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10 CATARINA GARNICA, et al.,

11 Plaintiffs,

12 v.

13 LABORATORY CORPORATION OF
14 AMERICA HOLDINGS,

15 Defendant.

No. 2:20-cv-02411-MCE-CKD

MEMORANDUM AND ORDER

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17 Through this action, Plaintiffs Catarina Garnica, Vanessa Singh, and Albert
18 Garnica (collectively "Plaintiffs") seek to recover damages from Defendant Laboratory
19 Corporation of America Holdings ("Defendant") for negligence, *res ipsa loquitur*, and
20 breach of contract based on the allegedly flawed processing and reporting, by
21 Defendant, of court-ordered paternity test results during state custody proceedings.
22 Presently before the Court is Defendant's Motion to Dismiss, made pursuant to Federal
23 Rule of Civil Procedure 12(b)(6), for failure to state a viable claim. Defendant asserts
24 the case is barred by California's litigation privilege, as codified by California Civil Code
25 § 47. ECF No. 10. Defendant's Motion is **GRANTED** with leave to amend.¹

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28 ¹ Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local Rule 230(g).

ANALYSIS

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2 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
3 Procedure (“FRCP”) 12(b)(6), all allegations of material fact must be accepted as true
4 and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut.
5 Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and
6 plain statement of the claim showing that the pleader is entitled to relief’ in order to ‘give
7 the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”
8 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson,
9 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss
10 does not require detailed factual allegations. However, “a plaintiff’s obligation to provide
11 the grounds of his entitlement to relief requires more than labels and conclusions, and a
12 formulaic recitation of the elements of a cause of action will not do.” Id. (internal citations
13 and quotation marks omitted). A court is not required to accept as true a “legal
14 conclusion couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
15 (quoting Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right
16 to relief above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan
17 Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating
18 that the pleading must contain something more than “a statement of facts that merely
19 creates a suspicion [of] a legally cognizable right of action”)).

20 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
21 assertion, of entitlement to relief.” Twombly, 550 U.S. at 555 n.3 (internal citations and
22 quotation marks omitted). Thus, “[w]ithout some factual allegation in the complaint, it is
23 hard to see how a claimant could satisfy the requirements of providing not only ‘fair
24 notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing
25 Wright & Miller, supra, at 94, 95). A pleading must contain “only enough facts to state a
26 claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have not
27 nudged their claims across the line from conceivable to plausible, their complaint must
28 be dismissed.” Id. However, “[a] well-pleaded complaint may proceed even if it strikes a

1 savvy judge that actual proof of those facts is improbable, and ‘that a recovery is very
2 remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236
3 (1974)).

4 A court granting a motion to dismiss a complaint must then decide whether to
5 grant leave to amend. Leave to amend should be “freely given” where there is no
6 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
7 to the opposing party by virtue of allowance of the amendment, [or] futility of the
8 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
9 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
10 be considered when deciding whether to grant leave to amend). Not all of these factors
11 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
12 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
13 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
14 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,
15 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
16 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.
17 1989) (“Leave need not be granted where the amendment of the complaint . . .
18 constitutes an exercise in futility”)).

19 All of Plaintiffs’ claims are foreclosed by California’s litigation privilege. See
20 Falcon v. Long Beach Genetics, Inc., 224 Cal. App. 4th 1263 (4th Dist. 2014) (applying
21 the privilege to challenges to court-ordered paternity test under materially analogous
22 circumstances). Indeed, even Plaintiffs concede that Falcon is fatal to their negligence

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1 and *res ipsa loquitur* claims. See Opp., ECF No. 16, at 4-5.² Moreover, the Court is
2 persuaded that the privilege extends to Plaintiffs' breach of contract claims as well. The
3 basis of the breach of contract and negligence claims is precisely the same. Those
4 contract claims are thus barred with Plaintiffs' negligence claims.³ See *Feldman v. 1100*
5 *Park Lane Assoc.*, 160 Cal. App. 4th 1467, 1497 (finding breach of contract claims
6 subject to the litigation privilege when "[t]he same communicative conduct formed the
7 basis for the tort and breach of contract causes of action"); *McNair v. City and County of*
8 *San Francisco*, 5 Cal. App. 5th 1154, 1172 (1st Dist. 2016) ("[I]t is the gravamen of the
9 cause of action rather than its designation that is controlling.").

10
11 **CONCLUSION**

12 For the reasons just stated, Defendant's Motion to Dismiss (ECF No. 10) is
13 **GRANTED** with leave to amend. Not later than twenty (20) days following the date this
14 Memorandum and Order is electronically filed, Plaintiffs may, but are not required to, file
15 an amended complaint. If no amended complaint is timely filed, this action will be
16 deemed dismissed with prejudice upon no further notice to the parties.

17 IT IS SO ORDERED.

18 Dated: September 7, 2021

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MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE

22 ² In an attempt to save those claims, Plaintiffs nonetheless make two unpersuasive arguments.
23 First, they contend that applying the litigation privilege in the context of court-ordered paternity
24 proceedings, when it would not apply to bar challenges to privately requested testing, violates the Equal
25 Protection Clause of the United States Constitution. Plaintiffs cite no authority for this proposition, do not
26 explain how litigants in court proceedings where paternity tests are ordered are similarly situated to private
individuals seeking to obtain testing on their own, or make clear how making such a distinction fails
rational basis review. This argument is thus rejected. Second, Plaintiffs contend this Court should follow
authority from outside of this circuit construing statutes from other states to argue that California's litigation
privilege should not apply. Given the irrelevance of that authority, this argument is also not well taken.

27 ³ Regardless, the Court is not convinced that Plaintiffs were owed a duty of care or were third-
28 party beneficiaries to any contract between Defendant and the county. See, e.g., *Falcon*, 224 Cal. App.
4th at 1270 n.5 (observing that the trial court had concluded that those plaintiffs failed to show the
laboratory owed them a duty of care or that plaintiffs were intended third-party beneficiaries).