

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMESON BEACH PROPERTY
OWNERS ASSOCIATION, et al.,

Plaintiff,

v.

UNITED STATES, et al.,

Defendants.

No. 2:13-cv-01025-MCE-AC

MEMORANDUM AND ORDER

On May 22, 2013, Plaintiffs Jameson Beach Property Owners Association (“Owners Association”), Gene Landon and Helen Nicolaides (collectively, “Plaintiffs”) filed the instant action against various defendants, including federal, state, and local government entities, for allegedly using Plaintiffs’ real property without compensation and in a hazardous manner that exposes Plaintiffs to significant liability. Plaintiffs filed a First Amended Complaint (“FAC”) on July 24, 2014, alleging additional causes of action against defendants, and added Ronald Saxon as an individual plaintiff. On August 4, 2014, Defendants Camp Richardson Resort, Inc. (“CRR”), Robert Hassett, Tammy Hassett, and Kris Knox (collectively “CRR Defendants”) moved to strike portions of and to dismiss Plaintiffs’ FAC. See ECF No. 138. On August 5, 2014, Defendant United States Forest Service (“USFS”) moved to strike the claims against it in Plaintiffs’ FAC.

1 See ECF No. 139. On August 11, 2014, Defendant El Dorado County (“El Dorado”)
2 moved to strike portions of and to dismiss Plaintiffs’ FAC. See ECF No. 142. For the
3 following reasons, the USFS’s Motion to Strike (ECF No. 139) is GRANTED, and El
4 Dorado and CRR Defendants’ Motions (ECF Nos. 142, 138) are GRANTED in part and
5 DENIED in part.¹

6
7 **BACKGROUND²**
8

9 The Owners Association was formed as an entity serving all owners of real
10 property located in the Jameson Beach Subdivision Tract (“Owners”). Plaintiffs Gene
11 Landon, Helen Nicolaides, and Ronald Saxon are Owners. Plaintiffs Owners
12 Association, Gene Landon, and Helen Nicolaides filed their initial complaint against all
13 Defendants on May 22, 2013. ECF No. 2.

14 On June 24, 2013, Defendant El Dorado moved to dismiss the five causes of
15 action against it for failure to state a claim. ECF No. 10. Plaintiffs failed to timely oppose
16 El Dorado’s motion, which was granted with leave to amend. See ECF No. 83.

17 On March 13, 2014, the Federal Defendants³ moved to dismiss all of Plaintiffs’
18 claims against them for lack of subject matter jurisdiction and for failure to state a claim.
19 ECF No. 29. The Federal Defendants’ motion to dismiss was granted with leave to
20 amend as to Plaintiffs’ claim for inverse condemnation, and granted without leave to
21 amend as to all other claims. ECF No. 83 at 11.

22
23

¹ Because oral argument would not be of material assistance, the Court ordered this matter
submitted on the briefs. E.D. Cal. Local R. 230(g).

24 ² Because the parties are familiar with the background of this case, this section recites only a
25 general overview of the facts, as well as additional facts alleged in the FAC, which are relevant to the
26 Court’s disposition of the Motions. These facts are taken, at times verbatim, from the FAC (ECF No. 136)
unless otherwise noted. Additional facts may be found in the Court’s previous Orders (ECF Nos. 83, 158).

27 ³ Plaintiffs’ initial Complaint named Nancy Gibson and the USFS as Defendants. See ECF No. 2.
28 These parties were collectively referred to as the “Federal Defendants.” Although Plaintiffs refer to Gibson
as “Defendant Gibson” within their FAC, Nancy Gibson is not listed in the caption as a Defendant nor listed
as a party to any of Plaintiffs’ fifteen claims. See generally FAC, ECF No. 136.

1 Plaintiffs timely filed their FAC on July 24, 2014. As indicated above, the FAC
2 includes Ronald Saxon as a new Plaintiff, and alleges fifteen causes of action: (1) quiet
3 title against the USFS; (2) quiet title against other Defendants; (3) interference with
4 easement; (4) partition; (5) ejectment; (6) inverse condemnation; (7) trespass; (8) unfair
5 competition; (9) public nuisance; (10) private nuisance; (11) intentional infliction of
6 emotional distress; (12) negligent infliction of emotional distress; (13) unjust enrichment;
7 (14) negligence; and (15) violation of the Freedom of Information Act (“FOIA”). Plaintiffs
8 allege that jurisdiction is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346
9 “because the United States is a Defendant and this action arises under the laws of the
10 United States.”

11 On August 4, 2014, the CRR Defendants moved to strike portions of and to
12 dismiss Plaintiffs’ FAC, pursuant to Federal Rules of Civil Procedure⁴ 12(b)(1), 12(b)(6),
13 and 12(f).⁵ ECF No. 138. On August 5, 2014, the USFS moved to strike the claims
14 against it in Plaintiffs’ FAC, pursuant to Rule 12(f). ECF No. 139. On August 11, 2014,
15 El Dorado moved to strike portions of and to dismiss Plaintiffs’ FAC, pursuant to Rules
16 12(b)(6), 12(b)(1), and 12(f). ECF No. 142. All three motions are currently pending
17 before the Court.

18 19 STANDARD

20 21 A. Rule 12(b)(6)

22 On a motion to dismiss for failure to state a claim under Rule 12(b)(6), all
23 allegations of material fact must be accepted as true and construed in the light most
24 favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,337-38

25 _____
26 ⁴ All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless
otherwise stated.

27 ⁵ The CRR Defendants did not move to dismiss or otherwise respond to Plaintiffs’ initial Complaint
28 due to a dispute regarding whether these Defendants were properly served prior to May 9, 2014. See
ECF Nos. 86, 158 at 5 n.5. Thus, the Court’s May 22, 2014, Order did not address Plaintiffs’ claims
against the CRR Defendants.

1 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain statement of the claim
2 showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
3 what the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp. v. Twombly,
4 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A
5 complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual
6 allegations. However, “a plaintiff’s obligation to provide the grounds of his entitlement to
7 relief requires more than labels and conclusions, and a formulaic recitation of the
8 elements of a cause of action will not do.” Id. (internal citations and quotations omitted).
9 A court is not required to accept as true a “legal conclusion couched as a factual
10 allegation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (quoting Twombly, 550 U.S.
11 at 555). “Factual allegations must be enough to raise a right to relief above the
12 speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R.
13 Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading
14 must contain something more than “a statement of facts that merely creates a suspicion
15 [of] a legally cognizable right of action.”)).

16 **B. Rule 12(b)(1)**

17 Federal courts are courts of limited jurisdiction, and are presumptively without
18 jurisdiction over civil actions. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,
19 377 (1994). The burden of establishing the contrary rests upon the party asserting
20 jurisdiction. Id. Because subject matter jurisdiction involves a court’s power to hear a
21 case, it can never be forfeited or waived. United States v. Cotton, 535 U.S. 625, 630
22 (2002). Accordingly, lack of subject matter jurisdiction may be raised by either party at
23 any point during the litigation, through a motion to dismiss pursuant to Rule 12(b)(1).
24 Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); see also Int’l Union of Operating
25 Eng’rs v. Cnty. of Plumas, 559 F.3d 1041, 1043-44 (9th Cir. 2009). Lack of subject
26 matter jurisdiction may also be raised by the district court sua sponte. Ruhrgas AG v.
27 Marathon Oil Co., 526 U.S. 574, 583 (1999). Indeed, “courts have an independent
28 obligation to determine whether subject matter jurisdiction exists, even in the absence of

1 a challenge from any party.” Id.; see Fed. R. Civ. P. 12(h)(3) (requiring the court to
2 dismiss the action if subject matter jurisdiction is lacking).

3 **C. Rule 12(f)**

4 The Court may strike “from any pleading any insufficient defense or any
5 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “[T]he
6 function of a 12(f) motion to strike is to avoid the expenditure of time and money that
7 must arise from litigating spurious issues by dispensing with those issues prior to trial...”
8 Sidney-Vinsein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Immaterial
9 matter is that which has no essential or important relationship to the claim for relief or the
10 defenses being pleaded. Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993),
11 rev’d on other grounds 510 U.S. 517 (1994) (internal citations and quotations omitted).
12 Impertinent matter consists of statements that do not pertain, and are not necessary, to
13 the issues in question. Id.

14 **D. Leave to Amend**

15 A court granting a motion to dismiss a complaint must then decide whether to
16 grant leave to amend. Leave to amend should be “freely given” where there is no
17 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
18 to the opposing party by virtue of allowance of the amendment, [or] futility of the
19 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
20 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
21 be considered when deciding whether to grant leave to amend). Not all of these factors
22 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
23 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
24 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
25 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,
26 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
27 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.

28 ///

1 1989) (“Leave need not be granted where the amendment of the complaint . . .
2 constitutes an exercise in futility . . .”).

3 4 ANALYSIS

5 6 A. USFS’s Motion to Strike

7 The Court’s May 22, 2014, Order (ECF No. 83) dismissed all of Plaintiffs’ claims
8 against El Dorado with leave to amend. That Order also dismissed all of Plaintiffs’
9 claims against the Federal Defendants, but it only granted Plaintiffs leave to amend with
10 respect to a single claim for inverse condemnation. See ECF No. 83 at 11.⁶ The USFS
11 now moves to strike all claims asserted against them in Plaintiffs’ FAC. Specifically, the
12 USFS argues that because the Court’s May 22, 2014, Order only gave Plaintiffs leave to
13 amend their inverse condemnation claim against Federal Defendants, Plaintiffs were not
14 permitted to add any new claims against the Federal Defendants in their FAC, without
15 seeking leave to amend. See ECF No. 139 at 2.

16 Under Rule 15, a party may amend his or her pleading “once as a matter of
17 course [and] . . . by leave of court . . . and leave shall be freely given when justice so
18 requires.” Fed. R. Civ. P. 15(a). District Courts in this circuit generally allow plaintiffs to
19 add new claims and/or parties to an amended complaint where a prior order of dismissal
20 granted leave to amend without limitation. See, e.g., Katz v. Cal-W. Reconveyance
21 Corp., 09-CV-04866-LHK, 2010 WL 3768049 (N.D. Cal. Sept. 21, 2010). On the other
22 hand, where a prior court order granted limited leave to amend, District Courts in this
23 circuit generally strike new claims or parties contained in an amended complaint when
24 the plaintiff did not seek leave to amend. See, e.g., Benton v. Baker Hughes,
25 CV-12-07735-MMM, 2013 WL 3353636 (C.D. Cal. June 30, 2013); Crane v. Yarborough,

26
27 ⁶ Plaintiffs did not renew or move to transfer their inverse condemnation claim against the Federal
28 Defendants within the time permitted. Therefore, pursuant to the terms of the Court’s prior orders (ECF
Nos. 83, 89), Plaintiffs’ inverse condemnation claim against the Federal Defendants is DISMISSED with
prejudice.

1 CV 05-8534-DSF, 2012 WL 1067956 (C.D. Cal. Mar. 29, 2012). Thus, whether a district
2 court will accept new claims and/or parties in an amended complaint after a motion to
3 dismiss will depend on whether the plaintiff was granted leave to amend with or without
4 limitation. Urista v. Bank of America, N.A., C11-03097-HRL, 2012 WL 10596, at *3 (N.D.
5 Cal. Jan. 3, 2012). In all of these cases, courts looked at the specific language of the
6 prior order to determine whether or not leave to amend was granted without limitation.

7 When the language of an order clearly states that a plaintiff may only amend to
8 address certain deficiencies identified in the order, courts have held that a plaintiff is
9 barred from adding new claims or parties. For example, in Benton v. Baker Hughes, the
10 court found that the order did not grant plaintiff leave to add new claims when the order
11 stated that plaintiff “may file an amended complaint addressing the deficiencies identified
12 herein.” 2013 WL 3353636, at *3. In DeLeon v. Wells Fargo Bank, N.A., the court
13 similarly found that the plaintiff was not allowed to add new claims to the complaint when
14 its previous order dismissed six claims without leave to amend, and granted leave to
15 amend with respect to certain claims to give the plaintiff an opportunity to allege more
16 facts. 2010 WL 4285006, *3 (N.D. Cal. Oct. 22, 2010).

17 Here, with respect to the USFS’s Motion to Strike, Benton and DeLeon are
18 analogous. In this Court’s previous Order, the Court granted the Federal Defendants’
19 motion “with leave to amend as to Plaintiffs’ claim for inverse condemnation and . . .
20 without leave to amend as to all other claims.” ECF No. 83 at 11. Within the Order itself,
21 the Court specifically identified the deficiency to be cured with respect to the inverse
22 condemnation claim when it stated that Plaintiff must plead a dollar amount in damages
23 not exceeding \$10,000. See ECF No. 83 at 8. As in Benton and DeLeon, the Court was
24 specific about the purpose of the limited leave granted, as opposed to granting leave to
25 amend without limitation. For that reason, the Court GRANTS the USFS’s Motion to
26 Strike and DISMISSES without prejudice Plaintiffs’ claims against it.

27 ///

28 ///

1 Because the Court strikes all of Plaintiffs' claims against the USFS and there are no
2 other claims alleged by Plaintiffs over which the Court may exercise jurisdiction, the
3 Court finds that it no longer has subject matter jurisdiction over this action.

4 **B. CRR Defendants' and El Dorado's Motions**

5 The CRR Defendants and El Dorado moved to dismiss the FAC for lack of subject
6 matter jurisdiction under Rule 12(b)(1). See ECF Nos. 138, 142. To the extent that CRR
7 Defendants' and El Dorado's Rule 12(b)(1) motions are based on the grounds that no
8 federal claims or federal defendants properly remain in the FAC, for the reasons
9 discussed above, those motions are GRANTED.

10 Defendant El Dorado also moved to strike all new claims against it in the FAC,
11 and also to strike Ronald Saxon as a plaintiff, on the grounds that Plaintiffs exceeded the
12 scope of the Court's May 22, 2014, Order in adding new claims against it and a new
13 Plaintiff, without seeking leave of court.⁷ See ECF No. 142 at 2. In their motion, the
14 CRR Defendants similarly argue that Plaintiffs exceeded the scope of the previous Order
15 by adding new claims and a new party. See ECF No. 138 at 2.

16 Because the Court finds that it is without jurisdiction over this matter, it declines to
17 reach these motions to strike, which are DENIED without prejudice.⁸ For the same
18 reasons, these Defendants' Motions to Dismiss pursuant to Rule 12(b)(6) are DENIED
19 without prejudice to being renewed should Plaintiff file a Second Amended Complaint as
20 permitted below. Finally, the CRR Defendants also moved to dismiss the FAC pursuant
21 to Rule 12(b)(1) on grounds that Plaintiffs cannot show associational standing. Because
22 the Court lacks subject matter jurisdiction over this action, the Court declines to reach
23 the issue of associational standing at this time and this request is also denied without
24 prejudice.

25 ⁷ USFS did not move to strike Ronald Saxon as a plaintiff. Compare ECF No. 139 with ECF
26 Nos. 138, 142).

27 ⁸ Nonetheless, the Court questions whether these motions to strike are warranted given that, as
28 set forth above, district courts generally hold that it is proper for plaintiffs to add claims or a party when
leave to amend is granted without limitation, such as this Court did in its Order granting El Dorado's motion
(ECF No. 83 at 11). See Katz, 2010 WL 3768049.

1 **CONCLUSION**

2

3 As set forth above, because Plaintiffs improperly added new claims against the

4 USFS without seeking leave of court to do so, as required by Rule 15, the USFS's

5 Motion to Strike (ECF No. 139) is GRANTED. Plaintiffs' quiet title and FOIA claims

6 against the USFS are therefore DISMISSED without prejudice. Not later than twenty

7 (20) days after the date this Memorandum and Order is filed electronically, Plaintiffs may

8 (but are not required to) move to amend their Complaint pursuant to Rule 15 to add any

9 claims and parties not included in their initial Complaint. If Plaintiffs do not file a Second

10 Amended Complaint ("SAC") containing claims over which the Court has jurisdiction,

11 accompanied by a properly noticed Motion to Amend, within said twenty (20)-day period,

12 Plaintiffs' quiet title and FOIA claims against the USFS will be dismissed with prejudice,

13 resulting in the dismissal, without further notice, of Plaintiffs' FAC, in its entirety, for lack

14 of subject matter jurisdiction.

15 In addition, as set forth above, the CRR Defendants and El Dorado's pending

16 Motions (ECF Nos. 138, 142) are GRANTED to the extent that these parties contend

17 that the Court lacks subject matter jurisdiction over this matter. However, to the extent

18 that the CRR Defendants and El Dorado moved to dismiss claims against them for

19 failure to state a claim under Rule 12(b)(6), to strike claims against them, or to strike

20 Plaintiff Ronald Saxon, these Motions (ECF Nos. 138, 142) are DENIED without

21 prejudice. If Plaintiffs file a SAC as permitted above, the CRR Defendants and

22 El Dorado may renew these objections in accordance with the Local Rules and the


23 Federal Rules of Civil Procedure.

24 IT IS SO ORDERED.

25 Dated: September 29, 2014

26

27

28 
MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT