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

8
9 Ruben Natal,

10 Plaintiff,

11 v.

12 Arizona Department of Agriculture,
13

14 Defendant.

No. CV-12-2330-PHX-JAT

ORDER

15 Pending before the Court is defendant Arizona Department of Agriculture's
16 Motion to Dismiss (Doc. 19). Plaintiff has not filed a Response. (*See* CM/ECF Docket
17 Report).

18 Defendant initially argues (Doc. 19 at 2) that it "is entitled to judgment as a matter
19 of law because it is a non-jural entity and cannot be sued." (*Id.* (citing Fed. R. Civ. P.
20 17(b)(3)). The capacity of a party that is not an individual or corporation to be sued is
21 governed "by the law of the state where the court is located." Fed. R. Civ. P. 17(b)(3).
22 "Under Arizona law, '[g]overnment entities have no inherent power and possess only
23 those powers and duties delegated to them by their enabling statutes. Thus, a
24 governmental entity may be sued only if the legislature has so provided.' " *United States*
25 *v. Maricopa County, Ariz.*, 915 F. Supp. 2d 1073, 1077 (D. Ariz. 2012) (quoting
26 *Brillard v. Maricopa County*, 232 P.3d 1263, 1269, ¶ 12 (Ariz. App. 2010) (citations
27 omitted)).

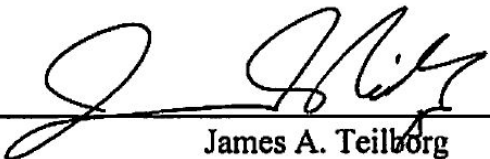
28 Defendant Arizona Department of Agriculture is an agency of the State of Arizona

1 created entirely by state law with organic provisions found in Title 3, Article 1 of the
2 Arizona Revised Statutes. A.R.S. §§ 3-101–109.02. The Arizona Department of
3 Agriculture’s organic statute does not confer the power to sue or be sued upon Defendant.
4 *Contrast ibid. with* A.R.S. §§ 3-414, 468.02, 526.02, 584, 1083, 1233 (conferring the
5 power to “[s]ue and be sued” upon five councils and one marketing commission
6 established by the Arizona Department of Agriculture pursuant to State organic statutes).
7 Nor does Plaintiff point to another provision of the Arizona Revised Statutes that would
8 allow Defendant to be sued. (*See* Plaintiff’s Amended Complaint, Doc. 8). Because no
9 Arizona statute confers on the Arizona Department of Agriculture the right to sue and be
10 sued, it cannot be sued as a separate legal entity. Thus, the Arizona Department of
11 Agriculture is an unauthorized Defendant under federal and state law and must be
12 dismissed.

13 Accordingly,

14 **IT IS ORDERED** that Defendant’s Motion to Dismiss (Doc. 19) is GRANTED
15 with prejudice. The Clerk of the Court shall enter judgment accordingly and close this
16 case.

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18 Dated this 21st day of January, 2014.

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23 James A. Teilborg
24 Senior United States District Judge
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