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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ronald Cooke, et al.,

10 Plaintiffs,

11 v.

12 Town of Colorado City, et al.,

13 Defendants.

No. CV-10-08105-PCT-JAT

ORDER

14 Pending before the Court is the State of Arizona’s Motion to Amend the Judgment
15 (Doc. 713). The Court now rules on the motion.

16 **I. Background**

17 During this case, including at trial, Plaintiff-Intervenor State of Arizona (the
18 “State”) alleged three claims against Defendants Town of Colorado City, City of Hildale,
19 Hildale-Colorado City Utilities, Twin City Water Authority, and Twin City Power
20 (collectively, “Defendants”). First, the State claimed that Defendants violated the federal
21 Fair Housing Act (“FFHA”) and the Arizona Fair Housing Act (“AFHA”) by
22 discriminating against Plaintiffs Ron and Jinjer Cooke (the “Cookes”) in the provision of
23 services or facilities because of religion. (Doc. 169 at 24, 25-27). Second, the State
24 claimed that Defendants violated the FFHA and AFHA by retaliating or interfering with
25 the Cookes’ enjoyment of their dwelling because of religion or because of the Cookes’
26 assertions of their rights. (*Id.* at 24, 27-28). Third, the State claimed that Defendants
27 engaged in a pattern or practice of resistance to the full enjoyment of rights granted under
28 the AFHA. (*Id.* at 29).

1 At trial, the Court instructed the jury on all three claims. The Court quotes its
2 previous Order:

3 On March 20, 2014 the jury returned its verdict in this
4 case making the following findings. First, the jury found by a
5 preponderance of the evidence that Defendants¹ violated the
6 federal Fair Housing Act and the Arizona Fair Housing Act
7 by discriminating against the Cookes in the provision of
8 services or facilities because of religion. On this claim, the
9 jury found that Defendants were jointly and severally liable
for damages because they all committed the same unlawful
act as, acted in concert with, or acted as an agent or servant of
another defendant. The jury found the damages to Ron Cooke
to be \$650,000 and the damages to Jinjer Cooke to be
\$650,000.

10 Second, the jury found by a preponderance of the
11 evidence that Defendants violated the federal Fair Housing
12 Act and the Arizona Fair Housing Act by coercing,
13 intimidating, threatening, interfering with, or retaliating
14 against the Cookes in the enjoyment of their dwelling because
15 (1) of religion or (2) the Cookes asserted rights, or
16 encouraged others to assert their rights, protected by the
17 federal Fair Housing Act or the Arizona Fair Housing Act. On
18 this claim, the jury found that Defendants were jointly and
19 severally liable for damages because they all committed the
20 same unlawful act as, acted in concert with, or acted as an
21 agent or servant of another defendant. The jury found the
22 damages to Ron Cooke to be \$1,950,000 and the damages to
Jinjer Cooke to be \$1,950,000.

23 Third, the jury found by a preponderance of the
24 evidence that Defendants violated the Arizona Fair Housing
25 Act by engaging in a pattern or practice of resistance to the
26 full enjoyment of any right granted by the Act.

27 The Court agrees with and adopts the jury's findings in
28 this case as its own. The Court also adopts the jury's advisory
finding with respect to Defendants engaging in a pattern or
practice of resistance to rights protected under the Arizona
Fair Housing Act.

(Doc. 703 at 3-5) (citations and footnotes omitted).

During the process of drafting the subsequent judgment and permanent injunction,
the Court became concerned that the State's pattern-or-practice claim was not an

¹ Because each of the jury's findings included all defendants in this case, the Court uses the term Defendants to refer collectively to the Town of Colorado City, City of Hildale, Hildale-Colorado City Utilities, Twin City Water Authority, and Twin City Power.

1 independent cause of action but merely a procedural mechanism for the State to file a
2 lawsuit and obtain a broader scope of relief than would be available to an individual
3 plaintiff. The Court, without briefing from the parties, found the latter to be true and
4 declined to enter judgment on this claim, explaining its reasoning as follows:

5 At summary judgment and during trial, the Court
6 assumed that the State's pattern-or-practice claim against
7 Defendants was a valid independent cause of action and none
8 of the parties disputed its existence. However, the Court has
9 an independent duty to ensure that it enters judgment
10 according to the law. The Court concludes that there is no
11 independent cause of action for a pattern or practice of
12 discrimination; rather, a showing of pattern or practice
13 establishes the attorney general's standing to sue. This is
14 evident from the plain language of the statute, which recites
15 the requirements for standing but contains no elements of a
16 claim under that section. It is further supported by courts'
17 interpretations of the similar language of the federal Fair
18 Housing Act ("FFHA").

19 The language of the Arizona Fair Housing Act
20 concerning a pattern or practice of discrimination closely
21 tracks that of the FFHA:

22 The attorney general may file a civil action in
23 superior court for appropriate relief if the
24 attorney general has reasonable cause to believe
25 that either:

- 26 1. A person is engaged in a pattern or practice
27 of resistance to the full enjoyment of any right
28 granted by this article.
2. A person has been denied any right granted
by this article and that denial raises an issue of
general public importance.

A.R.S. § 41-1491.35(A).

Whenever the Attorney General has reasonable
cause to believe that any person or group of
persons is engaged in a pattern or practice of
resistance to the full enjoyment of any of the
rights granted by this subchapter, or that any
group of persons has been denied any of the
rights granted by this subchapter and such
denial raises an issue of general public
importance, the Attorney General may
commence a civil action in any appropriate
United States district court.

41 U.S.C. § 3614(a).

1 Courts interpreting the FFHA have held that this
2 provision confers standing to sue upon the attorney general.
3 *See, e.g., United States v. Bob Lawrence Realty, Inc.*, 474
4 F.2d 115, 122 (5th Cir. 1973). The confusion as to whether a
5 pattern or practice claim exists is not uncommon. *See United*
6 *States v. City of Parma, Ohio*, 494 F. Supp. 1049, 1095 (N.D.
7 Ohio 1980); *United States v. Real Estate Dev. Corp.*, 347 F.
8 Supp. 776, 783 (N.D. Miss. 1972). With respect to Title VII,
9 which incorporates a statute very similar to the FFHA and
10 Arizona Fair Housing Act, *see* 42 U.S.C. § 2000e-6(a), the
11 Second Circuit Court of Appeals clarified that language
12 concerning a pattern or practice “simply refers to a method of
13 proof and does not constitute a freestanding cause of
14 action,” *Parisi v. Goldman, Sachs & Co.*, 710 F.3d 483, 487
15 (2d Cir. 2013) (quoting *Chin v. Port Authority of N.Y.*, 685
16 F.3d 135, 148 n.8 (2d Cir. 2012)). Title VII discrimination
17 analysis applies to FFHA discrimination claims. *Harris v.*
18 *Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999).

19 Accordingly, the State’s pattern-or-practice claim
20 against Defendants is not a separate claim and the Court will
21 not enter judgment on it. The jury’s verdict in this regard was
22 advisory and serves to confirm the attorney general’s proper
23 standing to intervene in this case. The Court’s conclusion is
24 of no practical distinction to this case, however, because the
25 State remains as an intervenor-plaintiff on the claims for
26 discrimination in providing services or facilities and for
27 intimidation or interference with rights. A.R.S. § 41-1491.35
28 permits the Court to award relief to the State in this action
because the State intervened under that statute.

(*Id.* at 4 n.3).

The State now moves pursuant to Federal Rule of Civil Procedure (“Rule”) 59(e) to amend the Court’s Judgment and Permanent Injunction filed at Doc. 704. (Doc. 713 at 1). The State asserts that the Court erred in declining to recognize its pattern-or-practice claim as a separate cause of action. (*Id.* at 2).

II. Rule 59(e) Standard

A district court “enjoys considerable discretion in granting or denying” a Rule 59(e) motion to amend its judgment. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999)). “In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or

1 previously unavailable evidence; (3) if such motion is necessary to prevent manifest
2 injustice; or (4) if the amendment is justified by an intervening change in controlling
3 law.” *Id.* However, “amending a judgment after its entry is “an extraordinary remedy
4 which should be used sparingly.” *Id.*

5 **III. Analysis**

6 The State argues that the Court must amend its September 4, 2014 Judgment and
7 Permanent Injunction (the “Judgment”) because the Court committed manifest legal error
8 resulting in manifest injustice when it declined to recognize the State’s pattern-or-
9 practice claim as an independent cause of action. (Doc. 713 at 1-2). In determining
10 whether the Court committed manifest legal error, the Court must reexamine its prior
11 decisional process as well as the relevant legal authorities, including the cases and
12 arguments cited by the State.

13 **A. The Court’s Prior Interpretation of A.R.S. § 41-1491.35**

14 Section 41-1491.35 of the Arizona Revised Statutes (“A.R.S.”) controls the scope
15 of a pattern-or-practice case under the AFHA. The entirety of the statute is as follows:

16 A. The attorney general may file a civil action in superior
17 court for appropriate relief if the attorney general has
reasonable cause to believe that either:

- 18 1. A person is engaged in a pattern or practice of
19 resistance to the full enjoyment of any right granted by
this article.
20 2. A person has been denied any right granted by this
21 article and that denial raises an issue of general public
importance.

22 B. In an action under this section the court may:

- 23 1. Award preventive relief, including a permanent or
24 temporary injunction, restraining order or other order
25 against the person responsible for a violation of this
article as necessary to assure the full enjoyment of the
rights granted by this article.
26 2. Award other appropriate relief, including monetary
27 damages, reasonable attorney fees and court costs.
28 3. To vindicate the public interest, assess a civil
penalty against the respondent in an amount that does
not exceed:

1 (a) Fifty thousand dollars for a first violation.

2 (b) One hundred thousand dollars for a second
3 or subsequent violation.

4 A.R.S. § 41-1491.35 (2014).

5 According to the Court's reading of this statute at the time it issued its prior Order,
6 subsection A does not specify any elements of a statutory cause of action, but provides
7 that the "attorney general *may* file a civil action in superior court for appropriate relief"
8 upon having a reasonable cause to believe either of two conditions are satisfied. Thus, the
9 Court concluded that subsection A concerns statutory standing, granting standing to the
10 attorney general if certain conditions are met.

11 The only other subsection of the statute, subsection B, specifies the type of relief
12 available "[i]n an action under this section." This language, read in conjunction with the
13 forms of relief enumerated in (B), guided the Court's conclusion that the legislature did
14 not intend the statute to create an independent cause of action but rather to expand the
15 availability of otherwise-extant AFHA causes of action in cases of widespread
16 discrimination. Because the Court could not find any elements of a cause of action within
17 the statute, the Court concluded the statute was not intended to create an independent
18 cause of action.

19 The Court also concluded that regardless of whether the statute created an
20 independent cause of action or merely grafted expanded remedies and statutory standing
21 onto other causes of actions under the AFHA, it was clear that the statute grants the Court
22 the power to enter expansive remedies "as necessary to assure the full enjoyment of the
23 rights granted by this article." Thus, under the Court's original reading of the statute, the
24 Court had the power to award remedies concerning nonparties to the litigation as well as
25 general injunctive relief towards Defendants as necessary to stop an unlawful pattern or
26 practice of discrimination (or to stop the denial of rights protected under the AFHA).

27 For these reasons, the Court declined to enter judgment on the pattern-or-practice
28 claim but noted that in light of A.R.S. § 41-1491.35(B), its non-recognition of the claim

1 was irrelevant to the relief granted. *See* (Doc. 703 at 4 n.3).

2 **B. Definition of a Cause of Action**

3 Because the issue presently before the Court is whether the State had a cause of
4 action under A.R.S. § 41-1491.35(A) against Defendants, the first question to be resolved
5 is the appropriate definition of a “cause of action.” Although the parties and the Court
6 have spoken in this case of an “independent cause of action,” the word “independent” is
7 superfluous.

8 In *Davis v. Passman*, 442 U.S. 228 (1979), the Supreme Court explained the
9 distinction between claims, standing, rights, and causes of action. There, the Supreme
10 Court noted that “*standing* is a question of whether a plaintiff is sufficiently adversary to
11 a defendant to create an Art. III case or controversy . . . *cause of action* is a question of
12 whether a particular plaintiff is a member of the class of litigants that may, as a matter of
13 law, appropriately invoke the power of the court; and *relief* is a question of the various
14 remedies a federal court may make available.” 442 U.S. at 239 n.18. Thus, “[i]f a litigant
15 is an appropriate party to invoke the power of the courts, it is said that he has a ‘cause of
16 action’ under the statute, and that this cause of action is a necessary element of his
17 ‘claim.’ . . . The concept of a ‘cause of action’ is employed specifically to determine who
18 may judicially enforce the statutory rights or obligations.” *Id.* at 239.

19 Here, there is no dispute that the State has standing under A.R.S. § 41-1491.35(B)
20 to file a lawsuit against Defendants, nor is there any actual dispute as to the nature or
21 scope of the remedies available to the Court.² Instead, the dispute is whether A.R.S. § 41-
22 1491.35(B) creates a substantive right such that when combined with the existence of
23 standing, the State has a cause of action (and therefore a claim) against Defendants. If the
24 State has a pattern-or-practice claim against Defendants, then the Court must enter
25 judgment on that claim to close out the case. If not, then the Court must not enter
26 judgment on a nonexistent claim.

27
28 ² Although the State alleges that the Court limited its relief based upon its
determination that there was no pattern-or-practice claim, as the Court has stated, this
was not the case.

1 C. The State's Arguments

2 The State argues that the Court erred in determining that A.R.S. § 41-1491.35 was
3 not a cause of action. (Doc. 713 at 2). As the State correctly notes, there are no Arizona
4 state court decisions interpreting the pattern-or-practice statute. (Doc. 713 at 4). Because
5 the Arizona legislature intended the AFHA to mirror the FHA, cases interpreting the
6 latter are persuasive as to the interpretation of the former. *See Canady v. Prescott Canyon*
7 *Estates Homeowners Ass'n*, 60 P.3d 231, 233 ¶ 9 n.3 (Ariz. Ct. App. 2002). The State
8 cites a number of cases from other federal courts interpreting the FHA, specifically 42
9 U.S.C. § 3614, which concerns pattern-or-practice claims and upon which A.R.S. § 41-
10 1491.35 is derived.

11 The State principally relies upon *United States v. Balistrieri*, 981 F.2d 916 (7th
12 Cir. 1992) for the proposition that a pattern-or-practice claim is a cause of action under
13 the FHA. *See* (Doc. 713 at 4-5). In *Balistrieri*, the United States sued the owner and
14 rental agent of an apartment complex for discriminatory rental practices. 981 F.2d at 924.
15 The Seventh Circuit Court of Appeals (“Seventh Circuit”) recited in its opinion that the
16 jury found that the defendants “had violated the Fair Housing Act by intentionally
17 engaging in a pattern or practice of discrimination.” *Id.* at 926.

18 The key paragraph of the Seventh Circuit’s analysis in *Balistrieri* reads as follows:

19 The government, however, had to prove more than the fact
20 that the defendants discriminated against several people.
21 Section 3614(a) empowers the Attorney General to sue if he
22 has cause to believe that a “pattern or practice” of violations
23 exists. Proof of isolated or sporadic acts of discrimination
24 does not suffice to prove a pattern or practice. Rather, the
 government must present evidence from which the fact-finder
 can reasonably conclude “that . . . discrimination was the
 [defendants’] standard operating procedure—the regular
 rather than the unusual practice.”

25 *Id.* at 929 (citations omitted).

26 The State urges that this language supports the existence of a pattern-or-practice
27 cause of action. (Doc. 713 at 5). It is unclear, however, how the State’s argument
28 translates into the argument, as framed by the Court, that 42 U.S.C. § 3614 provides a

1 new substantive right to the government. In *Balistrieri*, the Seventh Circuit cited 42
2 U.S.C. § 3604 with respect to substantive prohibitions against discrimination, and cited
3 section 3614 with respect to the United States' standing to bring the lawsuit as well as the
4 scope of relief. 981 F.2d at 927. Thus, the Seventh Circuit's discussion of a pattern or
5 practice in the above-quoted paragraph appears to imply two necessary factual findings
6 for the United States to have prevailed in *Balistrieri*: (1) a finding of discrimination in
7 rental practices under the substantive rights of 42 U.S.C. § 3604 and (2) a finding that the
8 Attorney General's belief that a pattern or practice of discrimination existed was
9 reasonably supported.

10 The first finding follows logically from the fact that the United States could not
11 prevail without proving that discrimination occurred. The second follows from the
12 Seventh Circuit's remark that the United States "had to prove *more than* the fact that the
13 defendants discriminated against several people." 981 F.2d at 929 (emphasis added).
14 Section 3614(a) grants standing upon the Attorney General having "reasonable cause to
15 believe" that a pattern or practice of FHA violations exists. Proof of the existence of FHA
16 violations serves two purposes: It tends to show that a violation of the substantive rights
17 protected under the FHA has occurred, and it tends to show that at the time of filing suit
18 the Attorney General had reasonable cause to believe that a pattern or practice of such
19 violations existed. Because the latter is necessary to establish standing on the part of the
20 United States, the jurisdictional issue of standing and the substantive claims are "so
21 intertwined that resolution of the jurisdictional question is dependent on factual issues
22 going to the merits." *See Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987). In
23 such cases, "the intertwined jurisdictional facts must be resolved at trial by the trier of
24 fact." *Id.* Thus, the jury's finding of a pattern or practice establishes that the Attorney
25 General's belief in the existence of a pattern or practice was reasonable, and therefore
26 that statutory standing existed.

27 This interpretation of the FHA pattern-or-practice framework comports with the
28 well-established legal principle that the party invoking federal jurisdiction bears the

1 burden of establishing standing, and each element of standing “must be supported in the
2 same way as any other matter on which the plaintiff bears the burden of proof.” *Lujan v.*
3 *Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The requirement that the United States
4 prove that it had a reasonable cause to believe that a pattern or practice of FHA violations
5 existed also appropriately prevents the United States from unilaterally sidestepping the
6 standing prerequisites by issuing an unreviewable declaration that it had a reasonable
7 belief when it in fact had none.

8 Nothing in the remainder of the opinion in *Balistreri* bears on the scope of a
9 pattern-or-practice claim. Accordingly, *Balistreri* appears to stand for the proposition
10 that a FHA pattern-or-practice claim requires (1) statutory standing as specified in 42
11 U.S.C. § 3614(a), (2) a violation of legal rights protected by other FHA statutes, and (3) a
12 demand for relief under § 3614(d). As the Court has stated, the United States must prove
13 at trial the intertwined jurisdictional question of statutory standing. Because the statute
14 provides standing, a cause of action, and available relief, it creates a pattern-or-practice
15 claim.

16 Based on the similarities between the FHA and AFHA, the Court concludes that
17 the persuasiveness of *Balistreri* applies equally to A.R.S. § 41-1491.35. The AFHA thus
18 creates a pattern-or-practice claim requiring (1) statutory standing as specified in § 41-
19 1491.35(A), (2) a violation of legal rights protected elsewhere in the AFHA, and (3) a
20 demand for relief under § 41-1491.35(B). The Court notes, however, that its conclusion
21 does not materially differ from that expressed in its Order accompanying the Judgment,
22 in which it remarked that § 41-1491.35 conferred standing and additional remedies upon
23 other AFHA causes of action. *See* (Doc. 703 at 4 n.3). The difference is that the Court
24 now recognizes that the trier of fact must find, at a minimum, that the government had
25 reasonable cause to believe a pattern or practice of discrimination existed. In the present
26 case, both the jury and the Court found that a pattern or practice of discrimination
27 existed. *See* (Doc. 703 at 5).

28 Indeed, the Court’s revised opinion as to the existence of an AFHA pattern-or-

1 practice claim stems from the recognition that its prior Order required a cause of action to
2 enumerate a legal right or rights unique to only that cause of action. This confusion
3 stemmed from an overly-narrow definition of “cause of action,” a misinterpretation that
4 places the Court in the distinguished company of jurists serving on the Fifth Circuit Court
5 of Appeals. *See Davis*, 442 U.S. at 239 n.18 (“The Court of Appeals appeared to confuse
6 the question of whether petitioner had standing with the question of whether she had
7 asserted a proper cause of action.”). The Court’s error was one of terminology and not of
8 substance.

9 Defendants argue, however, that the Court’s prior Order appropriately relied upon
10 *Parisi v. Goldman, Sachs & Co.*, 710 F.3d 483 (2d Cir. 2013) to conclude that a pattern-
11 or-practice claim is not an independent cause of action. Although *Parisi* was a Title VII
12 discrimination case, the Court cited it because Title VII discrimination analysis has been
13 held to apply to FFHA discrimination cases. *See Harris v. Itzhaki*, 183 F.3d 1043, 1051
14 (9th Cir. 1999). In *Parisi*, the Second Circuit Court of Appeals reaffirmed that “in Title
15 VII jurisprudence ‘pattern-or-practice’ simply refers to a method of proof and does not
16 constitute a ‘freestanding cause of action,’” *Parisi*, 710 F.3d at 487 (citing *Chin v. Port*
17 *Authority of N.Y.*, 685 F.3d 135, 148 n.8 (2d Cir. 2012)). *Chin v. Port Authority of New*
18 *York* itself relied upon other Title VII cases that compared pattern-or-practice cases to
19 those involving disparate treatment. *See Chin*, 685 F.3d at 148-49 (citing *Celestine v.*
20 *Petroleos de Venezuela SA*, 266 F.3d 343, 355 (5th Cir. 2001); *Int’l Bhd. of Teamsters v.*
21 *United States*, 431 U.S. 324, 343 (1977)).

22 In *International Brotherhood of Teamsters*, the Supreme Court held that the
23 government could prevail in a Title VII pattern-or-practice case merely by making an
24 un rebutted showing that “unlawful discrimination has been a regular procedure or policy
25 followed by an employer.” 431 U.S. at 360. But *International Brotherhood of Teamsters*
26 also uses the phrase “pattern-or-practice action.” *Id.* Accordingly, the Court is not
27 convinced that this case stands for the proposition that a pattern-or-practice is merely a
28 method of proof. Regardless, the Court now believes that *Balistreri*, an actual FFHA

1 case, is more persuasive than Title VII cases in divining the nature of a pattern-or-
2 practice claim. *Balistrieri* supports, and the Court’s understanding of the definition of
3 “cause of action” confirms, that a pattern-or-practice cause of action exists under the
4 FHA.

5 For the foregoing reasons, the Court will amend its Judgment to add A.R.S. § 41-
6 1491.35 as a basis upon which to enter judgment in favor of the State.

7 **D. Relief**

8 The State also asks that the Court also grant equitable relief to three nonparties
9 who testified in favor of the State’s case. (Doc. 713 at 11). Specifically, the State requests
10 the Court require Defendants to supply John Cook, Patrick Barlow, and Richard Holm (or
11 his brother, Monte Holm) with municipal utilities on a non-discriminatory basis. (*Id.*)
12 Each of these individuals testified concerning Defendants’ pattern or practice of
13 discriminating against individuals in the provision of utilities on the basis of religion. *See*
14 (Tr. at 386-488) (Richard Holm); (Tr. at 489-630) (Barlow); (Tr. at 2274-2347) (Cook).

15 As a threshold matter, although the State attempts to tie its request for more
16 specific injunctive relief to the Court’s initial failure to enter judgment on the State’s
17 pattern-or-practice claim, *see* (Doc. 713 at 10), the two are wholly unrelated. As the
18 Court explained, the available scope of relief under A.R.S. § 41-1491.35(B) was never at
19 issue, and the Court exercised its discretion to award injunctive relief under that statute.
20 At the time the Court issued the Judgment, it believed that its prohibition on
21 discrimination in violation of the AFHA and FFHA was sufficient to encompass relief to
22 the nonparties without needing to identify specific individuals. Thus, the Court
23 considered the State’s requested injunctive relief with respect to these individuals and
24 was well aware of its power to grant it, but declined to do so.

25 The State now argues that Defendants are not providing water service to Cook,
26 Barlow, and Holm on non-discriminatory terms. Although finding Defendants in
27 contempt of the Court’s injunction requires an evidentiary hearing, no such hearing is
28 required for the Court to exercise its wide discretion in deciding the scope of equitable

1 relief in the first instance. Defendants respond that Holm has already received a water
2 connection and therefore any request as to him is moot. (Doc. 718 at 8).

3 Defendants make a troubling series of factual assertions, however, concerning
4 Cook and Barlow. Namely, Defendants contend that they have “begun the process” to
5 change their behavior following the jury’s verdicts. (*Id.* at 9). They contend that they are
6 waiting on an engineering firm to analyze the water system and make recommendations
7 concerning an impact fee to charge for new connections to the system. (*Id.*) Defendants
8 state that once the engineering firm’s analysis is finished, they will “hold a series of
9 public meetings” to collect questions as well as to “consider, discuss, and adopt the
10 engineering firm’s recommendations.” They assert that the “Utility Board must now wait
11 for the engineering firm to complete its analysis so that it knows the amount of the impact
12 fee.” (*Id.*) They state that after the process of reviewing the analysis, holding public
13 meetings, and creating a policy for the distribution of water, “John Cook and Patrick
14 Barlow can apply for new water connections. Assuming they comply with the application
15 process and pay all required fees, they can then receive those new water connections, just
16 like any other applicant.” (*Id.* at 9-10).

17 Although the matter is not before the Court on an evidentiary hearing and the
18 Court at this time makes no factual or precedential findings as to whether Defendants’
19 conduct violates the injunction, Defendants’ assertions do not instill confidence that
20 Defendants understand their obligations under the injunction. For example, Defendants
21 apparently intend to keep John Cook and Patrick Barlow’s water connections in limbo
22 until they decide the amount of an impact fee—an event that has no stated timeframe.
23 Moreover, presumably Defendants have not disconnected water service from every user
24 of the system pending the determination of this “impact fee” despite claiming that this fee
25 is of such importance that there can be no new connections in the meantime.³ Evidence at

26
27 ³ To the contrary, the State asserts that the Town of Colorado City recently
28 supplied new culinary water and sewer service to a group of FLDS families that have
moved onto city land after being evicted from their properties. *See* (Doc. 721 at 11).

Furthermore, as the State points out, *Monte Holm*, who unlike Cook and Barlow

1 trial showed that favoring existing water users over new connections has a discriminatory
2 effect upon non-FLDS residents. Defendants cannot continue this practice.

3 Defendants must not condition an applicant's water service on vague conditions
4 inconsistent with the obligation of a municipal utility provider. An illustration drives this
5 point home: For example, the City of Phoenix, which supplies culinary water, could not
6 stop accepting applications for new service until the City Council at some unknown
7 future time decided on the amount of a new impact fee. Defendants may be able to assess
8 an impact fee for new water connections (although any fee is subject to review for
9 discriminatory effect), but they cannot use the process of determining the amount of the
10 fee as a tool to further discrimination.

11 The Court enjoys wide discretion in fashioning equitable relief. The original terms
12 of the Court's injunction on their face prevent the sort of discriminatory conduct that the
13 State now alleges is ongoing. But Defendants' response to the State's motion has
14 emphasized to the Court that including terms of greater specificity in the injunction will
15 increase its efficacy by obviating the need for the State to bring a motion for a finding of
16 contempt against Defendants. For these reasons, and because the evidence presented at
17 trial clearly supports providing specific injunctive relief in favor of Cook and Barlow, the
18 Court will amend the Judgment to grant the State's requested relief.

19 The Court warns Defendants that it will not hesitate, upon motion and the requisite
20 showing at an evidentiary hearing, to find Defendants and their officers in either civil or
21 **criminal** contempt⁴ of its injunction. The Court further warns Defendants that their
22 description of having "begun the process" to make changes to their water policy is
23 inadequate. Defendants' use of the word "process" implies the existence of some time
24 period during which a reduced level of discrimination occurs while Defendants ultimately
25

26 did not testify against Defendants, has recently received new water and sewer
27 connections from Defendants. (Doc. 721 at 10-11); *see also* (Doc. 718 at 2) ("The State
28 of Arizona's request for additional injunctive relief is moot as to Richard Holm because
Hildale City already agreed to provide new water and sewer connections")

⁴ In general, penalties for criminal contempt include incarceration.

1 transition to the non-discriminatory provision of utilities. Such continuing discrimination
2 will not be tolerated.

3 For these reasons, the Court believes that including additional specifics in the
4 injunction is “necessary to assure the full enjoyment of the rights” granted by the AFHA.
5 *See* A.R.S. § 41-1491.35(B)(1). The Court will contemporaneously with this Order issue
6 an Amended Judgment and Permanent Injunction.

7 **IV. Conclusion**

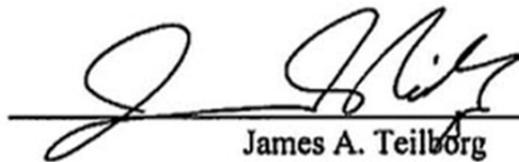
8 Accordingly,

9 **IT IS ORDERED** granting the State of Arizona’s Motion to Amend the Judgment
10 (Doc. 713).

11 **IT IS FURTHER ORDERED** that within seven days from the date of this Order
12 the officer(s) primarily responsible for approving new utility connections at Hildale-
13 Colorado City Utilities, Twin City Water Authority, and Twin City Power shall each file
14 a certification stating under oath that he or she has read a copy of this Order and the
15 Amended Judgment and Permanent Injunction.

16 **IT IS FURTHER ORDERED** that within seven days from the date of this Order
17 the officer(s) primarily responsible for creating and approving policies pertaining to
18 utility service for the Town of Colorado City and the City of Hildale shall each file a
19 certification stating under oath that he or she has read a copy of this Order and the
20 Amended Judgment and Permanent Injunction.

21 Dated this 25th day of November, 2014.

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24
25 
26 James A. Teilborg
27 Senior United States District Judge
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