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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

CV2010-020375

THE STATE OF ARIZONA *ex rel.* TERRY GODDARD, the Attorney General; and THE CIVIL RIGHTS DIVISION OF THE ARIZONA DEPARTMENT OF LAW, Plaintiff, v. HILDALE-COLORADO CITY UTILITIES; TWIN CITY WATER AUTHORITY; TWIN CITY POWER; CITY OF HILDALE, UTAH; TOWN OF COLORADO CITY, ARIZONA; JOHN DOES I-X; JANE DOES I-X; ABC CORPORATIONS I-X; XYZ LIMITED LIABILITY COMPANIES 1-X; Defendants.	No. **COMPLAINT** (Non-classified Civil)

Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General, and the Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its Complaint, alleges as follows:

INTRODUCTION

The State brings this civil rights action pursuant to the Arizona Fair Housing Act ("AFHA"), A.R.S. §§ 41-1491 to 41.1491.37, to remedy Defendants' discriminatory and unlawful housing practices, provide appropriate relief to aggrieved persons, and vindicate the public interest. Specifically, the State brings this matter to redress the injury sustained by Defendants' violation of the rights of Ronald Cooke ("Cooke"), and denial of and resistance to the full enjoyment of the fair housing rights of other persons who, like Cooke, are not members of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS"), and reside on or have applied to reside on land owned by the United Effort Plan Trust ("UEP") in Colorado City, Arizona, and seek to receive utility services, including new connections to the municipal culinary water system, from Defendants in this predominately FLDS community without discrimination, intimidation or interference based on religion.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this matter pursuant to A.R.S. §§ 41-1491.34(A) and 41-1491.35(A).

2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

PARTIES

3. The Civil Rights Division of the Arizona Department of Law ("the Division") is an administrative agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights Act, A.R.S. § 41-1401, *et seq.*

4. The State brings this action on its own behalf and on behalf of Cooke, his wife, Jinjer Cooke, and their three children (collectively "the Cookes"), and on behalf of other non-FLDS members ("the Applicants") who, like Cooke, applied for occupancy agreements for unfinished housing on UEP land and have either been or expect that they will be injured by Defendants' discrimination in providing utility services, including new connections to the municipal culinary water system, and interference and resistance to their exercise and

enjoyment of rights under the AFHA. The Cookes and the Applicants are aggrieved persons within the meaning of A.R.S. § 41-1491(1)(a).

5. Defendant Town of Colorado City is a municipality of the State of Arizona.

6. Defendant City of Hildale is a municipality of the State of Utah.

7. Defendant Twin City Water Authority ("TCWA") is a Utah non-profit corporation.

8. Defendant Hildale-Colorado City Utilities ("HCC Utilities") is, upon information and belief, an intergovernmental utility entity of the "twin cities" of Defendant Town of Colorado City, Arizona and Defendant City of Hildale, Utah ("the Defendant Municipalities"). Upon information and belief, HCC Utilities administers and provides water, sewer and gas utilities to customers residing in Colorado City and Hildale, and consists of the Hildale-Colorado City Power, Water, Sewer and Gas Department, and Defendant TCWA. HCC Utilities has both a utility board ("the Utility Board") and a water board ("the Water Board"). Upon information and belief, among other things, the Utility Board makes policy recommendations to and follows utility-related resolutions and ordinances adopted by the Defendant Municipalities. Upon information and belief, the Water Board, among other things, makes policy recommendations to and follows water-related resolutions and ordinances adopted by the Defendant Municipalities.

9. Defendant Twin City Power is an intergovernmental entity of the Defendant Municipalities who, upon information and belief, provided electric utility service for Colorado City and Hildale residents and participated in HCC Utilities and the Utility Board until on or about July 2009 when Garkane Energy reacquired the municipal power system and took over responsibility for providing electric utility service in the area.

10. Defendants John Does I-X, Jane Does 1-X, ABC Corporations I-X, and XYZ Limited Liability Companies I-X are persons or entities who, upon information and belief, caused or contributed to the actionable conduct, harm and injuries plead herein, or conspired with other persons to take the actions complained of, and who are therefore liable for the relief

demanded herein, but whose identities are not known to the Plaintiff at this time. The Plaintiff reserves its right pursuant to Rule 10(f), Ariz R.Civ.P., to amend this complaint to add the true names of these defendants when they are discovered.

GENERAL ALLEGATIONS

Background

11. As noted in the following excerpt from a Utah Supreme Court decision, much of the land in Colorado City, Arizona and adjacent Hildale, Utah was settled by a religious group who wanted to continue the practice of plural marriage in an isolated area. The Utah Supreme Court stated, in relevant part:

> Sometime in the late nineteenth century, some members of the Church of Jesus Christ of Latter Day Saints organized a movement called the Priesthood Work ("The Work") to continue the practice of plural marriage outside that church. In the early part of [the twentieth] century, The Work's leadership – The Priesthood Council – decided to settle its membership in an isolated area to avoid interference with their religious practices. In approximately the 1930's, The Work selected an area composed of Hildale, Utah and Colorado City, Arizona – an area now known as Short Creek. The Priesthood Council secured a large tract of land in this area, and adherents of The Work began to settle there. The Work continued to secure additional land in the area. Commonly, its adherents bought land and deeded it to The Work. Eventually, the leadership of The Work formed a trust to hold title to the land. The trust failed, and, for the most part, the land was deeded back to those who contributed it. In 1942, the Priesthood Council signed and recorded in Mohave County, Arizona, a Declaration of Trust for the United Effort Plan. After the Priesthood Council formed the UEP, adherents deeded most of the land that had been held by the first trust to the UEP. Over the years, the UEP acquired more land as adherents obtained and deeded it to the trust. . . . From its inception, the UEP invited members to build their homes on assigned lots on UEP land. Through this system, the UEP intended to localize control over all local real property and to have the religious leaders manage it. Members who built on the trust land were aware that they could not sell or mortgage the land and that they would forfeit their improvements if they left the land. However, the UEP did encourage its members to improve the lots assigned to them and represented that they could live on the land permanently. . . . Sometime during the late 1960's or early 1970's, dissension over a doctrinal issue arose among adherents of The Work, causing a split in the Priesthood Council. The dissension broke into the open in 1984 when adherents of The Work split

> into two groups: One group led by Rulon T. Jeffs ("Jeffs") acquired control of the UEP. A second group, led by J. Marion Hammon and Alma Timpson, includes most of the claimants in the present case [but some complainants claim no affiliation with either group]. In 1986, Jeffs declared that all those living on UEP land were tenants at will. Before this declaration, no one had told the claimants that they were tenants at will. In 1987, the claimants, [including Cooke's brother, Claude "Seth" Cooke] filed an action . . . to determine their rights in the [UEP] property.

Jeffs v. Stubbs, 970 P.2d 1234, 1239-40 (Utah 1998).

12. After the claimants prevailed in *Jeffs v. Stubbs*, an Amended and Restated Declaration of Trust of the United Effort Plan Trust was recorded in Mohave County, Arizona and Washington County, Utah in 1998 ("the 1998 Amendment"). The 1998 Amendment states in relevant part:

> The United Effort Plan is the effort and striving on the part of Church members toward the Holy United Order. This central principle of the Church requires the gathering together of faithful Church members on consecrated and sacred lands to establish as one pure people the Kingdom of God on Earth under the guidance of Priesthood leadership. . . . Consecration of real estate to the United Effort Plan Trust is accomplished by a deed of conveyance. Church members also consecrate their time, talents, money, and materials to the Lord's storehouse, to become the property of the Church and, where appropriate, the United Effort Plan Trust. . . . All consecrations made to or for the benefit of the United Effort Plan are dedicated to the sacred purpose of the United Effort Plan and without any reservation or claim of right and/or ownership. The privilege to participate in the United Effort Plan and live upon the lands and in the buildings of the United Effort Plan Trust is granted, and may be revoked by the Board of Trustees. Those who seek that privilege commit themselves and their families to live their lives according to the principles of the United Effort Plan and the church, and they and their families consent to be governed by the Priesthood leadership and the Board of Trustees. . . .Participants who, in the opinion of the Presidency of the Church, do not honor their commitments to live their lives according to the principles of the United Effort Plan and the Church shall remove themselves from the Trust property and, if they do not, the Board of Trustees may, in its discretion cause their removal.

13. On or about July 2000, the leadership of the local religion, now known as the "FLDS," instructed members that apostates were tools of the devil, and that there were dangers

in associating with apostates, including those who were close family members. The FLDS leadership required FLDS members to "leave apostates alone, severely" so that they would be discouraged and leave UEP land. Those who did not follow this instruction would be asked to leave.

14. On or about January 2004, FLDS leader Warren Jeffs told approximately 21 FLDS men that they had "lost Priesthood," that they should leave UEP land, and that their wives and children had been released from them.

15. By trying to assert control over housing, family relationships and salvation, the FLDS Church placed great pressure on FLDS members to conform and avoid apostates.

16. FLDS control over UEP property changed somewhat in 2005 when a Utah court determined that the existing UEP Trustees had engaged in breach of trust and violation of Utah law and appointed Bruce Wisan ("Wisan") as Special Fiduciary of the UEP.

17. Effective October 25, 2006, the Utah court reformed the UEP based on neutral principles of law rather than religious doctrine or practice. The UEP, as reformed in 2006, is to provide for the just wants and needs of the class of potential trust participants, *i.e.,* those who previously made contributions of property or time, talents or materials to the UEP or to the FLDS Church, and those who subsequently make contributions to the UEP which are approved by the Board, regardless of the potential participants' current religion.

18. When Wisan became the Special Fiduciary of the UEP, dozens of unfinished homes in various stages of completion had been abandoned since late 2002 and were deteriorating. The UEP began working on making housing on UEP land available to potential trust participants regardless of religion and on subdividing the UEP property. To subdivide its land, the UEP needed cooperation from the Defendants, which are composed of FLDS members.

19. Defendants raised concern about connecting water service to properties that had not been previously served with water in the context of discussions with the reformed UEP in

April and May 2007 about subdividing UEP land for distribution to trust beneficiaries, regardless of religion.

20. On or about April 25, 2007 in the context of reviewing a UEP subdivision proposal, Utility Board President Jonathan Fischer stated that additional studies of the water and wastewater systems are needed to determine the actual capacity of the systems.

21. According to a May 18, 2007 report to Defendant Colorado City's Town Council, Colorado City Town Manager David Darger ("Darger") spoke with Wisan about whether there would be roadblocks with water if someone submitted a building permit and Darger responded that he couldn't say yes or no because no study had been done to determine how much water was available although there seemed to be shortages in summer. Darger's report also indicates that Wisan offered on behalf of the UEP to work with the Defendants to help with infrastructure, particularly water.

22. Thereafter, the UEP hired a water engineer and requested records from Defendants to determine how much water was available. A dispute arose as to whether the records had been fully provided to the UEP by Defendant TCWA. On or about February 28, 2008, the UEP sought judicial relief to compel Defendant TCWA to provide subpoenaed water records. The dispute between the UEP and Defendant TCWA over production of water records continued on in Utah courts until approximately May 2010.

23. As of December 2009, the Defendants had not measured the aquifer and had not determined how much water was available for culinary water connections in their municipal water service area.

Ronald Cooke

24. Cooke was born in the Colorado City/Hildale area, and was raised in the FLDS religion. However, Cooke left the FLDS religion at age 18 or 19, and moved to Phoenix to work in construction.

25. In 2005 while doing road work in Phoenix, a large truck hit Cooke and he suffered traumatic brain and spinal cord injury, facial paralysis, and multiple mental and

physical impairments which, according to Cooke and his doctor, substantially and permanently limit him in performing multiple major activities of daily living including but not limited to: walking and balancing, memory and cognition, bladder and bowel function, and breathing.

26. Due to his disabilities, Cooke needs running water to clean catheters, bathe frequently, avoid infection and wash laundry. He also requires reliable electricity to run the electronic medical device that assists him with breathing when he sleeps.

27. Desiring to live near friends and family in Colorado City, Cooke applied to the UEP for suitable, affordable housing for himself, his wife, Jinjer, and their three children. The UEP determined that Cooke was a trust participant due to the past contributions of his time and construction work that Cooke had made to improve UEP property.

28. On or about late 2007 or early 2008, Cooke and his wife looked at numerous vacant UEP properties in Colorado City with Cooke's brother, Seth Cooke, who was also a general contractor and a member of the UEP Housing Advisory Board, before locating an unfinished home at 400 or 420 E. Academy Avenue in Colorado City, Arizona ("the subject property").

29. The subject property was the only available property in UEP inventory in Colorado City at the relevant time that both met Cooke's disability needs and was large enough for his family. Among other things, the subject property had enough bedrooms for the Cookes, was located on a single level without stairs, had wide enough hallways to accommodate his wheelchair and motorized scooter, was unfinished so that a roll in shower and tile floors could be easily installed without retrofitting, and it satisfied anticipated disability-related funding restrictions.

30. On or about February 11, 2008, Cooke entered into an occupancy agreement for the subject property with the UEP, the owner of the subject property. The Cookes planned to move to Colorado City after the children finished school in May, and live in their travel trailer for no more than a month while Seth Cooke completed construction and utilities were hooked up for the home.

Utilities

31. In April or May 2008, representatives of the Defendant Municipalities told Cooke and Seth Cooke that they would not grant a water service connection for the subject property because, due to a water shortage, no new water connections would be provided for property that had never had water service ("new connections"). Water service connections would only be provided to properties which had water service at some time in the past and needed to be reconnected ("existing connections").

32. On or about May 27, 2008, Cooke, Jinjer Cooke, and Seth Cooke met with Darger and Freeman Barlow in the Colorado City Town Hall to discuss getting utilities for the subject property. The Cookes told Darger that Defendant Colorado City had issued a building permit for construction of a home on the subject property in April 2001 for builder Robert Black ("the 2001 building permit"), and that it contains signatures indicating that all utilities, including water, had been approved. The Cookes also stated that under the usual practice, utility hookup and impact fees were paid before issuance of the 2001 building permit. On behalf of Defendant Colorado City, Darger maintained that the 2001 building permit for the subject property had expired because no construction had been done for more than 180 days and, as a result, Cooke would need to obtain a new building permit, submit new construction plans and related documents, and have inspections before getting utilities. The Cookes stated that residents of Colorado City often live in unfinished homes without ever having to get new building permits and that the Cookes shouldn't need a new building permit because they were not changing the footprint of the house, but Darger insisted that the 2001 permit had expired. Darger also refused to give the Cookes a copy of the construction plans on file for the subject property.

33. On or about May 27, 2008, Cooke, Jinjer Cooke, and Seth Cooke also met with Jerry Barlow in the Utility Office of Defendant HCC Utilities, explained Cooke's disability-related need for water service at the subject property, and discussed procedures for getting utility service. Jerry Barlow gave the Cookes a checklist including utility construction

submittal requirements that he said that they would need to submit before obtaining a quote for utilities.

34. In May 2008, Cooke submitted power and sewer utility applications to a lady in the Utility Office, and called for blue staking of utility lines.

35. Thereafter, Defendants took no action on Cooke's utility applications, and did not blue stake to show the location of sewer and water laterals to the subject property.

36. Without approval of utilities for the subject property by Defendants, all five of the Cookes had to live together in their small travel trailer without running water. This was especially difficult due to Cooke's incontinence. Jinjer Cooke and her son had to haul away raw sewage on a regular basis, and had to haul irrigation water and store it in a tank where it would get moldy before the Cookes used it. The Cookes had to rely on a propane fueled generator to power their travel trailer and to run Cooke's electronic breathing machine while he slept. They also had to take their laundry to St. George, Utah every few days because there were no laundromats in the Colorado City or Hildale area.

Request for Reasonable Accommodation

37. On October 24, 2008, with winter approaching, Cooke wrote a letter that was provided to Mayor David Zitting of Defendant City of Hildale. In the letter, Cooke explained his disability-related need for immediate utility service, including a water connection.

38. On or about December 8, 2008, the Cookes submitted a second application for electric power to Defendants.

39. On or about December 8, 2008, Jinjer Cooke went to Jerry Barlow's office with Kristi Bundrick of the Arizona Department of Economic Security Division of Developmental Services to discuss utility service for the Cookes. Jerry Barlow denied receiving the Cookes' May utility applications and stated that the Cookes needed to complete new applications for utilities other than power, complete a utility checklist, and have a utility inspection before they could receive utilities service from Defendants. Jinjer Cooke stated that the Cookes had not received a response to Cooke's October 24, 2008 letter requesting immediate utility service.

Jerry Barlow then advised that the Cookes could not have a water connection because the system was overextended and that Defendants were following a policy of no new water connections since July 2007 when water emergencies had been declared, but that they were still reconnecting existing water connections. Jerry Barlow further stated that determinations of who would receive water connections were not based on engineering or health or safety, only on policy.

40. On or about December 9, 2008, Darger met with Kristi Bundrick about the Cookes' need for water. Darger stated that the Cookes' application for water was not just an isolated instance but rather represented potentially hundreds of applications that would directly impact the current resources. Kristi Bundrick informed Darger that the Cookes believed they were being discriminated against based on religion and planned to file a civil rights complaint.

41. On or about December 9, 2008, Jerry Barlow indicated in his notes that he had received a copy of Cooke's October 24, 2008 letter from Darger about a month earlier and would be responding the following week.

42. On or about December 15, 2009, Jerry Barlow, as Business Manager of Defendant Hildale, responded to Cooke's October 24, 2008 request for reasonable accommodation on behalf of all Defendants. In the letter, Jerry Barlow again stated that the Cookes could not have a water service connection because the water system is overextended and that only properties with existing water connections are being reconnected. As to other utilities, Jerry Barlow again denied having seen the Cookes' May 2008 utility application, and told the Cookes that they had to fill out more utilities applications and have a utility inspection before receiving utilities.

Administrative Fair Housing Investigation

43. On or about December 23, 2008, Cooke filed a timely complaint of housing discrimination with the State's Civil Rights Division ("the Division") pursuant to A.R.S. § 41-1491.22(C), in which he alleged that he had been the victim of disability and religious

discrimination by Defendants. The Division investigated Cooke's complaint pursuant to A.R.S. § 41-1491.24(B).

44. During the Division's investigation, the Defendants acknowledged that they did not have a written policy or ordinance denying new water service connections to properties that have not had water service before, or allowing new water service only to properties that previously had water service.

45. Although the Defendant Municipalities issued declarations of water emergency in July 2007 after a pump failed, the emergency restrictions were in place only for several days until the pump was fixed, and did not ban new water service connections.

46. The April 2007 Water Service Regulations of the Hildale-Colorado City Water Department which govern supply and utilization of water in the area were never amended to ban new water service connections.

47. The November 2008 letter report from Sunrise Engineering, submitted by Defendants, did not recommend banning of new water service connections.

48. Since January 2008, Defendants have provided water service connections to more than 100 properties with existing connections. Based on records provided by Defendants, there are more than 80 other properties with existing water service connections for which Defendants would be willing to provide water service connections, regardless of their alleged water shortage.

49. Defendants have a water line running down Academy Avenue in the vicinity of the subject property, and properties located at 325, 345, and 450 E. Academy Avenue, which are on both sides of the subject property, have had water service connections and are eligible for and/or are already receiving water from Defendants. The subject property is within Defendants' municipal water service area.

50. At a September 14, 2009 public hearing before the Utility and Water Boards to consider a proposed conciliation agreement under which the Cookes were to receive water service, FLDS spokesperson Willie Jessop opposed the agreement, and Robert Black, who had

abandoned the subject property in or about 2002 and admittedly had not requested or received permission from the UEP to occupy the subject property, announced that he had already conferred with Defendants and would be making partial payments on a building permit for the subject property. UEP representative Jethro Barlow also attended the hearing and informed the Boards that Robert Black had abandoned the subject property years earlier, had informed Jethro Barlow in 2005 that he no longer had any interest in the subject property, and currently had no right to the subject property from the UEP which had given an occupancy agreement to Cooke.

51. By resolution dated September 25, 2009, the Utility Board recommended that the Defendant Municipalities not approve a conciliation agreement which would provide Cooke with water service for the following reasons: (1) Defendants had informed Cooke before he moved onto the subject property that water service would not be available under Defendants' policy of not hooking up properties that had not had previous water service; (2) a UEP representative had informed Defendants that the UEP planned to rent out 35 additional lots that had not previously been connected to the culinary water system; (3) the UEP is unwilling to provide assurances that it will discontinue placing individuals in lots which have not previously been connected to the culinary water system; and (4) Defendants considered the Cooke's fair housing complaint as the UEP's attempt to circumvent the Utility Board's unwritten water connection policy.

52. On October 29, 2009, Utility Board President Jonathan Fischer stated under oath to the Division that the Utility Board could not add one new water connection for Cooke because that would have jeopardized the system, but that they would have added the connection for Cooke if the UEP would have made assurance that no new families would be placed in homes not previously connected to the water system.

53. On October 29, 2009, Jerry Barlow testified to the Division that he does not know how many connections can be served based on the current water supply; he does know the system is "maxed out," but Defendants will continue to provide connections to properties

that previously had water connections because that is Utility Board policy. Jerry Barlow also acknowledged that the UEP offered to trade an existing water service connection on UEP land so that Cooke could have a new water service connection for the subject property, but that Defendants refused that offer.

54. Upon information and belief, there are approximately 50 unfinished homes on UEP land which have had building permits from Defendants but have not had connections to the municipal culinary water system, and the majority of those homes are in Colorado City, Arizona. Upon information and belief, the UEP has received applications for occupancy agreements from persons who are not FLDS members and who are seeking to reside in, complete construction, and have utility services, including water connections, provided by Defendants for those unfinished homes.

New Building Permit Issued to Robert Black

55. Despite their belief that the utility hookup and impact fees had already been paid and that the 2001 building permit should have remained in effect under Defendants' usual procedures, on or about October 13, 2009, the Cookes paid utility hookup and deposits and a sewer impact fee to Defendants for the subject property, and tried to reach Darger and Freeman Barlow to get a building permit. On October 14, 2009, Freeman Barlow informed Jinjer Cooke that Defendant Colorado City had already issued a building permit to Robert Black and, for that reason, would not issue a building permit to the Cookes. The Cookes asked if they could have a utility inspection without a building permit, but received no response from Defendants.

56. The 2009 building permit that Defendant Colorado City issued to Robert Black is dated October 13, 2009 and, unlike the 2001 building permit for the subject property, the 2009 building permit bears no signature from the UEP, as property owner.

Expiration of Building Permits

57. The 2001 building permit has a notice indicating that the permit becomes null and void if construction or work is suspended or abandoned for a period of 180 days at any

time after work is commenced. Defendants provided no evidence to the Division that they had ever enforced the 180-day provision before imposing it upon Cooke for the 2001 building permit.

58. Upon information and belief, Colorado City Town Manager and Building Official Darger told UEP representative Jethro Barlow in 2005 that Colorado City had never closed a building permit in the past on "work in progress."

59. Darger confirmed to the Division that people often live in unfinished homes in Colorado City for years during construction without getting new building permits.

60. During its investigation, the Division observed numerous occupied but unfinished homes on UEP property in Colorado City. Despite the common practice of FLDS members living in unfinished homes for years, Defendants had not issued any new building permits from January 1, 2005 through October 1, 2009.

Building Permit and Inspection Requirements

61. In November 2009, Freeman Barlow of the Colorado City Building Department stated under oath that Defendant Colorado City prefers to have a building permit before utility inspections, but that it is not a hard and fast rule.

62. On December 4, 2009, Darger confirmed that Defendant Colorado City has conducted utility inspections before issuance of a building permit and that while it prefers that residents have an inspection before receiving utilities, it does not insist upon it.

Utility Signatures on Building Permit

63. Upon information and belief, at the time that Defendant Colorado City issued the 2001 building permit for the subject property, the usual practice in the Defendant Municipalities was for the builder to pay utility impact and hookup fees to Fred Jessop, who represented both the FLDS Church and the UEP, and then obtain the utility approvals and sign-offs. Upon information and belief, the utility signatures on the 2001 building permit indicate that utilities were approved for the subject property.

New Water Connections for FLDS Housing in Hildale

64. On or about December 28, 2009, the Utility Board held a public hearing to discuss an application by FLDS-owned and operated Twin City Improvement Association to use its canyon irrigation water rights to obtain culinary water hookups for four triplexes being built in Hildale to provide 12 housing units for FLDS members outside of UEP land. This new FLDS housing development did not have prior water utility hookups.

65. At the December 28, 2009 hearing, Jerry Barlow stated that staff had been working with the applicant on the project for a year, and that they had retained a water engineer who studied Utah requirements and made water calculations, and that they had determined that FLDS-controlled Twin City Water Works had sufficient capacity to handle and treat additional irrigation water and convert it to sufficient culinary water for the new FLDS housing development. Jerry Barlow also announced that Defendants' staff had made recommendations and several draft ordinances had previously been distributed to Board members for review.

66. During the hearing, Defendants' water engineer, Brian Zitting, confirmed that Defendants still had not measured the aquifer or otherwise determined the amount of water actually available for culinary water service connections. Brian Zitting also indicated that by issuing building permits, Defendants had become obligated to provide new water connections.

67. The Utility Board approved the proposed new ordinance, resolutions and rate structure for adding new water users to the culinary water system, and accepted the applicant's irrigation water rights to be substituted for culinary water connections. Jerry Barlow noted that it was necessary to approve these measures expeditiously so that water would be available for this new 12-unit FLDS project by its projected completion date in January 2010.

68. Jethro Barlow of the UEP stated at the hearing that the UEP had on many occasions asked Defendants to work with it to develop water for the entire community and had many times offered to discuss with Defendants a methodology of exchanging the same type of irrigation water rights that the Twin City Improvement Association was offering, and that the

UEP had applications from many people who wanted to have water connections, and that the UEP wanted to have the same deal as Twin City Improvement Association. Jethro Barlow also mentioned the Cookes' urgent, longstanding need for water service. Defendants' representatives would not commit that Twin City Water Works would have capacity to treat and store additional water from the UEP and were insulted when Jethro Barlow brought up the Cookes' situation.

Interference with Electric Service

69. Defendants delayed Cooke in obtaining electric service for the subject property for months by failing to act on the Cookes' May and December 2008 utility applications and by requiring Garkane Energy, who had acquired the electric power distribution system in July 2009, to make numerous submittals in order to obtain a right of way access permit to bring electricity to the subject property for the Cookes. Garkane Energy had not experienced this degree of scrutiny from Defendants when previously providing electricity to Colorado City customers.

70. Due to the delays in obtaining electric service, the Cookes spent most of a second winter in their cold travel trailer, relying only on their propane fueled generator. Despite the cold, the Cookes' daughters chose to sleep in the unfinished house on the subject property due to Cooke's disability and the close quarters in the trailer. The Cookes dealt with frozen water pipes, mold, and deterioration of their travel trailer from prolonged use, and Cooke developed a foot infection which required surgery.

Reasonable Cause Determination

71. On April 5, 2010, the Division issued a reasonable cause determination finding that reasonable cause exists to believe that Defendants violated the AFHA by discriminating against Cooke based on disability and religion, and by engaging in a pattern or practice of discrimination based on religion. The Division invited the parties to engage in conciliation efforts in accordance with A.R.S. 41-1491.29(D).

72. Thereafter, on or about April 28, 2010, the parties entered into a tolling agreement to allow the parties adequate time for conciliation discussions and extend the statute of limitations for the State to file an action to enforce the AFHA until June 25, 2010.

Retaliation and Interference

73. On or about May 1, 2010, Robert Black ("Black") went to the subject property with other men and, claiming that the house belonged to him, told the Cookes to evacuate immediately. When the Cookes refused to leave, Black called for assistance from the Colorado City Marshal's Office. Deputy Sam Johnson of the Colorado City Marshal's Office arrived and told the Cookes that Black had a building permit and asked the Cookes to show him papers to prove that they had a legal right to be on the subject property. UEP representative Jethro Barlow arrived and confirmed to Deputy Johnson that the Cookes had an occupancy agreement from the UEP and that Defendant Colorado City already knew that the Cookes had the right to occupy the subject property. Jinjer Cooke told Deputy Johnson that Black was trespassing, but Deputy Johnson advised that Defendant Colorado City's Attorney had instructed him to only take a report. By May 1, 2010, the October 13, 2009 building permit that Defendant Colorado City had issued to Black was more than 180 days old and Black had done no construction on the subject property. Upon information and belief, Defendant Colorado City did not cite Black for trespassing or harassing the Cookes, and did not advise him that his building permit had expired.

74. On or about May 3, 2010, FLDS spokesperson Willie Jessop and Colorado City Building Official Jake Barlow arrived outside the subject property with other men. Later that day, while the Cookes' children were home alone, Black returned to the subject property with representatives of the Colorado City Marshal's Office and the Mohave County Sheriff's Department. Black again claimed to own the house and neighbors came to stay with the Cookes' children until their parents returned home later that night.

75. Due to the series of incidents involving Black and others at the subject property, Jinjer Cooke decided to sleep in the unfinished house with her daughters on the evening of

May 3, 2010. In the early morning hours of May 4, 2010, someone broke into the house while Jinjer and her daughters were sleeping. On May 4, 2010, various vehicles began circling around both sides of the Cookes' house and the Cookes heard gunshots coming from the reservoir in back of their house.

76. On or about June 2, 2010, Scott Jessop, who upon information and belief works for an irrigation company connected to FLDS spokesperson Willie Jessop, showed up at the subject property and stated that he was checking for theft of services. Scott Jessop returned to the subject property shortly thereafter with Deputy Helamon Barlow ("Deputy Barlow") of the Colorado City Marshal's Office, a backhoe, and other men. Deputy Barlow told Seth Cooke that they were going to dig up the front yard of the subject property to check for theft of service of irrigation water. The Cookes had been hauling water for two years and had not used water from the irrigation line that ran across the subject property. Deputy Barlow arrested Seth Cooke for obstruction and theft of services, put him in handcuffs, and placed him in a Colorado City Marshal's Office patrol car. During that incident, Scott Jessop pushed a metal wand into Jinjer Cooke's midsection but did not injure her. Jinjer Cooke asked Deputy Barlow to cite Scott Jessop for assaulting her with his metal wand, but Deputy Barlow refused to do so. UEP representative Jethro Barlow informed Deputy Barlow that there was a civil dispute over ownership of the irrigation water and that the UEP claims it, but Defendant Colorado City arrested Seth Cooke anyway. Upon information and belief, on or about June 23, 2010, the Cookes received a June 2, 2010 invoice from an entity purportedly named South Side Irrigation Co. Inc. for $365 in backhoe and other charges for "disconnecting pipeline in theft of service issue."

77. Since issuance of the reasonable cause determination on April 5, 2010, the State, Cooke and the Defendants have not entered into a conciliation agreement. Having exhausted administrative requirements regarding conciliation, the State is authorized to file this Complaint pursuant to A.R.S. §§ 41-1491.29(D), 41-1491.34(A) and 41-1491.35(A).

COUNT ONE

[Discrimination in Violation of A.R.S. § 41-1491.19 of AFHA]

78 Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 77 of this Complaint.

79. The subject property is a dwelling within the meaning of A.R.S. § 41-1491(7)(a) of AFHA.

80. Cooke is a person with a disability pursuant to A.R.S. § 41-1491(5).

81. Cooke's letter dated October 24, 2008 constituted a disability-related request to Defendants for a reasonable accommodation in Defendants' rules, policies, practices, and services so that Cooke could receive immediate utility service at the subject property.

82. Cooke's requested reasonable accommodation was necessary to afford Cooke an equal opportunity to use and enjoy a dwelling in Colorado City, and did not pose an undue burden for Defendants.

83. By letter dated December 15, 2008, then City of Hildale Business Manager Jerry Barlow, on behalf of all Defendants, refused to grant Cooke's request for reasonable accommodation.

84. Under A.R.S. § 41-1491.19(E)(2), it is discriminatory to refuse to make reasonable accommodations in rules, policies, practices or services if the accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

85. As a result of discrimination by Defendants, the Cookes suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil rights and monetary damages in an amount to be determined at trial.

COUNT TWO

[Discrimination in Violation of A.R.S. § 41-1491.14 (B) of AFHA]

86. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 85 of this Complaint.

87. Cooke is not a member of the FLDS religion and, upon information and belief, is considered an apostate by FLDS members.

88. Defendants HCC Utilities, Colorado City, and Hildale told Cooke that he needed to have a building permit and inspections before Defendants would provide him with utilities for the subject property. Defendants do not require FLDS members to have a building permit and an inspection before Defendants provide them with utilities service at their homes.

89. Defendants HCC Utilities, Colorado City, and Hildale told Cooke that he needed to have a new building permit to obtain utilities from Defendants for the subject property because the original building permit on the subject property had expired 180 days after construction ceased. Defendants do not require FLDS members to have a new building permit to obtain utilities service at their homes based on the 180-day building permit expiration rule.

90. Defendants HCC Utilities, Colorado City and Hildale told Cooke that, due to the 180-day building permit expiration rule, he needed to submit new construction plans, utility and construction submittals, and pay building permit and hookup fees before he could have utilities from Defendants for the subject property. Defendants do not require FLDS members, due to the 180-day building permit expiration rule, to submit new construction plans, utility and construction submittals, and pay building permit and hookup fees before they can have Defendants' utilities service at their homes.

91. Defendants HCC Utilities, Colorado City and Hildale told Cooke that he needed to pay a new sewer impact fee for the subject property to receive sewer services from Defendants. Defendants do not require FLDS members to pay new sewer impact fees when a building permit had already been issued for their properties. Upon information and belief, Defendants did not require Robert Black to pay a new sewer impact fee for the subject property before he received the October 13, 2009 building permit from Defendant Colorado City.

92. Defendants HCC Utilities, Colorado City and Hildale took no action on the Cookes' May and December 2008 applications to receive utilities for the subject property.

Upon information and belief, Defendants do not fail to act on utility applications from FLDS members.

93. Defendants made repeated demands for various submittals from Garkane Energy in connection with a requested right of way access permit to deliver electric service to the subject property for the Cookes. These demands delayed the Cookes in receiving electric service for the subject property for months during the winter of 2009-2010. Upon information and belief, Defendants do not make such demands or impose such close scrutiny with respect to requested right of way access permits to deliver electric service to homes occupied or to be occupied by FLDS members.

94. Defendants discriminated against the Cookes by not providing utility services in connection with the rental of a dwelling because of religion in violation of A.R.S. § 41-1491.14(B) of the AFHA.

95. As a result of Defendants' discrimination, the Cookes suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil rights and monetary damages in an amount to be determined at trial.

COUNT THREE

[Discrimination in Violation of ARS § 41-1491.14 (A) of AFHA]

96. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 95 of this Complaint.

97. As a result of Defendants' discriminatory failure and refusal to provide water and other utilities services to the Cookes at the subject property, Defendants made housing in the home at the subject property unavailable to the Cookes in violation of A.R.S. § 41-1491.14(A), and the Cookes suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil rights and monetary damages in an amount to be determined at trial.

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COUNT FOUR

[Discrimination in Violation of A.R.S. § 41-1491.18 of AFHA]

98. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 97 of this Complaint.

99. Defendants interfered with Cooke's exercise and enjoyment of his right to have equal opportunity to use and enjoy a dwelling without disability discrimination.

100. Defendants interfered with the Cookes' right to have utility services provided without discrimination based on religion in connection with the rental of a dwelling,.

101. Defendants interfered with the Cookes' right not to have a dwelling made unavailable to them based on religion.

102. Defendants retaliated against, interfered with and intimidated Cooke for requesting a reasonable accommodation for his disability and for filing a fair housing complaint, which conduct is protected under the AFHA. In particular, Defendants issued a building permit to Black for the subject property in October 2009 with knowledge that Black had no right to occupy the subject property and that Cooke had permission from the UEP to occupy the subject property. Defendants' issuance of the 2009 building permit to Black interfered with Cooke's ability to get utility inspections for the subject property and falsely empowered Black to come onto the subject property to harass the Cookes in an effort to get them to leave. Thereafter, representatives of Defendant Colorado City Marshal's Office arrived at the subject property on two occasions at Black's behest to investigate the Cookes' right to occupy the subject property, while failing and refusing to cite Black for criminal trespass and harassment.

103. Upon information and belief, Defendants retaliated, intimidated, and interfered with Cooke's enjoyment of the subject property by having Colorado City Marshals arrive at the subject property with a backhoe and no search warrant on June 2, 2010, and arrest, handcuff and place Seth Cooke in a patrol car on charges of theft of irrigation services, when

the Cookes have been hauling their own water for two years and have not used water from the irrigation line.

104. Defendants violated A.R.S. § 41-1491.18 of the AFHA by intimidating, retaliating and/or interfering with the Cookes in the exercise or enjoyment of rights granted or protected by A.R.S. §§ 41-1491.14, 41-1491.18, and 41-1491.19.

105. As a result of Defendants' unlawful conduct, the Cookes suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil rights and monetary damages in an amount to be determined at trial.

COUNT FIVE

[Pattern or Practice in Violation of A.R.S. § 41-1491.35 of AFHA]

106. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 105.

107. Plaintiff has reasonable cause to believe that the Cookes and other non-FLDS persons who reside on or who have applied to reside on or have applied to reside on land owned by the UEP in Colorado City, Arizona and seek to have water connections and other utilities provided by Defendants for housing on UEP property without regard to religion have been denied rights under A.R.S. §§ 41-1491.14 and 41-1491.18 of the AFHA by Defendants, and that denial of rights by municipal defendants raises an issue of general public importance.

108. Plaintiff has reasonable cause to believe that Defendants are engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the AFHA based on religion.

109. As a result of Defendants' unlawful conduct, the Cookes and, upon information and belief, other non-FLDS persons who reside on or who have applied to reside on land owned by the UEP in Colorado City, Arizona and seek to have utility services, including water connections and other utilities, provided by Defendants for housing on UEP property without regard to religion suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil rights, and monetary damages in an amount to be determined at trial, and are entitled to damages under A.R.S. § 41-1491.35(B)(2).

110. To vindicate the public interest, imposition of a civil penalty against Defendants of up to $50,000 for a first violation and up to $100,000 for a subsequent violation is appropriate under A.R.S. § 41-1491.35 of the AFHA.

111. Injunctive and affirmative relief is necessary to assure the full enjoyment of rights granted under A.R.S. § 41-1491.35 of the AFHA.

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendants violated the AFHA by: (1) unlawfully discriminating against the Cookes based on disability and religion and retaliating and interfering with the Cookes for engaging in conduct protected by the AFHA; (2) unlawfully denying rights to the Cookes and other persons who are not FLDS, who reside on or who have applied to reside on land owned by the UEP in Colorado City, Arizona and seek to have utility services, including water connections and other utilities, provided by Defendants for housing on UEP property without regard to religion; and (3) engaging in a pattern or practice of resistance to the full enjoyment of rights granted by the AFHA based on religion.

B. Enjoin Defendants, their successors, assigns and all persons in active concert or participation with Defendants, from engaging in any housing practice that discriminates based upon disability or religion or interferes with the exercise of rights granted by AFHA and order them affirmatively to develop and institute policies of non-discrimination and to have fair housing training, as allowed by A.R.S. §§ 41-1491.34(C) and 41-1491.35(B)(1);

C. Assess a statutory civil penalty against Defendants to vindicate the public interest in an amount that does not exceed fifty thousand dollars ($50,000) for the first violation or one hundred thousand dollars ($100,000) for a second or subsequent violation, pursuant to A.R.S. § 41-1491.35(B)(3);

D. Order Defendants to make the Cookes and any other victims whole for any damages suffered and award damages in an amount to be determined at trial, pursuant to A.R.S. §§ 41-1491.34(C) and 41-1491.35(B)(2);

E. Order Defendants to provide a connection to the municipal culinary water system to Cooke at the subject property, as allowed by A.R.S. §§ 41-1491.34(C) and 41-1491.35(B)(1);

F. Order the State to monitor Defendants' future compliance with AFHA pursuant to A.R.S. §§ 41-1491.34(C) and 41-1491(B)(1);

G. Award the State its costs incurred in bringing this action, and its costs in monitoring Defendants' future compliance with the AFHA, as allowed by A.R.S. §§ 41-1491.34(C) and 41-1491.35(B)(2);

H. Award the State its reasonable attorneys fees, as allowed by § 41-1491.35(B)(2); and

I. Grant such other and further relief as this Court may deem just and proper in the public interest.

DATED this 25th day of June, 2010.

TERRY GODDARD
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