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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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RONALD COOKE AND JINJER COOKE,)
husband and wife,)

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Plaintiffs,)

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No: CV-10-08105-PCT-JAT

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THE STATE OF ARIZONA *ex rel.*)
TERRY GODDARD, the Attorney General;)
and THE CIVIL RIGHTS DIVISION OF)
THE ARIZONA DEPARTMENT OF LAW,)

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Plaintiff-Intervenor,)

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ORDER

vs.)

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TOWN OF COLORADO CITY, ARIZONA;)
CITY OF HILDALE, UTAH; HILDALE-)
COLORADO CITY UTILITIES (Hildale-)
Colorado City Power, Water, Sewer and)
Gas Department); TWIN CITY WATER)
AUTHORITY, INC., a Utah non-profit)
corporation; TWIN CITY POWER; et al,)

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Defendants.)

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Pending before the Court is Defendant Hildale’s motion to leave to file a motion to dismiss Counts 6, 8, and 9 on subject matter jurisdiction grounds. More specifically, Hildale claims that Plaintiffs failed to comply with Utah’s notice of claim statutes. *See* Doc. 467.

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The Court has reviewed the proposed motion to dismiss currently lodged at Doc. 468. The Motion does not establish that it is timely. *See e.g. Farber v. City of Mesa*, 2010 WL 749934, *3 (D. Ariz. 2010) (“As the Arizona Courts have made clear, ... a defendant waives the notice of claim defense ... when the defendant has taken substantial action to litigate the merits

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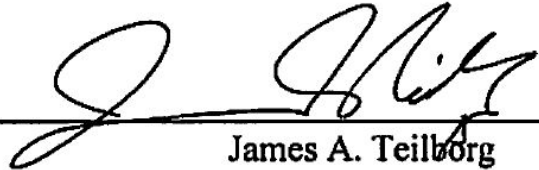
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1 of the claim that would not have been necessary had the entity promptly raised the defense.”
2 (internal citations and quotations omitted)); *Davis v. Garcia*, - - - F.Supp.2d - - - , 2013 WL
3 3087561, *13 (D. Utah 2013) (noting that the State can be estopped from asserting the Utah
4 notice of claim defense in certain circumstances). Additionally, the motion fails to establish that
5 the Utah notice of claim statute even applies to Counts 6, 8, and 9. *See e.g. Gressett v. Central*
6 *Arizona Water Conservation Dist.* 2012 WL 3028347, *4 (D. Ariz. 2012) (noting that the
7 Arizona notice of claim statute does not apply to claims arising under federal law).

8 As a result of the foregoing, the Court will deny the motion for leave to file because: 1)
9 the motion does not establish that this defense has not been waived by the failure to raise it in
10 the three year period this case has been pending, and 2) the motion does not establish that the
11 defense applies to claims that do not arise under Utah law. Therefore,

12 IT IS ORDERED that the motion for leave to file (Doc. 467) is denied.

13 DATED this 17th day of October, 2013.

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18 James A. Teilborg
19 Senior United States District Judge
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