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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

M.O.R.E., LLC, et al.,
Plaintiffs,
v.
UNITED STATES OF AMERICA,
Defendant.

Case No. 12-cv-03609-JST

**ORDER GRANTING MOTION TO
DISMISS**

Re: ECF Nos. 84, 106

Before the Court are Defendant United States' Motions to Dismiss and for Judgment on the Pleadings. ECF Nos. 84, 106. For the reasons set forth below, the Motion to Dismiss is GRANTED and the Motion for Judgment on the Pleadings is DENIED AS MOOT.

I. BACKGROUND

A. Factual Allegations¹

In this action, Plaintiffs, M.O.R.E. Partners LLC, Mark Ottovich, Randy Ottovich, Harvey Ottovich, and Karen Rayl bring claims against the United States² for quiet title and wrongful levy. ECF No. 27. Plaintiffs seek to quiet title to, and remove tax levies from, two separate properties in Alameda County. The first is a residential property located at 36224 Pecan Court, Fremont, California (the "Pecan Court property"). *Id.*, ¶ 4. The second is a commercial property located at 15601 Washington Avenue, San Lorenzo, California (the "Washington Avenue property"). *Id.* The individual plaintiffs are siblings and are the children of Jeanette and Jack Ottovich. *Id.*, ¶ 12.

¹ The following allegations are taken from the Second Amended Complaint ("SAC"). ECF No. 27. The Court accepts the allegations as true for the purpose of resolving the United States' motion to dismiss. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

² The SAC states that its second cause of action for wrongful levy is brought against "Defendant Aurora," ECF No. 27 at 6. Since that entity is mentioned nowhere else in the complaint, the Court will assume that the claim is actually brought against the United States.

1 Jeanette and Jack Ottovich previously owned both properties as joint tenants. Id., ¶ 12. In 1993,
2 the Pecan Court property was transferred to the Ottovich Family Revocable Trust. Id., ¶ 13.
3 Jeanette Ottovich passed away in February of 2000, and all interest in the Washington Avenue
4 property transferred to Jack Ottovich as the surviving tenant. Id., ¶¶ 15, 17. Jack Ottovich passed
5 away in April of 2000. Id., ¶ 19.

6 Plaintiffs assert that upon the passing of Jack Ottovich, the estate of Jeannette Ottovich
7 (hereafter “the Estate”) filed a petition in the Alameda County Superior Court in December of
8 2004. Id., ¶¶ 20-21. Plaintiffs further allege that the Superior Court found that the Estate did not
9 have an interest in the Washington Avenue Property and recognized the equitable interests of
10 Mark and Harvey Ottovich in the property. Id., ¶ 21. For eight years, the Pecan Court property
11 was retained by beneficiaries of the Ottovich Family Revocable Trust and the Washington Avenue
12 property was retained by Mark and Harvey Ottovich. Id., ¶ 22. The Ottovich Family Revocable
13 Trust then transferred its interest in the Pecan Avenue property to Plaintiff M.O.R.E. Partners
14 LLC. Plaintiffs further allege that Mark Ottovich continued to pay necessary taxes on the
15 Washington Property, and that Plaintiffs filed an amended estate tax return (Form 706)³ to
16 demonstrate that the Estate did not owe taxes on the properties. Id., ¶¶ 24-25.

17 Plaintiffs then state that on January 18, 2011, IRS agents placed liens, seized, and levied
18 both properties because the Estate continued to owe \$167,000 in taxes. Id., ¶¶ 26, 27. In February
19 of 2011, the IRS then served a notice of seizure for both properties on Mark Ottovich, and Mark
20 Ottovich appealed this notice. Id., ¶ 31. Plaintiffs allege that Randy Ottovich later received a
21 letter from the IRS stating that the liens had expired and that the IRS would not continue
22 collection actions against the Plaintiffs. Id., ¶¶ 33-34. However, the United States continues to
23 improperly act on the liens and levies on the two properties, with the intent to sell them. Id., ¶35.

24 In their SAC, Plaintiffs assert that the Internal Revenue Service (“IRS”) levies on the
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27 ³ IRS Form 706 is the United States estate tax return form required to be filed for every estate
28 valued at over \$60,000. See 26 CFR § 20.6018-1(a) (“A return must be filed on Form 706 for the
estate of every citizen or resident of the United States whose gross estate exceeded \$60,000 in
value on the date of his death.”).

1 Pecan Court and Washington Avenue properties, for the purpose of collecting taxes owed by the
2 Estate, are wrongful because the Estate does not own the properties. Id., ¶ 36. Plaintiffs seek an
3 injunction preventing the United States from enforcing the levies. Id. at 8; 26 U.S.C. § 7426.
4 Plaintiffs also seek a declaration that M.O.R.E. LLC is the owner of the Pecan Court property and
5 that Mark and Harvey Ottovich hold an equitable interest in the Washington Avenue property.
6 ECF No. 27 at ¶¶ 40, 47.

7 **B. Procedural History**

8 Plaintiffs filed their first complaint on July 11, 2012. ECF No. 1. On September 12, 2012,
9 the United States filed a motion to dismiss on the grounds, inter alia, that Plaintiffs' claims were
10 time-barred. ECF No. 6. On October 15, 2012, the court denied the motion because there
11 appeared to be discrepancy between the recorded documents and the order of the probate court
12 affecting who owned the properties. ECF No. 21 at 7. However, the Court denied the motion
13 without prejudice, and granted leave to the United States to file it again "once the facts are
14 established." Id.

15 Plaintiffs subsequently filed a Second Amended Complaint. ECF No. 27. The United
16 States filed an answer, as well as a counterclaim against Mark Ottovich, Harvey Ottovich, Randy
17 Ottovich, and Karen Rayl. ECF No. 30. The United States contends that the Estate remains
18 indebted to the United States in the amount of \$199,308.48. Id. at 6. The United States alleges
19 that counter-claim defendants Karen Rayl, Harvey Ottovich, and Randy Ottovich are liable for the
20 unpaid estate taxes as trustees of the Ottovich Family Revocable Trust. Id. at 6-7. Alternatively,
21 the United States alleges that Karen Rayl, Harvey Ottovich, Randy Ottovich, and Mark Ottovich
22 are liable as beneficial transferees of assets received from the estate. Id.

23 Now before the Court are two motions from the United States.⁴ The first motion is a
24 motion to dismiss and for judgment on the pleadings moving the Court to dismiss the wrongful
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26 ⁴ In both motions, the United States relies on the original complaint and exhibits Plaintiffs
27 submitted at ECF No. 1. However, this Court will rely on the allegations in the Second Amended
28 Complaint, ECF No. 27, since that is the operative complaint. See Lacey v. Maricopa Cnty., 693
F.3d 896, 927 (9th Cir. 2012).

1 levy and quiet title actions on the grounds that, because they are untimely, the Court lacks subject
2 matter jurisdiction over the claims. ECF No. 84. The second motion is a motion for judgment on
3 the pleadings as to the quiet title and wrongful levy claims against the Pecan Court property
4 because the IRS's lien rights attached prior to any alleged transfer of that property. ECF No. 106.

5 **C. Requests for Judicial Notice**

6 Federal Rule of Evidence 201 permits a court to take judicial notice of facts that are "not
7 subject to reasonable dispute" because they are either "generally known within the trial court's
8 territorial jurisdiction," or they "can be accurately and readily determined from sources whose
9 accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

10 "Generally, a district court may not consider any material beyond the pleadings in ruling
11 on a Rule 12(b)(6) motion." Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542,
12 1555 n. 19 (9th Cir.1990). Federal Rule of Civil Procedure 12(d) provides: "If, on a motion under
13 Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the
14 court, the motion must be treated as one for summary judgment under Rule 56." However, courts
15 may properly take judicial notice of materials attached to the complaint. See Lee v. City of Los
16 Angeles, 250 F.3d 668, 688-69 (9th Cir. 2001). If the documents are not attached to the
17 complaint, they may be considered if their authenticity is not contested and the complaint
18 "necessarily relies on them." Id. at 688. This has become known as the "incorporation by
19 reference" doctrine. Knieval v. ESPN, 393 F.3d 1068, 1076 (9th Cir.2005). The incorporation by
20 reference doctrine "is a narrow exception aimed at cases interpreting, for example, a contract. It is
21 not intended to grant litigants license to ignore the distinction between motions to dismiss and
22 motions for summary judgment." Levenstein v. Salafsky, 164 F.3d 345, 347 (7th Cir. 1998). See,
23 e.g., Cooper v. Pickett, 137 F.3d 616, 622-23 (9th Cir.1997) (declining to consider documents
24 referred to but not central to plaintiff's complaint).

25 The United States has attached a document to its motion to dismiss. See ECF No. 109, Ex.
26 1. Exhibit 1 is a copy of an official court record from the Alameda County Superior Court. The
27 record in question is an order from the probate court dated October 29, 2004, approving a
28 settlement of certain disputes among Karen Rayl, Harvey Ottovich, Randy Ottovich, and the

1 Estate. It includes the order itself, copies of Jeannette Ottovich and Jack Ottovich’s wills, a
2 declaration of the family trust, the release agreement, and the stipulation of the compromise and
3 settlement of claims against the estate.

4 The Court will construe Defendant’s submission of these documents in connection with its
5 motion as a request for judicial notice, and grant the request. The Alameda County Superior Court
6 order is generally subject to notice, because it is a matter of public record and its authenticity of
7 the document is not disputed.⁵ See Knievel, 393 F.3d at 1076 (explaining the “incorporation by
8 reference” doctrine extends to situations where plaintiff’s complaint relies on the contents of the
9 document, defendant attaches the document to its motion to dismiss, and the parties do not dispute
10 the authenticity). Plaintiffs refer to and rely on these documents in the SAC. See, e.g., ECF No.
11 27 at 4 (The probate court found that “estate of Ms. Jeanette Ottovich had no interest in the
12 Washington Property and instead recognize[ed] the equitable interests of Plaintiffs Mark and
13 Harvey Ottovich in the Property.”). The Court will take judicial notice of Exhibit 1.

14 Plaintiff Mark Ottovich asks the Court to take judicial notice of four different documents
15 in his opposition to the Motion for Judgment on the Pleadings. See ECF No. 113. Exhibit 1 is an
16 amended 706 form submitted by Karen Rayl on October 14, 2014. The Second Amended
17 Complaint does not refer to or rely on this document; it refers only to an amended 706 form
18 submitted in 2007. ECF No. 27, ¶ 25. Because the Complaint does not rely on the 2014 amended
19 form, the Court will not take judicial notice of Exhibit 1. Exhibit 2 is a copy of the Ottovich
20 Family Revocable Trust. This document was already submitted by the Defendant as part of
21 Exhibit 1. See ECF No. 109, Ex. 1. The Court will therefore deny the request as redundant.
22 Exhibit 3 purports to be a copy of the probate order submitted by Defendant, but it appears to be
23 both incomplete and with pages out of order. The Court will therefore deny this request as well.

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26 ⁵ Plaintiff Mark Ottovich does not dispute the authenticity of the Alameda County Superior Court
27 order submitted by the United States, ECF No. 109, but he does argue that the exhibit is not a
28 complete copy of the order. ECF No. 117 at 1. Rather than submit a true and correct copy of the
order, however, he submits only some pages that he contends were, or should have been, attached
to that order as an exhibit. Id. at 2. The Court finds that Ottovich has failed to meet his burden of
demonstrating that his purported exhibit is authentic, Fed. R. Evid. 901(a), and so declines to
consider it.

1 Exhibit 4 is a letter dated March 25, 2011 an Internal Revenue Service Appeals Team Manager to
2 Harvey Ottovich. That document is attached to the SAC as an exhibit and is already before the
3 Court. See ECF No. 27-1. The Court will therefore deny the request for judicial notice as
4 redundant.

5 **II. LEGAL STANDARD**

6 “After the pleadings are closed—but early enough not to delay trial—a party may move for
7 judgment on the pleadings.” Fed. R. Civ. P. 12(c). The analysis for Rule 12(c) motions for
8 judgment on the pleadings is “substantially identical to [the] analysis under Rule 12(b)(6)”
9 Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012) (quotation omitted). To evaluate a
10 Rule 12(b)(6) motion to dismiss, the court accepts the material facts alleged in the complaint,
11 together with reasonable inferences to be drawn from those facts, as true. Navarro v. Block, 250
12 F.3d 729, 732 (9th Cir. 2001). A plaintiff must allege facts that are enough to raise his/her right to
13 relief “above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

14 In sum, a “judgment on the pleadings is properly granted when, taking all the allegations in
15 the non-moving party’s pleadings as true, the moving party is entitled to judgment as a matter of
16 law.” Fajardo v. Cnty. of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999). “Finally, although Rule
17 12(c) does not mention leave to amend, courts have discretion both to grant a Rule 12(c) motion
18 with leave to amend, and to simply grant dismissal of the action instead of entry of judgment.”
19 Lonberg v. City of Riverside, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004) (citations omitted).

20 **III. ANALYSIS**

21 **A. Sovereign Immunity**

22 The United States moves to dismiss the SAC for lack of subject matter jurisdiction. The
23 United States argues that the government has not waived its sovereign immunity, and accordingly
24 is immune from suit.

25 In order to establish subject matter jurisdiction in an action against the United States, there
26 must be: (1) “statutory authority vesting a district court with subject matter jurisdiction” and (2) “a
27 waiver of sovereign immunity.” Alvarado v. Table Mountain Rancheria, 509 F.3d 1008, 1016
28 (9th Cir. 2007). Even where statutory authority vests the district courts with subject matter

1 jurisdiction, the United States cannot be sued unless it has expressly consented to be sued. Dunn
2 & Black P.S. v. United States, 492 F.3d 1084, 1087-88 (9th Cir. 2007). Waivers of sovereign
3 immunity cannot be implied, but instead must be unequivocally expressed, and are to be strictly
4 construed in favor of the sovereign. Id. at 1088. When the party fails to establish the United
5 States’ consent to be sued, “dismissal of the action is required.” Id.

6 When an action for wrongful levy is brought against the United States, the United States
7 waives sovereign immunity only if the action is filed within nine months of the date of the levy.
8 26 U.S.C. § 6532(c)(1). The United States argues that it has not waived sovereign immunity
9 because Plaintiffs failed to allege that their complaint was filed within the nine month statute of
10 limitations. ECF No. 84 at 6. Additionally, if a plaintiff has filed a collection appeal request, the
11 statute of limitations is extended to the shorter of (1) twelve months from the date of filing an
12 appeal or (2) six months from the date the plaintiff received notice that the appeal was denied. 26
13 U.S.C. § 6532(c)(2). The United States argues that Plaintiffs did not file their complaint within
14 twelve months of filing their collection appeal request. ECF No. 84 at 7.

15 The United States purports to bring its motion to dismiss under Rule 12(b)(1) of the
16 Federal Rules of Civil Procedure, which allows a motion to dismiss for “lack of subject matter
17 jurisdiction.” ECF No. 84 at 1. Federal statutory time limitations on suits against the government,
18 however, are not jurisdictional in nature. Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 95
19 (1990). Because the question whether Plaintiffs’ claim is barred by the statute of limitations is not
20 a jurisdictional question, it should have been raised through a Rule 12(b)(6) motion to dismiss for
21 failure to state a claim, not a Rule 12(b)(1) motion to dismiss for lack of jurisdiction. Supermail
22 Cargo, Inc. v. United States, 68 F.3d 1204, 1206 n.2 (9th Cir. 1995).

23 Finally, because the applicability of equitable tolling often relates to matters outside of a
24 complaint, it is not “generally amenable to resolution on a Rule 12(b)(6) motion.” Supermail, 68
25 F.3d at 1206 (citing Cervantes v. City of San Diego, F.3d 1273, 1276 (9th Cir. 1993)). A
26 complaint cannot be dismissed on a Rule 12(b)(6) motion “unless it appears beyond doubt that the
27 plaintiff can prove no set of facts that would establish the timeliness of the claim.” Id. at 1207.

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1 **1. Statute of Limitations in Wrongful Levy**

2 Plaintiffs respond to the United States’ motion in several ways. First, they contend that the
3 motion is really an improper motion for summary judgment because the United States attaches
4 “evidence outside of the four corners of any pleadings.” ECF No. 90 at 3. As previously noted, a
5 Court may take judicial notice of documents that a complaint relies on or refers to. See Knievel,
6 393 F.3d at 1076. That is what happened here. Plaintiffs’ argument is unavailing.

7 Plaintiffs next argue that the United States’ motion is an improper motion for
8 reconsideration of the Court’s prior order denying its earlier motion to dismiss. ECF No. 90 at 2.
9 But the Court’s prior order denying the United States’ motion to dismiss explicitly permitted the
10 United States to make the same argument in a future motion “once the facts are established.” ECF
11 No. 21 at 7. The United States merely accepted the Court’s invitation.

12 Plaintiffs then argue that the United States should be estopped from making the statute of
13 limitations defense because the Estate submitted an amended return estate tax return. ECF No. 90
14 at 5-6. Plaintiffs allege that the IRS never acted on the return for several years but instead the IRS
15 later seized and levied the properties. Id. at 6. Plaintiffs also raise the argument that because
16 Plaintiffs were pursuing administrative remedies, such as the collection appeals request, its claims
17 should be tolled. Id. at 7. Plaintiffs’ arguments invoke the concepts of both equitable estoppel
18 and equitable tolling.⁶

19 “Equitable estoppel focuses primarily on the actions taken by the defendant in preventing a
20 plaintiff from filing suit, whereas equitable tolling focuses on the plaintiff’s excusable ignorance
21 of the limitations period and on lack of prejudice to the defendant.” Santa Maria v. Pac. Bell, 202
22 F.3d 1170, 1176 (9th Cir. 2000) (citation omitted), overruled on other grounds by Socop-
23 Gonzalez v. INS, 272 F.3d 1176, 1194-96 (9th Cir.2001) (en banc). “A finding of equitable
24 estoppel rests on the consideration of a non-exhaustive list of factors, including: (1) the plaintiff’s
25 actual and reasonable reliance on the defendant’s conduct or representations, (2) evidence of
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28 ⁶ Plaintiffs also allege in their opposition (although not in their complaint) that the government is
guilty of unclean hands. That allegation is not relevant to the Court’s statute of limitations
inquiry.

1 improper purpose on the part of the defendant, or of the defendant’s actual or constructive
2 knowledge of the deceptive nature of its conduct, and (3) the extent to which the purposes of the
3 limitations period have been satisfied.” Id. “Additionally, when estoppel is sought against the
4 government, there must be affirmative misconduct (not mere negligence) and a serious injustice
5 outweighing the damage to the public interest of estopping the government.” Estate of Amaro v.
6 City of Oakland, 653 F.3d 808, 813 (9th Cir. 2011).

7 By contrast, equitable tolling focuses on a plaintiff’s excusable ignorance and the lack of
8 any prejudice to the defendant. Leong v. Potter, 347 F.3d 1117, 1123 (9th Cir. 2003). “The
9 doctrine of equitable tolling ‘has been consistently applied to excuse a claimant’s failure to
10 comply with the time limitations where she had neither actual nor constructive notice of the filing
11 period.’” Id. (quoting Leorna v. U.S. Dep’t of State, 105 F.3d 548, 551 (9th Cir. 1997)).

12 Plaintiffs make only passing reference to the doctrine of equitable tolling, but plead no
13 facts in their complaint to support its application. Plaintiffs allege no facts that would support a
14 finding that they were or should have been unaware that the statute of limitations was running.
15 They were fully aware of the facts underlying their claim at all relevant times, and neither the
16 United States nor anyone else did anything to conceal either those facts or the existence of a
17 statute of limitations. See Hall v. Leorse, 536 F. App’x 690, 691 (9th Cir. 2013) (“Contrary to
18 Hall’s contentions, neither equitable tolling nor equitable estoppel applies because Hall should
19 have reasonably been aware of the existence of his claims within the limitations period and
20 defendants did not wrongfully prevent Hall from asserting his claims.”); Li v. Cnty. of San Diego,
21 259 F. App’x 912, 913 (9th Cir. 2007) (“Li’s contention that the district court should have applied
22 equitable tolling because he was not aware of the basis of his claims due to defendants’ fraudulent
23 concealment is unpersuasive, because Li failed to adequately allege any acts on the part of
24 defendants to prevent him from detecting the facts sufficient to support bringing his claims on a
25 timely basis.”). Nor have Appellants argued that any “extraordinary circumstances beyond [their]
26 control made it impossible to file the claims on time.” Seattle Audubon Soc’y v. Robertson, 931
27 F.2d 590, 595 (9th Cir.1991) (noting that lack of access to courts caused by war supports equitable
28 tolling); see also Scholar v. Pac. Bell, 963 F.2d 264, 267-68 (9th Cir.1992) (holding that equitable

1 tolling is applicable only in “extreme cases”).

2 Plaintiffs also have not alleged any facts to support their equitable estoppel arguments
3 because they fail to allege any affirmative government misconduct. They complain that they filed
4 an amended return with the IRS, which the IRS did not act upon. But that was an action the
5 plaintiffs took, not conduct or a representation by the defendant. In any event, the IRS has “ample
6 discretion to refuse to accept” amended returns. See, e.g., Dover Corp. & Subsidiaries v. C.I.R.,
7 148 F.3d 70, 73 (2d Cir. at 1998), Koch v. Alexander, 561 F.2d 1115, 1117 (4th Cir. 1977) (per
8 curiam). The amended return is therefore irrelevant to the issue of equitable estoppel.⁷

9 Plaintiffs also point out they were lead to believe that the IRS would no longer pursue its
10 levy based on a letter that was sent to Mr. Harvey Ottovich on March 25, 2011. See ECF No. 27-
11 1. The letter states that notices of levy issued to individual beneficiaries had expired and that the
12 IRS no longer intended to pursue collection against the beneficiaries’ individual assets. Id.
13 However, the March 25 letter did not state that the gross estate would no longer be liable. See id.;
14 26 U.S.C. § 6324(a)(3). This letter is not evidence of affirmative government misconduct.

15 In Schweiker v. Hansen, 450 U.S. 785 (1981), the Supreme Court found no need to
16 determine whether the government was estopped by the actions of its agent because the agent’s
17 actions did not rise to the level of affirmative misconduct. Id. at 789. In that case, in response to a
18 claimant’s oral inquiry, a Social Security Administration employee informed the claimant that she
19 was not entitled to benefits and, contrary to the agency manual, failed to advise the claimant that
20 she should file a written application for benefits. Id. The Court acknowledged that the agent’s
21 conduct was in error, but found that it nonetheless “did not cause [the plaintiff] to take action . . .
22 or fail to take action . . . that respondent could not correct at any time.” Id. Even construing the
23 March 25 letter in the light most favorable to Plaintiffs, the Court is unable to conclude that the
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25 ⁷ It also appears that Plaintiffs’ amended 706 form was not timely. Amended 706 forms must be
26 filed within three years from the time of filing the original return or within two years from the date
27 the disputed tax was paid. 26 U.S.C. § 6511. Jeannette Ottovich passed away in 2000. Form 706
28 must be filed within nine months of the decedent’s death and can be eligible for an automatic six
month extension to file. See Instructions for Form 706. An amended form must be filed within
three years from filing the original 706. 26 U.S.C. § 6511.

1 IRS' conduct here is any more culpable than the conduct in Schweiker.

2 In short, the Court concludes that Plaintiffs' wrongful levy claim must be dismissed
3 because Plaintiffs have failed to allege a plausible claim that equitable tolling or estoppel applies
4 to the statute of limitations outlined in 26 U.S.C. section 6532(c).

5 **2. September 2012 Notice of Determination**

6 Finally, Plaintiff Karen Rayl claims that even if the other plaintiffs' claims are time-barred,
7 hers is not. She points to a September 14, 2012 Notice of Determination she received, ECF No.
8 91-1, and suggests that this document was the triggering event for the statute of limitations, such
9 that her complaint in this court was timely. ECF No. 90 at 8.

10 By its plain terms, the Notice is directed to the Estate (of which Rayl was the Executrix)
11 and not to Rayl personally. Also, the notice pertains to a collection action under 26 U.S.C.
12 § 6320, and the second page notes that this relates to a lien, not a wrongful levy as alleged in
13 Plaintiffs' SAC.

14 The Notice of Determination is not relevant to the Court's determination and does not give
15 Rayl different rights than those held by the remaining plaintiffs.

16 **3. Statute of Limitations for Plaintiffs' Quiet Title Claim**

17 Civil actions against the United States are generally barred unless the complaint is filed
18 within six years after the right of action first accrues. 28 U.S.C. § 2401(a). This includes quiet
19 title actions. See, e.g., Nesovic v. United States, 71 F.3d 776, 778 (9th Cir. 1995) (applying the
20 six-year statute of limitations to plaintiff's quiet title action against the United States).

21 Here, the Estate filed its 706 tax form in 2002. Subsequently, a lien rose in favor of the
22 IRS and against the property of the Estate. See 26 U.S.C. § 6324(a)(1) (a lien attaches on the
23 gross estate if the estate tax is not paid in full or unenforceable); 26 U.S.C. §6321 (a lien on all
24 property and rights to property for the person who is liable for taxes and neglects or refuses to
25 pay). The United States argues that Plaintiffs had six years from the date the Estate's taxes were
26 assessed to file their complaint. See also Nesovic, 71 F.3d at 778 (holding that the statute of
27 limitations accrued when the unpaid taxes were assessed). Because Plaintiffs did not file the
28 action within six years of the time the lien arose, the United States argues that the quiet title action

1 must also be dismissed as untimely.

2 Although equitable tolling and estoppel may relieve a litigant's failure to file against the
3 government within the statutory filing deadline, as discussed above, Plaintiffs' Complaint contains
4 no set of facts that would establish timeliness of the claim through tolling or estoppel.

5 Accordingly, dismissal of the quiet title action is also appropriate because this Court lacks
6 jurisdiction. The United States' motion is GRANTED.

7 **B. IRS's Motion for Judgment On the Pleadings as to the Pecan Court Property**

8 The United States has filed a separate motion seeking judgment on the pleadings as to only
9 the Pecan Court property. ECF. No. 106. In light of the Court's order granting the United States'
10 other motion, this second motion is DENIED AS MOOT.

11 **CONCLUSION**

12 The Court finds that the Government has not waived sovereign immunity with respect to
13 the wrongful levy and quiet title claims because those claims were not timely filed. The United
14 States' motion for judgment on the pleadings is GRANTED, and the case is DISMISSED.

15 A district court may dismiss a complaint without leave to amend if amendment would be
16 futile. Airs Aromatics, LLC v. Opinion Victoria's Secret Stores Brand Mgmt., Inc., 744 F.3d 595,
17 600 (9th Cir. 2014). The Court asked Plaintiffs at the hearing on this motion whether there were
18 any additional facts Plaintiffs could plead that might bring them within the statute of limitations,
19 and Plaintiffs identified none. The Court concludes that amendment would be futile. Dismissal is
20 without leave to amend.

21 The Clerk will close the file.

22 IT IS SO ORDERED.

23 Dated: August 28, 2015

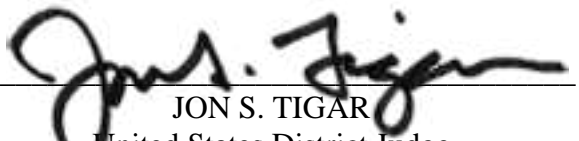
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JON S. TIGAR
United States District Judge