

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
TOWN OF COLORADO CITY, ARIZONA;)	
CITY OF HILDALE, UTAH;)	
TWIN CITY POWER; and)	
TWIN CITY WATER AUTHORITY, INC.,)	No. 3:12-cv-8123-HRH
)	(Prescott Division)
Defendants.)	
_____)	

O R D E R

Motion for More Definite
Statement or to Dismiss¹

Defendant Town of Colorado City (herein "the City") moves for a more definite statement as to plaintiff's first and second causes of action. The City moves in the alternative for an order dismissing plaintiff's second cause of action and moves to dismiss plaintiff's third cause of action. The motion is opposed. Oral argument has been requested but is not deemed necessary.

The City seeks a more definite statement as to plaintiff's first cause of action pursuant to Rule 12(e), Federal Rules of Civil Procedure, contending that plaintiff's cause of action founded upon 42 U.S.C. § 14141(a) is so vague or ambiguous that the City cannot reasonably prepare a response.

¹Docket No. 20.

Plaintiff's first cause of action is neither ambiguous nor unintelligible. Under the subtitle "unconstitutional policing" (paragraphs 16 through 35 of plaintiff's complaint), plaintiff has provided a rather extensive factual foundation for the § 14141(a) claim. The complaint contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A Rule 12(e) motion is not a substitute for discovery of the more detailed information which the City enumerates in the instant motion as to the first cause of action.

The motion for a more definite statement as to plaintiff's first cause of action is denied.

The City seeks a more definite statement as to plaintiff's second cause of action. For the same reasons stated above, that relief is denied.

The City also seeks dismissal of plaintiff's second cause of action pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

The City contends that the plaintiff has failed to exhaust applicable administrative remedies. As plaintiff points out, that contention is based upon the supposition that the plaintiff has asserted a direct claim under 42 U.S.C. §§ 3604(a), 3604(b), and 3617. Plaintiff's complaint (paragraph 59) expressly founds its second cause of action upon 42 U.S.C. § 3214(a), alleging that:

Defendants' actions described above constitute:

a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; or

b. A denial to a group of persons rights granted by the Fair Housing Act, which raises an issue of general public importance, in violation of the Fair Housing Act, 42 U.S.C. § 3614(a).

Section 3614(a) creates a separate cause of action, enforceable by the Attorney General of the United States, which is not encumbered by any statutory requirement for exhaustion of any administrative remedy. Section 3614(a) provides in the disjunctive for causes of action when a "person or group of persons is engaged in a pattern or practice of resistance to full enjoyment of any of the rights granted by" the act or "when any group of persons has been denied any of the rights granted by [the act] and such denial raises an issue of general public importance." The complaint alleges both of the categories of violation set out in § 3214(a).

The City's motion to dismiss plaintiff's second cause of action pursuant to Rule 12(b)(6) for failure to exhaust administrative remedies is denied.

Finally, the City seeks the dismissal of plaintiff's third cause of action pursuant to Rule 12(b)(6). In this regard, the City's arguments and the plaintiff's responses are the same as were made in a parallel motion by the City's co-defendant (the City of Hildale) in its motion to dismiss. By order of November 29, 2012, the court has granted Hildale's motion to dismiss as to plaintiff's third cause of action, with leave to amend.

For the reasons stated in the court's order deciding the Hildale motion, the City's motion to dismiss plaintiff's third cause of action is granted, with leave to amend.

The City's motion for a more definite statement is denied as to plaintiff's first and second causes of action. The City's motion to dismiss is denied as to plaintiff's second cause of action and is granted as to plaintiff's third cause of action, with leave to amend.

DATED at Anchorage, Alaska, this 29th day of November, 2012.

/s/ H. Russel Holland
United States District Judge