

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

Motions to Dismiss¹

Defendants City of Hildale, Utah, Twin City Power, and Twin City Water Authority, Inc. (collectively the "Hildale Defendants"), move to dismiss plaintiff's complaint or, in the alternative, for a more definite statement. The motion is opposed. Oral argument has been requested but is not deemed necessary.

Plaintiff asserts three causes of action against the Hildale Defendants: (1) a violation of 42 U.S.C. § 14141(a), the Violent Crime Control and Law Enforcement Act of 1994; (2) a violation of 42 U.S.C. § 3614(a), the Fair Housing Act; and (3) a violation of 42 U.S.C. § 2000b, Title III of the Civil Rights Act of 1964. The Hildale Defendants seek the dismissal of all three causes of action

¹Docket No. 21.

pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, or for a more definite statement pursuant to Rule 12(e), Federal Rules of Civil Procedure.

Rule 12(b)(6) motions are governed by Ashcroft v. Iqbal, 556 U.S. 662 (2009). "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 at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This application of Iqbal is summarized by the Ninth Circuit court in Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

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....

Plaintiff's § 14141(a) claim, the first cause of action, focuses upon the conduct of law enforcement officers who serve the City of Hildale. Plaintiff's first cause of action does not simply rely upon labels or conclusions or a bare recitation of the elements of the § 14141(a) claim. Rather, the "allegations" portion of the complaint – and more particularly, the "unconstitutional policing" paragraphs (16 through 35) – contain allegations of underlying facts which the court takes as true for purposes of this motion and which serve to put Hildale on notice and enable its defense. In arguing that the plaintiff's first claim sets forth nothing but conclusions, Hildale recites that, for example, the

complaint in paragraph 16 simply alleges that the law enforcement personnel failed to provide policing services on the basis of individuals' religion. Hildale divorces this bald statement from its factual surroundings. Similarly in other arguments, Hildale strips from plaintiff's pleading the central factual context. For example, with respect to paragraph 32, Hildale ignores the stated factual allegations surrounding a due process allegation.

Finally, Hildale argues that § 14141(a) applies only to the conduct of authorities involved in the administration of juvenile justice. Hildale misreads the statute. It applies in the disjunctive to governmental law enforcement officers or city employees involved in the administration of juvenile justice.

Reading plaintiff's first cause of action together with the factual predicate set forth in the complaint under the allegations/unconstitutional policing headings, plaintiff has stated a plausible cause of action for violation of 42 U.S.C. § 14141(a).

Hildale seeks the dismissal of plaintiff's second cause of action which alleges that the Fair Housing Act was violated. Hildale's arguments parallel those discussed above as to the first cause of action, and the analysis of the failure to state a claim contention is the same.

Plaintiff's complaint does not merely recite the elements of a cause of action under § 3614(a) of the Fair Housing Act. The complaint contains – under the “allegations/housing discrimination” paragraphs (36 through 41) – a factual statement sufficient to give Hildale fair notice of the alleged violations of the act. Reading

plaintiff's complaint as a whole and taking the factual allegations as true, plaintiff has stated a plausible cause of action for violation of the Fair Housing Act, 42 U.S.C. § 3614(a).

Plaintiff's third cause of action is based upon § 2000b of Title III of the Civil Rights Act of 1964. Factually, this claim is based upon alleged unequal access to or utilization of two "public facilities" – Cottonwood Park and Cottonwood Zoo. Again the analysis is the same, but there is a problem with plaintiff's third cause of action. Section 2000b has application to equal protection or religious discrimination as regards "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.

Paragraph 42 of plaintiff's complaint alleges that Hildale has denied non-FLDS individuals equal use of public facilities based on religion. Paragraph 43 of plaintiff's complaint alleges that the park and zoo are "owned, operated, or managed by or on behalf of the cities." Paragraphs 48 and 49 of the complaint allege that law enforcement officers harassed non-FLDS individuals with respect to the zoo premises, but that law enforcement was withdrawn as to the zoo in 2008 when its operation was taken over by a non-FLDS individual. Plaintiff's third cause of action alleges that law enforcement officials of the defendant cities have violated § 2000b as regards use of the park and zoo.

Hildale asks the court to take official notice of the fact that the park and zoo are situated on a single parcel of land, title to which is Fred M. Jessup, trustee of the United Effort Plan

Trust. Paragraph 11 of plaintiff's complaint alleges that the United Effort Plan Trust is a Utah registered, charitable trust, and succeeding paragraphs of the complaint allege that since 2005, the trust has been administered by a court appointed trustee who is not affiliated with the FLDS church. On these facts, Hildale contends that the Cottonwood Park and Cottonwood Zoo are privately owned and not public facilities for purposes of § 2000b.

In responding to the motion to dismiss, plaintiff argues that ownership of the park and zoo is not dispositive, for § 2000b addresses in the disjunctive facilities "owned, operated, or managed" (emphasis supplied) by a state or a subdivision of a state. With respect to the question of whether or not plaintiff's third cause of action satisfies Rule 12(b)(6), plaintiff argues that its factual allegations (paragraphs 42 through 50 of the complaint) demonstrate the adequacy of plaintiff's pleading and that the claim is plausible.

The court is not persuaded by the arguments of either Hildale or plaintiff. Plainly, § 2000b applies if the zoo and park are operated or managed by the City of Hildale. Paragraph 43 of the complaint does indeed allege that the park and zoo are "owned, operated, or managed by or on behalf of the cities." The complaint further alleges that local law enforcement once policed the park and zoo, but ceased doing so in 2008. Paragraph 43 is a bald statement repeating a statutory element of a § 2000b claim. Plaintiff appears to concede that the park and zoo are not presently "owned" by a political subdivision of the state. The

remaining factual allegations in support of the denial of access to public facilities claim leave the court puzzled as to who has operated or managed the park and zoo at relevant times.

It appears possible that the park and zoo were operated or managed as a public facility at some time by the City of Hildale. But it is equally possible that the park and zoo were owned and/or operated or managed privately through the United Effort Plan Trust, administered by a court appointed trustee, and that city marshals policed the park and zoo for a time even though it was privately owned and/or managed or operated. Police often enter public or private property for law enforcement purposes. Police do not ordinarily operate or manage parks or zoos. Plaintiff's complaint is silent as to what or how the city operated or managed the park and zoo. Policing alone (or not policing) the park and zoo does not amount to operating or managing a park or zoo.

Plaintiff's third cause of action does not state a plausible claim for purposes of 42 U.S.C. § 2000b as presently pleaded. However, because plaintiff may be able to plead a cause of action under § 2000b, the third cause of action is dismissed pursuant to Rule 12(b)(6), with leave to amend.

Hildale moves in the alternative for a more definite statement pursuant to Rule 12(e) as to plaintiff's three causes of action. Hildale contends that the complaint is ambiguous and unintelligible – that it cannot reasonably prepare a full and complete answer. Plaintiff disagrees.

Hildale's Rule 12(e) motion is moot as to plaintiff's third cause of action.

As to the first and second causes of action, the motion for a more definite statement is denied. Plaintiff's complaint is neither ambiguous nor unintelligible. 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. A plaintiff is not required to plead the detailed evidence that will support claims.

Hildale's motion to dismiss for failure to state a claim is denied as to plaintiff's first and second causes of action. That motion is granted as to plaintiff's third cause of action, with leave to amend on or before December 21, 2012. Hildale's motion for a more definite statement is denied.

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

/s/ H. Russel Holland
United States District Judge