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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRI-DAM,

Case No. 1:20-cv-00408-SKO

Plaintiff,

v.

**ORDER RE SUPPLEMENTAL
BRIEFING DIRECTED TO
DEFENDANT’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION**

SCOTT FRAZIER,

Defendant.

(Doc. 23)

_____ /

On May 21, 2021, Defendant Scott Frazier filed a motion to dismiss for lack of subject matter jurisdiction. (Doc. 23.) Plaintiff Tri-Dam filed an opposition brief on June 9, 2021. (Doc. 28.) Defendant filed his reply on June 16, 2021. (Doc. 29.) After reviewing the parties’ papers, the matter was deemed suitable for decision without oral argument pursuant to Local Rule 230(g), and the Court vacated the hearing set for June 23, 2021. (Doc. 30.)

Plaintiff’s complaint alleges that this Court has subject matter jurisdiction over the action pursuant to three statutes: (1) 28 U.S.C. § 1331, under which jurisdiction exists for “all civil actions arising under the Constitution, laws, or treaties of the United States”; (2) 28 U.S.C. § 1337, under which jurisdiction exists for “any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies”; and (3) 16 U.S.C. § 825p, under which district courts have exclusive jurisdiction over actions “brought to enforce any liability or duty created by, or to enjoin any violation of” the Federal Power Act or any rule, regulation, or order thereunder. (Compl. at ¶ 1.)

1 “[T]he plaintiff bears the burden of proof on a Rule 12(b)(1) motion to dismiss for lack of
2 subject matter jurisdiction.” *Sopcak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th
3 Cir. 1995). Although Plaintiff’s complaint identifies 28 U.S.C. § 1337, 28 U.S.C. § 1331, and 16
4 U.S.C. § 825p as bases for this Court’s jurisdiction over the action, Plaintiff’s opposition to the
5 motion to dismiss does not specifically explain **how** each of the aforementioned statutes confers
6 jurisdiction.

7 Accordingly, the Court ORDERS that Plaintiff submit supplemental briefing, identifying
8 specific legal authority supporting its position, on the following issues:

- 9 1. Regarding Plaintiff’s assertion that jurisdiction exists under 28 U.S.C. § 1331,
10 Plaintiff shall explain how the present case presents a federal question. The Court
11 notes that the “vast majority” of cases arising under federal law “are those in which
12 federal law creates the cause of action.” *Merrell Dow Pharm. Inc. v. Thompson*, 478
13 U.S. 804, 808 (1986). Cases may also arise under federal law when “the vindication
14 of a right under state law necessarily turn[s] on some construction of federal law.”
15 *Id.* at 808 (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1,
16 9 (1983)). “[F]ederal jurisdiction over a state-law claim will lie if a federal issue is
17 ‘(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of
18 resolution in federal court without disrupting the federal-state balance approved by
19 Congress.’” *City of Oakland v. BP PLC*, 969 F.3d 895, 904 (9th Cir. 2020) (quoting
20 *Gunn v. Minton*, 568 U.S. 251, 258 (2013)). “All four requirements must be met for
21 federal jurisdiction to be proper.” *Id.* at 904–05 (emphasis added);
- 22 2. The applicability of the Supreme Court’s decision in *Merrill Lynch, Pierce, Fenner*
23 *& Smith Inc. v. Manning*, 136 S. Ct. 1562 (2016), to this case. In *Merrill Lynch*, the
24 Supreme Court construed the exclusive jurisdiction provision set forth in Section 27
25 of the Securities Exchange Act (“Exchange Act”), 15 U.S.C. § 78aa(a),¹ which has

27 ¹ 15 U.S.C. § 78aa(a) provides, in part: “The district courts of the United States and the United States courts of any
28 Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of
 [the Exchange Act] or the rules and regulations thereunder, and of all suits in equity and actions at law brought to
 enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder.”

1 “[m]uch the same wording” as 16 U.S.C. § 825p, at issue in the instant case. *Id.* at
2 1566, 1568 n.3. The Supreme Court interpreted the “brought to enforce” language
3 in the exclusive jurisdiction provision of Section 27 and held that the jurisdictional
4 test established by Section 27 is the “same as the one used to decide if a case ‘arises
5 under’ a federal law” under 28 U.S.C. § 1331. *Id.* at 1566. In other words, “Section
6 27 provides exclusive federal jurisdiction of the same class of cases as ‘arise under’
7 the Exchange Act for purposes of § 1331.” *Id.* at 1575; and

8 3. Regarding Plaintiff’s assertion that jurisdiction exists under 28 U.S.C. § 1337,
9 Plaintiff shall explain:

10 a. Why the Federal Power Act, 16 U.S.C. § 791 *et seq.*, constitutes an “Act of
11 Congress regulating commerce or protecting trade and commerce against
12 restraints and monopolies,” pursuant to 28 U.S.C. § 1337; and

13 b. How this action “arises under” the Federal Power Act, considering that “the
14 ‘arising under’ language in section 1337 is interpreted in essentially the same
15 way as the ‘arising under’ phrase in [28 U.S.C. § 1331].” *Hunter v. United Van*
16 *Lines*, 746 F.2d 635, 639 (9th Cir. 1984) (quoting *Garrett v. Time-D.C., Inc.*, 502
17 F.2d 627, 629 (9th Cir. 1974)).

18 Plaintiff shall submit its supplemental briefing, not exceeding 10 pages, **by no later than July 20,**
19 **2021.** Any response by Defendant, not exceeding 10 pages, shall be submitted **by no later than**
20 **July 27, 2021.** An optional reply brief by Plaintiff, not exceeding 5 pages, may be submitted **by no**
21 **later than August 2, 2021.**

22
23 IT IS SO ORDERED.

24 Dated: **July 14, 2021**

/s/ Sheila K. Oberto
25 UNITED STATES MAGISTRATE JUDGE