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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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MCKENZIE HUFFAKER, personally, as guardian of J.H. and A.H., and as personal representative of the ESTATE OF PERRY HUFFAKER AND SARAH HUFFAKER; CADEN HUFFAKER; LEROY HUFFAKER; KATHRYN HUFFAKER; GREG PAYNE; and CLAUDIA PAYNE,

Plaintiffs,

v.

EAGLE FUEL CELLS, INC. aka EAGLE FUEL CELLS-ETC. INC. aka/dba EAGLE TECHNOLOGIES CO.,

Defendant.

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Case No. 1:19-CV-96 TS-DBP

District Judge Ted Stewart

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This matter is before the Court on a Motion to Dismiss for lack of personal jurisdiction (“Motion”) filed by Defendant Eagle Fuel Cells, Inc. aka Eagle Fuel Cells-Etc. Inc. aka/dba Eagle Technologies Co.’s (“Defendant”). For the reasons discussed below, the Court will grant the Motion.

### I. BACKGROUND

This case—originally filed in the District Court of Weber County, Utah, Second Judicial District—was removed to the Utah Federal District Court on August 21, 2019.<sup>1</sup> On August 28, Defendant filed the present Motion.<sup>2</sup> On September 18, Plaintiffs filed a Notice of Non-

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<sup>1</sup> See Docket No. 2.

<sup>2</sup> Docket No. 8.

Opposition to the Motion, notifying the Court that they do not oppose the Motion so long as dismissal is solely for lack of personal jurisdiction and the case is dismissed without prejudice.<sup>3</sup>

## II. DISCUSSION

The parties are in agreement concerning dismissal of this case for lack of personal jurisdiction. The only issue before the Court is whether dismissal should be with or without prejudice. The Tenth Circuit has made clear that “dismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”<sup>4</sup>

## III. CONCLUSION

It is therefore

ORDERED that Defendant’s Motion to Dismiss (Docket No. 8) is GRANTED. This action is dismissed without prejudice.

DATED this 1st day of October 2019.

BY THE COURT:

  
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Ted Stewart  
United States District Judge

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<sup>3</sup> Docket No. 13, at 1.

<sup>4</sup> *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006); *see also Birch v. Sprint/Nextel Corp.*, 657 F. App’x. 821, 824–825 (10th Cir. 2017) (affirming district court decision to dismiss case for lack of jurisdiction but reversing its decision to dismiss with prejudice because a court lacking jurisdiction cannot dispose of the case on the merits and, therefore, should dismiss without prejudice.); *Hollander v. Sandoz Pharm. Corp.*, 289 F.3d 1193, 1216 (10th Cir. 2002) (finding that district court, whose jurisdictional ruling did not address the merits of a claim, should have dismissed without prejudice to enable filing in an appropriate forum.); *Bauchman v. W. High Sch.*, 132 F.3d 542, 549–50 (10th Cir. 1997) (finding that district court abused its discretion by dismissing state law claims with prejudice after finding it lacked federal subject matter jurisdiction over those claims.).