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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DOUGLAS, et al.,

No. C 09-4788 CRB

Plaintiffs,

**ORDER GRANTING MOTIONS TO
DISMISS**

v.

TOWN OF PORTOLA VALLEY, et al.,

Defendants.

On January 19, 2010, this Court granted Defendants Town of Portola Valley's and George Mader's motions to dismiss Plaintiffs' complaint in its entirety. The Order explained that "to state a claim for relief against these Defendants, Plaintiffs must amend the Complaint to include factual allegations concerning the Defendants' role in the improper conduct," emphasizing that the "[a]llegations with regard to Defendant George Mader are particularly sparse, and will require extensive amendment in order to successfully state a claim." Order at 1:23-28.

Plaintiffs filed their First Amended Complaint on February 18, 2010. The Amended Complaint asserts six causes of action against Defendants under the same legal theories as the original complaint. The first cause of action asserts civil rights violations against Defendants Town of Portola Valley, West Bay Sanitary District, and George Mader under due process and equal protection theories. The second and third causes of action request declaratory and injunctive relief against Defendants West Bay Sanitary District, Town of

1 Portola Valley, Christopher Buja, Luis Mejia, and Sausel Creek Associates. The fourth, fifth
2 and sixth causes of action assert both intentional and negligent interference with contractual
3 or prospective economic relationships against Christopher Buja, Luis Mejia, and Sausel
4 Creek Associates. Defendants have filed three separate motions to dismiss, requesting that
5 this Court dismiss Plaintiffs’ First Amended Complaint in its entirety.

6 Regarding the first cause of action, Plaintiffs fail to bolster their civil rights action
7 with sufficient facts to merit relief. Alternatively, Plaintiffs are time barred for not meeting
8 the two year statute of limitations. Plaintiffs second and third causes of action fail for the
9 same reasons. Finally, Plaintiffs’ fourth, fifth and sixth causes of action fail to allege facts
10 sufficient to state a claim..

11 Therefore, the Court GRANTS Defendants’ motions to dismiss the complaint in its
12 entirety. Furthermore, because Plaintiffs have already been given an opportunity to amend
13 their complaint, in addition to the opportunity to further explain their claims in supplemental
14 briefing, dismissal is with PREJUDICE.

15 BACKGROUND

16 According to the Amended Complaint, the Town of Portola Valley imposed a
17 condition within a Conditional Use Permit (“C.U.P.”) that required Plaintiffs “to connect to a
18 sewer once [sic] became available in the town, allegedly for the benefit of the public
19 welfare.” Amended Compl. ¶ 14. The condition states: “When sewers are available in
20 Portola Road in front of the subject property, the commercial building and the residence shall
21 be connected to the sewer within one year of such availability.” *Id.* According to the
22 Complaint, “[t]he condition of connecting to a sewer, when available, in the Douglas’ C.U.P
23 has become a harsh and extraordinary condition, since the position of the town of Portola
24 Valley is that a private sewer pipe constructed pursuant to a private reimbursement
25 agreement dated August 14, 2006 between Defendant West Bay Sanitary District and
26 Defendant Developers Christopher Buja, Luis Mejia and Sausal Creek Associates has now
27 become applicable as against the Plaintiffs.” *Id.* at ¶ 17.

28

1 The Amended Complaint further alleges that “[o]n or about August 14, 2006, a private
2 reimbursement agreement was entered into without notice to the Douglas’ or the public. This
3 agreement was executed between Defendant West Bay Sanitary District and Defendant
4 Developers Christopher Buja, Luis Mejia and Sausal Creek Associates.” Id. ¶ 19. The
5 original Complaint remained consistently vague and conclusory as to Defendants’
6 involvement with the 2006 Reimbursement Agreement and the Amended Complaint does not
7 fair much better. Plaintiffs have added additional paragraphs alleging that the City of Portola
8 Valley issued Christopher Buja, Luis Mejia, and Sausal Creek Associates building permits to
9 construct the sewers with the “knowledge and intent to try and force the Douglas’ to pay for
10 the construction” of the sewers.” Id. ¶ 26. While the FAC is more focused on conclusory
11 allegations regarding Defendants’ ill intent than on alleging facts, it appears that the disputed
12 Reimbursement Agreement provided that while a private consortium would build the sewer,
13 it would be accepted by the District as public property, which in turn allowed the District to
14 assess a “Supplemental Connection Charge” to future connectors to the line to reimburse the
15 developers for constructing the line. See Dkt. #27, ex. A.

16 The next series of allegations concern the Town’s revocation of Plaintiffs’ C.U.P.,
17 which had originally required Plaintiffs to connect to a sewer once one became available.
18 “On or about February 11, 2009, the Town Council of Defendant Town of Portola Valley
19 affirmed the decision of the Planning Commission to revoke the conditional use permit of the
20 Plaintiffs if certain conditions were not met.” Id. ¶ 33. While the Complaint is not specific,
21 this appears to refer to Plaintiffs’ refusal to connect to the sewer, which is the only
22 “condition” mentioned by the Complaint. The Complaint goes on to explain that “[a]t the
23 hearing on January 28, 2009, Plaintiffs objected and asked for the recusal of any member of
24 the Town Council who had any personal acquaintance and/or involvement with any of the
25 parties to the private reimbursement agreement which had been entered into without notice to
26 the Douglas’ or the public and executed between Defendant West Bay Sanitary District and
27 Defendants Developers Christopher Buja, Luis Mejia and Sausal Creek Associates. The
28 request was rejected by the Town Council.” Id. ¶ 35. This conduct, according to the

1 Amended Complaint, subjects the Town to liability “for violations of civil rights under
2 Federal and State law, including but not limited to 42 U.S.C. §§ 1983, 1985, 1988 and
3 violations of due process in aspects including but not limited to equal protection. The due
4 process rights of the Douglas’ were violated when the Town Council based its decision in
5 part at least on favoring certain residents over other ones.” Id. ¶ 43.

6 Next, the Amended Complaint explains that the condition imposed in the C.U.P.
7 “constitutes an unreasonable restriction and gives the Plaintiffs less rights than the
8 surrounding properties including but not limited to the Town of Portola Valley’s properties.”
9 Id. ¶ 47. “Plaintiffs further allege that the Town of Portola Valley has itself declined to tie-
10 in to the private sewer pipe while unlawfully instigating an isolated policy of enforcement
11 against the Plaintiffs. This is despite their agreeing to do so previously and of which their
12 proportionate financial contribution to the sewer tie-in has unduly burdened Plaintiffs with
13 increased financial demands.” Id. ¶ 49.

14 Plaintiffs also allege that “the sewer condition as applied is an oppressive and
15 unwarranted interference with their property rights and are also a part of an unlawful
16 conspiracy between Defendants Town of Portola Valley, West Bay Sanitary District,
17 Christopher Buja, George Mader [sic], Luis Mejia and Sausal Creek Associates.” Id. ¶ 50.
18 As for George Mader’s role, the Amended Complaint adds a number of paragraphs alleging
19 specific conduct of George Mader. See id. ¶¶ 57-65. Plaintiffs argue that “George Mader
20 and Spangle Associates have shown a distinct pattern of negative recommendations
21 whenever any matters having to do with the Douglas’ are brought up.” Id. ¶ 62. In support of
22 this proposition, Plaintiffs point to three memorandums generated by George Mader and
23 Spangle Associates that allegedly disparaged Plaintiffs. Id. However, the allegedly
24 disparaging comments within these memorandums are the exact sentiments Defendants have
25 asserted against Plaintiffs throughout these proceedings - namely, that Plaintiffs should either
26 have their permit revoked or pay to connect to the sewer. Id.

27 While the above allegations are wide-ranging, all fall within the first cause of action.
28 The second cause of action is for declaratory relief against the Town of Portola Valley, West

1 Bay Sanitary District, Christopher Buja, Luis Mejia, and Sausel Creek Associates. This
2 cause of action appears to be primarily related to the 2006 Reimbursement Agreement, but
3 for the most part, the Complaint does not allege that the Town was in any way a party to the
4 Agreement. The Complaint alleges that “[t]he Town of Portola Valley has furthered the
5 conspiracy and utilized the unlawful private reimbursement agreement as a means to enforce
6 unlawful policies and conditions against the Douglases in violation of their constitutional
7 rights and the use and enjoyment of their property. As a direct and necessary result of the
8 actions of the Town of Portola Valley as described, the property of Plaintiffs has and/or will
9 be severely damaged in value.” Id. ¶ 70. The Complaint requests a declaration as to the
10 invalidity of the August 14, 2006 private reimbursement agreement “which had been entered
11 into without notice to the Douglas’ or the public” and as to the July 9, 2001 Conditional Use
12 Permit (“C.U.P”) . . . instructing Plaintiffs to connect to a sewer when one became available
13 in the town.” Id. ¶¶ 72, 74.

14 The third cause of action is for injunctive relief. While the Amended Complaint does
15 not assert a new substantive basis for this form of relief, the allegations listed under this
16 cause of action provide a bit more factual context. The Amended Complaint alleges that
17 “Defendant Town of Portola Valley agreed and represented that they would also utilize the
18 new sewer improvement as a result of the August 14, 2006 private reimbursement agreement
19 and pay their proportionate share, which would substantially decrease the burden on the cost
20 to the individual persons and/or residents, including but not limited to the Plaintiffs.” Id.
21 ¶ 79. “Sometime at or after the August 14, 2006 private reimbursement agreement was
22 entered into, in bad faith and negligently, the Town of Portola Valley proceeded to back out
23 of their agreement to participate, while still unlawfully utilizing their police powers to force
24 Plaintiffs to tie-in to a sewer pipe at an unconscionable and disproportionate cost to the
25 Douglas’ [sic].” Id. ¶ 80. The Amended Complaint goes on to accuse the Town of
26 inconsistent enforcement, alleging that even though the Town claims that sewers benefit the
27 public health, it has not itself connected to the sewer system. Id. ¶¶ 53-54. The Plaintiffs
28 therefore ask that the Town be enjoined from enforcing the condition.

1 The Plaintiffs' fourth, fifth and sixth causes of action allege intentional interference
2 with contract, and intentional and negligent interference with economic advantage against
3 Defendants. The Amended Complaint alleges that Christopher Buja, Luis Mejia, and Sausel
4 Creek Associates "proceeded to take intentional and fraudulent ongoing actions along with
5 other Defendants which would ultimately lead to the Plaintiff's property being rendered
6 harmed in a substantial manner." *Id.* ¶ 97. The actions taken by Defendants likely refers to
7 the private reimbursement agreement entered into on August 14, 2006, with the West Bay
8 Sanitary District. *Id.* ¶ 93.

9 DISCUSSION

10 Defendants move to dismiss, based on both Rule 12(b)(1) and 12(b)(6). While the
11 allegations in the Complaint are wide-ranging, Plaintiffs rely solely on two categories of
12 substantive legal liability as to the moving defendants: violations of Plaintiffs' civil rights¹
13 and interference with contractual or economic relationships. As for the civil rights claims,
14 which are based on due process and equal protection, Defendants argue that the Complaint
15 fails to allege sufficient facts to give rise to liability, and alternatively, that Plaintiffs are
16 barred by the applicable statute of limitations. Defendants similarly argue that Plaintiffs'
17 interference with contract or economic relationships claims are also barred by the applicable
18 statute of limitations. Defendants' arguments are persuasive, and their motions to dismiss are
19 therefore GRANTED.

20 1. Civil Rights Cause of Action

21 A. The Action is Time-Barred

22 Plaintiffs' first cause of action for violation of civil rights under 42 U.S.C. § 1983 is
23 subject to the State of California's statute of limitations. *Wallace v. Kato*, 549 U.S. 384
24 (2007). In California, the statute of limitations for a federal civil rights action brought
25 pursuant to 42 U.S.C. § 1983 is two years. *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132-

26
27 ¹ The two other listed causes of action, for declaratory and injunctive relief, do not assert further
28 forms of substantive legal liability. On the contrary, these causes of action seek particular remedies
based upon the alleged legal violations relating to inverse condemnation and civil rights violations.

1 33 (9th Cir. 2007). A statute of limitation defense may be raised by a motion to dismiss if the
2 running of the limitation period is apparent on the face of the complaint. Jablon v. Dean
3 Witter & Co., 614 F.2d 677, 682 (9th Cir. 2002).

4 Plaintiffs argue that the statute of limitations on their claim began running in early
5 2008 when defendant West Bay Sanitary District issued a formal notice requesting a
6 reimbursement fee from Plaintiffs for the sewer connection. However, as established in
7 Daniel v. County of Santa Barbara, the wrong alleged by Plaintiffs occurred when the
8 condition was imposed, not when the condition was exercised or enforced. 288 F.3d 375,
9 382-83 (9th Cir. 2002) (explaining that “[u]nder established federal law, a taking occurs
10 when an option to take an easement is granted, not when the option is exercised.” Id.
11 (internal citations omitted)). The Conditional Use Permit was issued to Plaintiffs on July 9,
12 2001. Amended Compl. ¶ 14. Plaintiffs waited until October 7, 2009 to file their first
13 Complaint, long after the statute of limitations had run. Because the condition was imposed
14 in 2001 and Plaintiffs did not file a complaint until 2009, the civil rights action is barred by
15 the applicable statute of limitations.

16 Plaintiffs attempt to distinguish the case at hand from the Daniel decision by arguing
17 that in Daniel there were no intervening or changed circumstances causing the matter of the
18 condition to be later on adjudicated. Plaintiffs argue that in the present case, there was a
19 change in circumstances because Defendants later chose to interpret the C.U.P. to require
20 Plaintiffs to connect to a private sewer line. Id. This argument fails. C.U.P. condition
21 number eleven states:

22 When sewers are available in Portola Road in front of the subject property, the
23 commercial building and the residence shall be connected to the sewer within one year
of such availability.

24 Condition Eleven never suggests that Plaintiff would only be required to connect to a public
25 sewer. On the contrary, the condition simply states that when “sewers are available,”
26 Plaintiffs would be required to connect to them. Plaintiffs therefore fail to identify any
27 intervening or changed circumstances that justify extending the statute of limitations.
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1 Even accepting Plaintiffs' theory that the statute of limitations is triggered by the
2 exercise of Condition No. 11 as opposed to its imposition, their claim is still time-barred.
3 Plaintiffs were asked to submit supplemental briefing on the question of notice, and they
4 concede that they were aware of their obligation to connect to the sewer in August 2006. See
5 Plaintiff's Further Briefing at 4. However, they argue that because they were not aware of
6 the Reimbursement Agreement until later, it is only upon learning of the Agreement itself
7 that the statute begins to run. However, as explained below, Plaintiffs fail to explain why it
8 is the Agreement, as opposed to the requirement that they connect to the sewer and pay their
9 proportionate share, that gives rise to their cause of action. On the contrary, regardless of
10 whether the sewer was built by a public or a private entity, California law permits the water
11 district to require those who connect to the sewer to pay their proportionate cost. In other
12 words, the Reimbursement Agreement is irrelevant. Plaintiffs were notified of the
13 requirement that they connect to the sewer by August of 2006; therefore, their claims are
14 untimely.

15 Plaintiffs argue in the alternative that their civil rights claim accrued when Defendant
16 Town of Portola began the administrative process concerning the sewer connection and that
17 equitable tolling would place their claim within the statute of limitations. In California,
18 "tolling is appropriate in a later suit when an earlier suit was filed and where the record
19 shows: (1) timely notice to the defendant in filing the first claim; (2) lack of prejudice to the
20 defendant in gathering evidence to defend against the second claim; and (3) good faith and
21 reasonable conduct by the plaintiff in filing the second claim. Azer v. Connell, 306 F.3d 930,
22 936 (9th Cir. 2002) (internal quotation marks and citation omitted); Lucchesi v. Bar-O-Boys
23 Ranch, 353 F.3d 691, 694-95 (9th Cir. 2003).

24 On August 10, 2006, Plaintiffs sent a letter to Defendant Town of Portola noting the
25 high cost of the sewer connection and asking to be relieved from the condition. They
26 contend that this letter served as their first "claim" against Defendants and put them on notice
27 for purposes of equitable tolling. Defendants point out, correctly, that even if Plaintiffs'
28 claim accrued in 2006 upon exercise of the condition, their August 10, 2006 letter does not

1 rise to the level of a legal claim. Indeed, the letter does not mention any supposed
2 Constitutional rights or changed circumstances, but rather refers to the high cost as a burden.
3 As Azer reflects, it is not enough to complain to a defendant about a certain sort of conduct
4 in order to be entitled to equitable tolling. Azer's test requires that the prior notice be in the
5 form of a "suit," which Plaintiffs cannot point to here. Accordingly, Plaintiffs are not
6 entitled to equitable tolling and their claim is time-barred.

7 **B. The Action Fails to State Sufficient Facts**

8 Alternatively, even if the first cause of action is not time-barred, it still fails to state
9 sufficient facts to support the § 1983 claim. Previously, this Court granted Defendants Town
10 of Portola and George Mader's motion to dismiss the civil rights cause of action explaining
11 that "it is not clear what facts Plaintiffs believe support their civil rights claims against
12 Portola Valley and George Mader, nor is it clear exactly how these facts would support a
13 legal claim." Order 7:8-10. Plaintiffs argued that their rights were violated when the town
14 council refused to recuse council members who had any personal involvement with the
15 parties. In dismissing the Complaint, the Court previously stated that "there is no allegation
16 that any council member in fact was involved with the parties to the reimbursement
17 agreement, nor is there an explanation as to how such an acquaintance would justify recusal."
18 Order 8:5-7.

19 In an attempt to bolster their Complaint, Plaintiffs now argue that because Defendant
20 Buja served on the Cable and Utilities Undergrounding Committee and the Traffic
21 Committee that the members of the town council were acquaintances with Buja and thus
22 favored him and the other Defendants. SAC ¶¶ 35-42. Defendants respond that California
23 Fair Practices Commission ("FPPC") Regulations, California Code of Regulations Section
24 18700-18709, govern when a public official has a conflict of interest. Defendants explain
25 that the regulations do not indicate that a mere acquaintance qualifies as a conflict, and that
26 in most situations a conflict of interest is found when a council member has a material
27 economic interest in the outcome. Here, the council members did not have a material
28 economic interest in the outcome of the hearing and are only alleged acquaintances with

1 Defendants. Furthermore, Defendants reasonably point out that “it would not make sense in
2 a small community like the Town of Portola Valley to require Town Council members to
3 recuse themselves every time they are acquainted with any party who might be interested in a
4 decision. If that were the rule, the Town Council might find itself unable to fulfill its duties.”
5 Mot. to Dis. at 9. Alleging that Defendants were acquainted and favored each other cannot be
6 sufficient to state a claim for due process.

7 The Complaint then alleges equal protection violations against Defendants Town of
8 Portola and George Mader because they treated Plaintiffs differently than other members of
9 the Town of Portola by imposing the requirement of connecting to the sewer on Plaintiffs but
10 not other members of the Town. An equal protection challenge will be reviewed under a
11 strict scrutiny standard if Plaintiffs can prove that they were members of a suspect class.
12 United States v. Armstrong, 517 U.S. 456, 465 (1996). Here, Plaintiffs fail to allege that they
13 are members of a suspect class, and thus Defendants’ allegedly unequal treatment need only
14 be rationally related to a legitimate purpose. NAACP v. Jones, 131 F.3d 1317, 1322 (9th Cir.
15 1997). Defendants argue that for many years there have been drainage problems and that
16 failing leach fields are even more likely to cause drainage problems. Defendants argue that
17 the likelihood of drainage problems supports that the condition was rationally related to the
18 legitimate purpose of protecting public health and safety. Because the Plaintiffs’ business
19 involved leach fields that could pose drainage difficulties, Defendants have a clearly rational
20 and legitimate purpose.

21 Plaintiffs try to bolster their Amended Complaint by pointing out that 90% of the
22 residents in Town are connected to septic systems, which demonstrates unequal treatment.
23 This argument fails to persuade. As the Court pointed out in its previous Order, “the
24 Complaint also illustrates that this condition was imposed on Plaintiffs in exchange for a
25 Conditional Use Permit. Therefore, the fact that other surrounding properties - which did not
26 receive a commercial permit - were not subjected to such a condition does not suggest a
27 double standard. The fact that the Town did not unilaterally force all property owners to
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1 connect to the sewer is simply not relevant to the validity of the C.U.P.’s condition, or the
2 procedures by which that C.U.P. was revoked.” Order 8:24-28.

3 In regard to the civil rights claims against West Bay Sanitary District, Plaintiffs’
4 Amended Complaint seems to focus on the absence of notice to Plaintiffs of the
5 Reimbursement Agreement. But Plaintiffs fail to explain both why they were entitled to
6 notice, and how the failure to provide notice itself harmed them. “The requirements of
7 procedural due process apply only to the deprivation of interests encompassed by the
8 Fourteenth Amendment’s protection of liberty and property.” Bd. of Regents of State
9 Colleges v. Roth, 408 U.S. 564, 569 (1972). Plaintiffs have failed to explain how the
10 enactment of the Reimbursement Agreement deprived them of either their liberty or their
11 property. Long before the Agreement was signed, they had agreed to connect their property
12 to a sewer when one became available. Under the terms of the C.U.P., they had no authority
13 to determine that any particular sewer was inadequate. Plaintiffs attempt to make much of
14 the fact that private interests were involved in the construction of the sewer, but they fail to
15 explain how this is important. They obliquely suggest that somehow the cost imposed on
16 them would be lower had the project been public, but they fail to allege facts to support this
17 conclusion. On the contrary, California law permits a District to require a property owner
18 desiring to connect to a sewer line owned by the District to pay a proportionate share of the
19 cost of the line, where the person did not contribute to its construction.² Cal. Health & Safety
20 Code § 6520.2. Therefore, even if the sewer had been entirely public, they still could have
21 been forced to contribute to its construction.

22 In closing, Plaintiffs’ civil rights causes of action fail to state sufficient facts for relief,
23 as they fail to allege a protected property right for which they were entitled to further
24 process. The C.U.P. obligated them to connect to a sewer, and they could have been charged
25 for connection even had the sewer been entirely public. Further, because they should have

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27 ² Indeed, despite the involvement of private parties, the Reimbursement Agreement
28 makes clear that the sewer itself is “now public property of District.” See Agreement, Dkt. #27,
ex. A. See also Cal. Health & Safety Code § 4742.3 (permitting a District to “collect from any
person” using a privately constructed sewer the funds “to reimburse” the party that constructed
the sewer).

1 known at the time they agreed to the C.U.P. that California law could obligate them to pay in
2 order to fulfill the conditions of the C.U.P., their suit in 2009 is clearly untimely. If
3 Plaintiffs' real complaint concerns the amount they are charged, rather than the fact that they
4 were obligated to pay in the first place, they have failed to make such claims in either the
5 original or the amended complaint. Therefore, this Court GRANTS the motion to dismiss the
6 first cause of action against all Defendants, with prejudice.

7 **2. Second Cause of Action: Declaratory Relief**

8 Plaintiffs request a declaratory judgment as to the validity of the July 9, 2001
9 Conditional Use Permit and the August 14, 2006 Reimbursement Agreement. Amended
10 Compl. 23-28. However, as discussed above, Plaintiffs have failed to identify legal grounds
11 supporting the conclusion that either the C.U.P. or the Reimbursement Agreement are
12 invalid.

13 Plaintiffs are likewise not entitled to a declaratory judgment against Defendant
14 Christopher Buja as to the Conditional Use Permit because Defendant Buja is not a party to
15 that city permit. FAC at ¶ 14. Defendant Buja helpfully cites recent precedent from this
16 Court dismissing a cause of action for declaratory judgment when the defendants were not
17 parties to the contracts upon which Plaintiffs predicated their action. Def. Mot. at 13 (citing
18 DuFour v. Be., LLC, 2010 WL 431972 (N.D. Cal. Feb. 2, 2010) (Breyer, J.)). For the same
19 reasons, declaratory judgment as to the conditional use permit would be improper against
20 Defendant Buja.

21 **3. Third Cause of Action: Injunctive Relief**

22 Plaintiffs also seek injunctive relief against West Bay Sanitary District and the Town
23 of Portola Valley. To the extent that Plaintiffs allege that they seek to enjoin the West Bay
24 Sanitary District from requiring Plaintiffs to connect to the sewer line, Plaintiffs' arguments
25 are misplaced. The West Bay Sanitary District never required Plaintiffs to join the sewer
26 line, rather this condition was instituted by the Town of Portola Valley. To the extent that
27 Plaintiffs seek injunctive relief against the Town of Portola, they have failed to establish a
28 legal entitlement to this relief.

1 **4. Fourth, Fifth and Sixth Causes of Action: Intentional and Negligent Torts**

2 Plaintiffs also sue various private parties for intentional and negligent torts.

3 Defendant Buja moves to dismiss. Plaintiffs fail to allege the facts required to establish a
4 cognizeable contractual relationship for purposes of California law. The complaint indicates
5 that the relevant contractual or economic relationship is between “the Town of Portola Valley
6 and the Douglas’.” SAC ¶¶ 96, 106, 115. Presumably, this refers to the Conditional Use
7 Permit and its requirement that Plaintiffs connect to a sewer once it become available.
8 However, California courts do not recognize such relationships between a private party and a
9 city as “economic” relationships for purposes of this tort. See Blank v. Kirwan, 39 Cal. 3d
10 311 (1985); Asia Investment Co. v. Borowski, 133 Cal. App. 3d 832, 842 (1982). Therefore,
11 because the complaint fails to allege a cognizeable economic or contractual relationship, this
12 claim must be dismissed.

13 **Conclusion**

14 This Court there GRANTS the motions to dismiss the Amended Complaint in their
15 entirety. Furthermore, because Plaintiffs have previously had the opportunity to amend their
16 complaint, and have failed to correct its inadequacies, dismissal is WITH PREJUDICE.

17 **IT IS SO ORDERED.**

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20 Dated: July 21, 2010

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE