. City of St. Louis*, 588 F.2d 235, 239 (8th Cir. 1978) (Title VII) (finding liability in a pattern or practice case based on the existence of a discriminatory policy).

[3] As discussed in Part III.C.1, *infra*, the United States alleges that the CCMO has engaged in a pattern or practice of misconduct that violates the FHA as well as the Constitution.

The facts alleged in the Complaint establish that the Defendants, through the CCMO, have endorsed the FLDS religion. The CCMO has enforced FLDS edicts, Complaint ¶¶ 21-23; selectively enforced laws against non-FLDS individuals, *id.* at ¶ 19; assisted in the surveillance of non-FLDS individuals in connection with FLDS security personnel, *id.*; and taken direction from the FLDS, *id.* at ¶ 25. In short, the facts alleged in the Complaint demonstrate that Defendants' actions, through the CCMO, have the effect of endorsing the FLDS religion and creating a troubling and unconstitutional fusion between religion and the political regime. *See Larkin*, 459 U.S. at 126-27 ("[T]he core rationale underlying the Establishment Clause is preventing 'a fusion of governmental and religious functions.' The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions.") (internal citation omitted).

The facts the Complaint alleges also show a violation of the Free Exercise Clause. "[T]he protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is taken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The Complaint includes several allegations that the CCMO engaged in discriminatory practices against non-FLDS individuals because of their religious beliefs, as well as allegations that the CCMO regulates conduct that does not conform to FLDS beliefs. *E.g.,* Complaint ¶¶ 17, 19, 21-23, 28-32. These alleged facts are sufficient to establish a violation of the Free Exercise Clause.

Second, the Complaint alleges facts sufficient to establish that the CCMO engages in a pattern or practice of violating the Fourth Amendment. Specifically, the Complaint

provides examples of situations where the CCMO arrested non-FLDS individuals without probable cause and seized property without due process of law. Complaint ¶¶ 31-32. These allegations, accepted as true, violate the Fourth Amendment. *See, e.g., Caballero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992) (concluding that an arrest by police without probable cause violates the Fourth Amendment). While the Complaint alleges that the CCMO officers conducted these illegal arrests and seizures of property because of the religious status of those involved, a plaintiff is not required to allege motive in stating a Fourth Amendment claim. *See Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) ("[T]he subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment . . . ; the issue is not his state of mind, but the objective effect of his actions") (quoting *Bond v. United States*, 529 U.S. 334, 338 n.2 (2000)); *Chavez v. United States*, 683 F.3d 1102, 1109 (9th Cir. 2012) ("The Fourth Amendment [ ] does not require a plaintiff to allege that an officer acted with any 'subjective motivation.'"). As such, the Hildale Defendants' argument that the United States failed to state a claim because the facts do not suggest a discriminatory motive on the part of the CCMO officers, while factually incorrect, is also legally without merit. The facts alleged in the Complaint establish that the CCMO officers acted with a discriminatory motive when they arrested persons without probable cause and illegally seized property. Even if they did not, however, the Complaint still adequately asserts facts that, if true, would violate the Fourth Amendment.

Lastly, the allegations in the Complaint sufficiently allege a pattern or practice of misconduct in violation of the Fourteenth Amendment. The Fourteenth Amendment protects the right to have police services administered in a non-discriminatory manner—

"a right that is violated when a state actor denies such protection to disfavored persons." *Elliot-Park v. Manglona*, 592 F.3d 1003, 1007 (9th Cir. 2010) (quoting *Estate of Macias v. Ihde*, 219 F.3d 1018, 1029 (9th Cir. 2000)). Those are precisely the types of allegations raised here. The Complaint asserts that the CCMO discriminates against non-FLDS individuals because of their religion and gives specific instances in which the CCMO failed to provide police services to non-FLDS individuals while providing such services to FLDS individuals, as well as to instances in which the CCMO selectively enforced the law against non-FLDS individuals. Complaint ¶¶ 16, 17 & 49.

Accordingly, this Court should find that the United States has alleged plausible[4] claims of constitutional violations that do "not simply recite the elements" but rather "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," *Starr*, 652 F.3d at 1216, and thus has met the requirements of Rule 8.

C. The United States Stated a Claim Under the Fair Housing Act.

1. <u>The United States' Fair Housing Act Claim Satisfies Rule 12(b)(6).</u>

The Hildale Defendants also move to dismiss the United States' FHA claim on the basis that it too fails to satisfy the standard for sufficiency under Rule 8 set out in *Iqbal*. The United States alleged numerous and specific facts that, taken together, set forth a claim, plausible on its face, that the Hildale Defendants violated the FHA.

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[4] Likewise, the Hildale Defendants have put forth no argument on plausibility, much less suggesting that the claim is "*im*plausible." *Starr*, 652 F.3d at 1217.

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To make out a Section 814(a) claim, the United States may establish either (1) a pattern or practice of conduct in violation of the FHA, or (2) that the Defendants denied rights granted by the FHA to a group of persons. *Id; see also Garcia v. Brockway*, 526 F.3d 456, 460 (9th Cir. 2008). The United States may establish a pattern or practice by showing either that the Hildale Defendants engaged in conduct in violation of the FHA that is widespread,[5] or, as explained in Part III(B) above, that it was the Hildale Defendants' policy to engage in violations of the FHA.[6]

Here, the United States has alleged sufficient facts to support all three methods of establishing a Section 814(a) claim; it has alleged detailed facts that, taken as true, establish: that the Hildale Defendants engaged in widespread violations of the FHA; that it was the Hildale Defendants' policy to violate the FHA; and that the Hildale Defendants denied rights granted by the FHA to a group of persons, *viz*. non-FLDS individuals, where that denial amounts to an issue of general public importance.

Section 804(b) of the FHA states that it shall be unlawful:

> To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(b). Discrimination in the provision of municipal services violates Section 804(b). *Campbell v. City of Berwyn*, 815 F. Supp. 1138, 1143-44 (N.D. Ill. 1993) (allegation that city terminated police protection stated claim under § 3604(b)); *see also*

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[5] *See The Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 701 (9th Cir. 2009).

[6] *See, e.g.*, *Int'l Bhd. of Teamsters*, 431 U.S. at 360.

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United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach, Fla., 493 F.2d 799, 808 (5th Cir. 1974) ("While a city may have no obligation in the first instance to provide services . . . once it begins to do so, it must do so in a racially nondiscriminatory manner").[7]

The facts that the United States pled showing that the Defendants repeatedly violated Section 804(b) by denying services related to housing are sufficient to state a claim under Section 814(a) of the FHA. *See, e.g.*, *Int'l Bhd. of Teamsters*, 431 U.S. at 360. For example, paragraph 37 of the Complaint alleges that the Hildale Defendants provide water services to FLDS members but fail to provide water to non-FLDS individuals, and give a pretextual justification for such disparate treatment. *See* Complaint ¶ 37. Paragraph 38 alleges that the Defendants refused to permit non-FLDS individuals to construct or improve housing, while permitting FLDS members to do so. Similarly, paragraph 41 of the Complaint alleges that the Defendants refused to provide electricity to non-FLDS individuals, while at the same time providing electricity to FLDS members. *Id.* at ¶ 41. Moreover, these allegations are presented in the context of general allegations that the Defendants act in concert with FLDS leadership, *id.* at ¶ 4, and have violated the First Amendment by placing municipal government at the service of the FLDS Church, *id.* at ¶ 5. The Court can thus infer from these facts that the Defendants' alleged actions were taken on the basis of religion. *See, e.g.*, *Reeves v. Sanderson*

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[7] *See also Dunn v. Midwestern Indem., Mid-American Fire and Cas.*, 472 F.Supp. 1106, 1110 (S.D. Ohio 1979) (noting that the phrase "or in the provision of services or facilities" has been broadly construed to encompass municipal services such as sewage treatment).

1 *Plumbing Products, Inc.*, 530 U.S. 133, 146-47 (2000) (collecting cases and noting that a
2 plaintiff can prove discrimination through indirect evidence). Accordingly, the
3 allegations set forth in the Complaint, accepted as true, are more than sufficient to
4 establish discrimination in housing, on the basis of religion, in violation of the FHA.[8]
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6 That the Complaint sufficiently alleges a pattern or practice of violations of the
7 FHA is also evident from a comparison of the United States' Complaint to the one at
8 issue in *Goodwin v. Executive Trustee Servs., LLC*, 680 F. Supp. 2d 1244 (D. Nev. 2010).
9 In *Goodwin*, the court dismissed an FHA claim where the plaintiff, alleging a continuing
10 violation of the FHA, set forth only one incident of discrimination and failed to present
11 any "factual allegations." *Id.* at 1251. The United States' Complaint, by contrast, alleges
12 numerous examples of conduct that violate the FHA. It alleges that the Defendants
13 refused, on the basis of religion to: (1) issue building permits; (2) provide water services;
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17 [8] The United States' Complaint also alleges facts that, accepted as true, establish that the Defendants' pattern or practice of violating the FHA includes violations of Sections 804(a) and 818 of the FHA. Section 804(a) states that it shall be unlawful: "To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, *or otherwise make unavailable or deny*, a dwelling to any person because of . . . religion . . . ." 42 U.S.C. §3604(a). The Defendants' refusal to provide water and electricity violates § 804(a) as well as § 804(b). *See, e.g.*, *Kennedy Park Homes Ass'n, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (municipality violated § 804(a) by refusing to permit sewer hookup).
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22 Section 818 of the FHA provides, "It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title." 42 U.S.C. § 3617. The Ninth Circuit has held that § 818 should be "broadly applied to reach all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws, [ranging] from racially motivated firebombings to exclusionary zoning and insurance redlining." *United States v. City of Hayward*, 36 F.3d 832, 835 (9th Cir. 1994). Thus, the Defendants' alleged refusal to permit land to be subdivided, *see* Complaint ¶ 40, having the effect of preventing the transfer of deeds, violates § 818.
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(3) provide electricity to homes; or (4) subdivide property. Complaint ¶¶ 36-41. It alleges that the Defendants went so far as to refuse to supply electricity connections to non-FLDS individuals, but then supplied connections under the cover of darkness to FLDS members. Complaint ¶ 39. In other words, the Complaint contains more than adequate factual examples to conclude that the Defendants violated Section 814(a).

Finally, the same facts that establish that the Defendants engaged in multiple violations of the FHA also establish that the Defendants repeatedly denied rights to non-FLDS individuals where that denial amounts to an issue of general public importance.[9] The Hildale Defendants' motion to dismiss the United States' FHA claim under Rule 12(b)(6) should, accordingly, be denied.

2. The United States Was Not Required to Exhaust Administrative Remedies.

The Hildale Defendants also maintain that the United States' FHA claim should be dismissed because the United States failed to exhaust its administrative remedies. Here the Hildale Defendants advance the same argument that Colorado City presents in its motion to dismiss. The United States addressed this argument at length in responding to Colorado City's motion to dismiss and incorporates that argument by reference here. *See* Response to Colorado City at 9-14. The United States is not required to exhaust administrative remedies before bringing a claim under Section 814(a). *See United States*

[9] As the United States explained in response to Colorado City's motion to dismiss, the Attorney General's determination that an issue is one of general public importance within the meaning of the FHA is non-justiciable. *See United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 125 n.14 (5th Cir. 1973); *see also United States v. City of Philadelphia*, 838 F. Supp. 223, 227-28 (E.D. Pa. 1993) (collecting cases).

v. Oak Manor Apartments, 11 F. Supp. 2d 1047, 1051 (W.D. Ark. 1998) ("[Section 814(a)] gives the Attorney General independent authority to initiate and pursue a suit without regard to any HUD investigation.").

D. The United States Stated a Claim Under Title III of the 1964 Civil Rights Act.

The Hildale Defendants also move to dismiss Count Three of the United States' Complaint. They present two bases for dismissal, neither of which has merit.

First, the Hildale Defendants present the identical argument advanced by Colorado City, namely, that because no Defendant holds title to the Cottonwood Park and Cottonwood Zoo, then the United States cannot bring a Title III action. For the reasons set forth in the United States' response to Colorado City's motion, this argument is entirely without merit. *See* Response to Colorado City at 13-16. The Hildale Defendants ignore the operative language of Title III, which applies to facilities "owned, *operated, or managed by* or on behalf of any State." 42 U.S.C. § 2000b (emphasis added). Ownership is not dispositive. *See also* Response to Colorado City at 13-16.

Second, the Hildale Defendants contend that Count Three fails to satisfy Rule 12(b)(6). This argument too is without merit. Title III provides, in relevant part, that the United States is entitled to "relief as may be appropriate," when "an individual . . . [has been] deprived of or threatened with the loss of his right to equal protection of the laws, on account of his . . . religion . . . by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof . . . ." 42 U.S.C. § 2000b(a). The allegations in the Complaint, accepted as true, demonstrate that the United States adequately pled a Title III claim.

The Defendants fail to show that the United States' Title III allegations are *im*plausible. *See Starr*, 652 F.3d at 1216. The Complaint alleges that both Cottonwood Park and Zoo are public facilities, as they are owned, operated, or managed by or on behalf of the Twin Cities. Complaint ¶ 43. It then details a specific incident on May 18, 2010, when the CCMO instructed non-FLDS children to leave the park. *Id.* at ¶ 45. It further explains that it has been the practice of the CCMO since 2008 to instruct non-FLDS individuals that they may not play at the park, while allowing FLDS members to play there. *Id.* at ¶ 46. And, it alleges that non-FLDS individuals experience harassment and a withdrawal of police protection when they visit the zoo. *Id.* at ¶¶ 48-49.

These allegations, if true, establish the elements of a claim that the Twin Cities, through the CCMO, violated Title III by denying non-FLDS individuals equal use of the park and zoo.

E. The Defendants' Motion for a More Definite Statement Should be Denied.

Finally, like Colorado City, the Hildale Defendants move, pursuant to Rule 12(e), for a more definite statement. And, like Colorado City, the Hildale Defendants fail to address any of the cases in this District and Circuit that hold that Rule 12(e) motions are disfavored, and should not be used to force plaintiffs to allege specific dates or as a substitute for discovery.[10] For the reasons set forth more fully in Part III(A) of the

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[10] *See Resolution Trust Corp. v. Dean*, 854 F. Supp. 626, 649 (D. Ariz. 1994); *Colonial Sav., FA v. Gulino*, No. 09cv1635, 2010 WL 1996608, at *10 (D. Ariz. May 19, 2010); *Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981); *Osorio v. Tran*, No. 08cv4007, 2008 WL 4963064, at *2 (N.D. Cal. Nov. 19, 2008).

United States' response to Colorado City's motion to dismiss, the Hildale Defendants' Rule 12(e) motion should also be denied.[11]

IV. CONCLUSION

For the foregoing reasons, both the Hildale Defendants' motion to dismiss and their motion for a more definite statement are without merit and should be denied.

Respectfully submitted this 13th day of September, 2012,

THOMAS E. PEREZ
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[11] The Hildale Defendants claim that they need clarification on basic terms used in the Complaint like "traffic stop," "confronted," "responded to," and "withdrew," among others. The Hildale Defendants' request is risible; such terms have a plain and readily ascertainable meaning. They also take issue with the allegations that Cottonwood Park and Zoo are "owned, operated, or managed by the Cities," and request that the United States identify which level of control the Cities have over these facilities. *See* Defendants' Motion at 9. However, a plaintiff is permitted to plead factual allegations in the alternative. Fed. R. Civ. P. 8(d)(2) ("If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient."). Furthermore, to the extent the Hildale Defendants present factual challenges to the United States' allegations, such challenges are not the proper subject of a motion to dismiss. Fed. R. Civ. P. 12(b)(6); *Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).

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/s/ Sean R. Keveney
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CERTIFICATE OF SERVICE

I certify that on September 13, 2012, I filed in *United States v. Town of Colorado City*, No.3:12cv8123 (D. Ariz.), via the Court's ECF system, a copy of the *United States' Response to Hildale Defendants' Motion to Dismiss Complaint or in the Alternative for a More Definite Statement*, which system served a copy of the same on the following ECF participants:

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