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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY GILMORE AND DANA
GILMORE,

Case No. 09-cv-02180-JAM-DAD

ORDER DISMISSING DEFENDANT
ANDREW RIBBING

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY,
DENNIS MAGURES, JOHN PARKER,
ANDREW RIBBING, and LEO MARIN
and DOES 1 to 10, inclusive,

Defendants.

_____/

This matter comes before the Court on Defendant Andrew Ribbing's ("Defendant" or "Ribbing") Motion to Dismiss and Strike Plaintiffs' Jeremy Gilmore and Dana Gilmore's ("Plaintiffs'") Second Amended Complaint ("SAC") (Doc. #31) for lack of personal jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(6), and 12(f). Plaintiffs oppose the Motion to Dismiss and Strike.

1 (Doc. # 31)¹ For the reasons set forth below, Defendant's motion
2 to dismiss is granted.

3 FACTUAL AND PROCEDURAL BACKGROUND

4 Plaintiffs' SAC alleges a claim for relief for violation of
5 the Federal Employers Liability Act ("FELA"), 45 U.S.C. §51 et
6 seq., as well as state law claims for relief, stemming from
7 Union Pacific's discipline and dismissal of Plaintiffs from
8 their jobs at Union Pacific.
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10 Plaintiffs' First Amended Complaint ("FAC") was brought in
11 Superior Court, and removed to federal court by Union Pacific
12 under federal question jurisdiction. Union Pacific brought a
13 motion to dismiss and strike claims from the FAC. The Court
14 granted in part and denied in part the motion to dismiss, and
15 denied the motion to strike. Specifically, the Court denied the
16 motion to dismiss with respect to Plaintiffs' claims for
17 wrongful discharge and invasion of privacy. The Court granted
18 the motion to dismiss, without prejudice, with respect to
19 Plaintiff's claims for marital status discrimination, and with
20 prejudice with respect to the claims for intentional infliction
21 of emotional distress. Defendant Carolyn Will was dismissed from
22 the suit.
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28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g).

1 Plaintiffs were granted leave to amend the FAC, and
2 consequently filed the SAC. Plaintiffs also filed a motion for
3 reconsideration of the dismissal of the intentional infliction
4 of emotional distress claims. The Court denied the motion for
5 reconsideration (Doc. #43). Plaintiffs re-plead the intentional
6 infliction of emotional distress claims in the SAC, and Ribbing
7 has asked the Court to again dismiss these claims with prejudice
8 as they might apply to him. The Court grants this request and
9 dismisses these claims with prejudice as to Ribbing.
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11 Upon filing the SAC, Plaintiffs served the individual
12 defendants named in the SAC, including Ribbing. However,
13 Ribbing was served after the other individual defendants, and
14 therefore did not join in their motion to dismiss and strike the
15 SAC (Doc. #27). The Court's order (Doc. #44), granted the
16 motion to dismiss and strike in part, dismissing the marital
17 status discrimination claim and dismissing individual defendants
18 Dennis Magures, John Parker, and Leo Marin. The Court's order
19 noted that while Union Pacific also argued for dismissal of
20 Ribbing, he was not a party to that motion and therefore the
21 Court's order did not apply to the claims brought against him.
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24 In the present Motion to Dismiss and Strike, Ribbing argues
25 for dismissal or striking of all the claims brought in the SAC.
26 The Court, having already ruled on all the claims in the SAC,
27 will not repeat its entire ruling here but incorporates by
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1 reference its previous Orders (Doc. ##43/44). With respect to
2 the claims specifically brought against Ribbing in the SAC, only
3 one claim remains, for invasion of privacy.² The invasion of
4 privacy claim was not dismissed against Union Pacific, but was
5 dismissed against the other individual defendants because
6 Plaintiffs indicated that they had not intended to include the
7 individual defendants in this claim and did not raise any
8 opposition to dismissing the claim against the other individual
9 defendants. However, in response to Ribbing's motion herein,
10 Plaintiffs oppose the dismissal of this claim.
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14 I. OPINION

15 A. Legal Standard

16 A party may move to dismiss an action for failure to
17 state a claim upon which relief can be granted pursuant to
18 Federal Rule of Civil Procedure 12(b)(6). In considering a
19 motion to dismiss, the court must accept the allegations in the
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22 ² Plaintiffs also appear to argue in their opposition that their
23 new claim in the SAC for Retaliation is directed at Ribbing as
24 well as Union Pacific. As noted above, in their opposition to
25 Union Pacific, et al.'s Motion to Dismiss (Doc. #27), Plaintiffs
26 indicated that this claim was not brought against the individual
27 defendants (Doc. #34). Moreover, the claim, as pled in the SAC,
28 appears to be against only Union Pacific. Accordingly, the
Court dismisses this Retaliation claim against Ribbing, without
prejudice. If Plaintiffs actually intended to include Ribbing
as a defendant in this claim, greater specificity as to
Ribbing's alleged wrongful acts giving rise to this claim should
be included in the complaint.

1 complaint as true and draw all reasonable inferences in favor of
2 the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1975),
3 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
4 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that
5 are mere "legal conclusions," however, are not entitled to the
6 assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950
7 (2009), citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
8 (2007). To survive a motion to dismiss, a plaintiff needs to
9 plead "enough facts to state a claim to relief that is plausible
10 on its face." Twombly, 550 U.S. at 570. Dismissal is
11 appropriate where the plaintiff fails to state a claim
12 supportable by a cognizable legal theory. Balistreri v.
13 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Upon
14 granting a motion to dismiss for failure to state a claim, the
15 court has discretion to allow leave to amend the complaint
16 pursuant to Federal Rule of Civil Procedure 15(a). "Dismissal
17 with prejudice and without leave to amend is not appropriate
18 unless it is clear . . . that the complaint could not be saved
19 by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc., 316
20 F.3d 1048, 1052 (9th Cir. 2003).

21 B. Personal Jurisdiction

22 Ribbing, a citizen of the state of Washington, asserts that
23 this Court lacks personal jurisdiction over him. As explained
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1 below, the Court is dismissing with prejudice the one claim in
2 this action that remains against Ribbing. Thus, it is not
3 necessary for this Court to decide the personal jurisdiction
4 issue raised by Ribbing and it declines to do so.
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7 C. Invasion of Privacy

8 Plaintiffs bring a claim for invasion of privacy, alleging
9 that Ribbing invaded their "marital zone of privacy," by
10 attempting to compel them to disclose information about each
11 other known only as a result of their marital relationship.
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13 Article 1, Section 1 of the California Constitution states
14 that, "All people are by nature free and independent and have
15 inalienable rights. Among these are enjoying and defending life
16 and liberty, acquiring, possessing, and protecting property, and
17 pursuing and obtaining safety, happiness and privacy." To bring
18 a claim for invasion of privacy, a plaintiff must "establish
19 each of the following: (1) a legally protected privacy interest;
20 (2) a reasonable expectation of privacy in the circumstances;
21 and (3) conduct by defendant constituting a serious invasion of
22 privacy." Hill v. National Collegiate Athletic Assn., 7 Cal.
23 4th 1, 39-40.
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26 Previously, the Court found that Plaintiffs had established
27 a legally protected autonomy privacy interest, and pled enough
28 facts to support a claim for invasion of privacy. However this

1 ruling applied only to Union Pacific. In the SAC, there are no
2 facts pled specifically against Ribbing individually that would
3 support a claim for invasion of privacy against him. The only
4 allegation against Ribbing is that he conducted Plaintiff Dana's
5 disciplinary hearing, acting as hearing officer and fact finder,
6 and informed her of her termination. The disciplinary hearing
7 was conducted pursuant to the Collective Bargaining Agreement.
8 There are no allegations that Ribbing engaged in invasive
9 conduct in his role as fact finder and hearing officer, nor are
10 there allegations that he engaged in any conduct outside of the
11 disciplinary hearing. In the absence of any facts alleging that
12 Ribbing committed a serious invasion of Plaintiffs' privacy,
13 this Court finds that Plaintiffs have not met their burden to
14 show a prima facie case of invasion of privacy. Thus, the
15 invasion of privacy claim is dismissed against Defendant
16 Ribbing, with prejudice.
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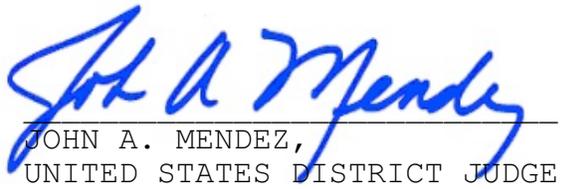
21 III. ORDER

22 For the reasons set forth above, Defendant Ribbing's motion
23 to dismiss the claims against him is GRANTED. All claims, other
24 than the Retaliation claim, are DISMISSED WITH PREJUDICE.
25 Plaintiffs should file an Amended Complaint within twenty (20)
26 days of this Order if they wish to attempt to include Ribbing as
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1 a defendant in their Retaliation claim. The Motion to Strike
2 is moot.

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4 IT IS SO ORDERED.

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7 Dated: July 26, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE