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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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10 ROBERT LENKNER, et al.,

No. 2:17-cv-01839-JAM-CMK

11 Plaintiffs,

12 v.

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

13 COUNTY OF TEHAMA,

14 Defendant.

15
16 Certain citizens of Tehama County seek to contest the
17 County's procedures for issuing citations and assessing fees for
18 alleged public nuisances. The Defendant County moves to dismiss
19 the Complaint under Federal Rule of Civil Procedure 12(b)(6) for
20 failure to state a claim. For the reasons set forth below,
21 Defendant's motion is granted with leave to amend.¹

22 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

23 The following allegations are taken as true for the purposes
24 for this motion:

25 Plaintiffs are citizens of Tehama County and the Bilton

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for November 21, 2017.

1 Family Revokable [sic] Trust. Compl. ¶¶ 5-6. On August 31,
2 2017, Plaintiffs received letters from County of Tehama
3 ("Defendant") informing them that they were in alleged violation
4 of a county ordinance and that their use of their residential
5 properties had created a Public Nuisance. Id. at ¶¶ 9-10. "The
6 notices stated that the effective accrual date for the subject
7 penalties was to begin Tuesday, September 5, 2017, at a rate of
8 \$1,000 per day, prior to any hearing on the subject matter." Id.
9 at ¶ 10. Plaintiffs contend that the accrual of administrative
10 penalties before a hearing is a violation of their due process
11 rights and an attempt to intimidate Plaintiffs to abandon their
12 right to be heard and to object to a search of their property.
13 Id. They further allege that the ordinance allows a lien to be
14 placed on real property and a forced sale in order to satisfy
15 unpaid penalties. Id. at ¶ 11.

16 Plaintiffs assert two causes of action. First, Plaintiffs
17 claim Tehama County Code Chapter 9.06—apparently the ordinance on
18 which the notices were based—deprives them of due process of law
19 under the Fifth and Fourteen Amendments and their right to be
20 free from unreasonable search and seizure. Id. at ¶¶ 11-12.
21 Second, Plaintiffs claim that Defendant requires them to consent
22 to a warrantless search and thus deprives them of their Fourth
23 Amendment rights. Id. at ¶ 13.

24 When Plaintiffs filed this action, they sought a Temporary
25 Restraining Order and Preliminary Injunction enjoining Defendant
26 from conducting a hearing pursuant to Tehama County Ordinance
27 § 9.06.035, from assessing administrative penalties or
28 enforcement costs prior to a hearing, and from any enforcement

1 actions pursuant to the ordinance. Motion for Temporary
2 Restraining Order, Proposed Order, ECF No. 1-3. The Court denied
3 the motion because Plaintiffs had not shown they were likely to
4 succeed on the merits of their claim or that they were likely to
5 suffer irreparable harm in the absence of preliminary relief.
6 Order, ECF No. 12. Defendant filed a Motion to Dismiss on
7 October 12, 2017. ECF No. 14. Plaintiffs did not oppose the
8 Motion to Dismiss but instead filed a First Amended Complaint on
9 November 9, 2017. ECF No. 19. The Court ordered the First
10 Amended Complaint stricken because it was filed outside of the
11 21-day window permitted under Federal Rule of Civil Procedure
12 15(a). ECF No. 22. Defendant's Motion to Dismiss is before the
13 Court unopposed.

II. OPINION

A. Legal Standard

16 While the Rule 8 pleading standard does not require detailed
17 factual allegations, "it demands more than an unadorned, the-
18 defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal,
19 556 U.S. 662, 678 (2009). A pleading is insufficient if it
20 merely offers "labels and conclusion" or "naked assertions devoid
21 of further factual enhancement." Id. (citing Bell Atlantic Corp.
22 v. Twombly, 550 U.S. 544, 555-57 (2007)) (quotation marks
23 omitted). On a motion to dismiss for failure to state a claim,
24 the Court's review is limited to the Complaint. See Farr v.
25 United States, 990 F.2d 451, 454 (9th Cir. 1993).

B. Analysis

27 The Court is compelled to dismiss the Complaint because it
28 is devoid of factual allegations supporting Plaintiffs' claims.

1 On the first cause of action, Plaintiffs allege that
2 penalties will accrue prior to any hearing on the subject matter.
3 Plaintiffs have not alleged any other facts concerning the
4 hearing or process, facts concerning the ordinance, or facts
5 concerning Plaintiffs' activities that caused the notices to
6 issue. See Compl. Furthermore, the Court remains unconvinced
7 that the accrual of penalties prior to hearing is a due process
8 violation where penalties do not become due until after notice
9 and a hearing. See Order, ECF No. 12.

10 As to the search and seizure allegations—included under both
11 the first and second cause of action—the Complaint contains no
12 facts supporting the claim that Plaintiffs are forced to consent
13 to a warrantless search.

14 In sum, Plaintiffs' bare and conclusory allegations fail to
15 state a plausible claim for relief and the Complaint must be
16 dismissed. Defendant asks the Court to grant their motion
17 without leave to amend. However, as the Complaint represents
18 Plaintiffs' first attempt to plead their case and the Court is
19 not yet convinced that amendment is futile, leave to amend is
20 granted.²

III. ORDER

22 For the reasons set forth above, the Court GRANTS

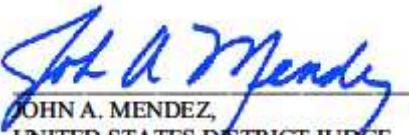
24 ² The Court issued a Status (Pre-trial Scheduling) Order in this
25 case on the same day Plaintiffs filed their First Amended
26 Complaint. ECF Nos. 18 & 19. The Order states that no further
27 joinder of parties or amendments to pleadings is permitted except
28 with leave of court. Under the circumstances, and for the
reasons stated in this Order, Plaintiffs are permitted leave to
amend their complaint. Any amendment beyond that is subject to
the restrictions in the Court's Status Order.

1 Defendant's Motion to Dismiss with leave to amend. Plaintiffs'
2 amended complaint must be filed within twenty days from the date
3 of this Order. Defendant's responsive pleading is due within
4 twenty days thereafter.

5 Plaintiffs' Motion to Amend, ECF No. 23, is dismissed as
6 moot.

7 IT IS SO ORDERED.

8 Dated: December 6, 2017

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11 JOHN A. MENDEZ,
12 UNITED STATES DISTRICT JUDGE

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