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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 FRANCISCO CARRASCAL, RHONDA  
9 BURTON, and THAWEESAP UTTHO,

No. 3:16-cv-03284 CRB

10 Plaintiffs,

**ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE**

11 v.

12 AVI-BEN ABRAHAM, JR., and TIKI  
13 BELKIN

14 Defendants.

15 In their initial complaint, Plaintiffs brought claims under the Age Discrimination in  
16 Employment Act of 1967 (“ADEA”), the Americans with Disabilities Act (“ADA”), Title  
17 VII of the Civil Rights Act (“Title VII”), and the Equal Pay Act of 1963. See Compl. (dkt. 1)  
18 at 2–9. As the Court informed them at the November 18, 2016 hearing, those statutes apply  
19 only to certain employers. The ADEA applies only to employers with twenty or more  
20 employees. 29 U.S.C. § 630(b). The ADA and Title VII apply only to employers with  
21 fifteen or more employees. 42 U.S.C. § 12111(5)(A); 42 U.S.C. § 2000e(b). The Equal Pay  
22 Act applies only to enterprises “whose annual gross” income “is not less than \$500,000.”  
23 29 U.S.C. § 203(s)(1)(A). The complaint contained no allegations that Defendants met those  
24 requirements, and so the Court dismissed it for lack of subject-matter jurisdiction but granted  
25 leave to amend. See Minute Entry (dkt. 30).

26 Plaintiffs have again failed to allege that Defendants meet any of those statutory  
27 requirements in their amended complaint or in their opposition to the motion to dismiss. See  
28 generally FAC (dkt. 33); Opp’n (dkt. 36). That makes sense, as the allegations then and now

1 concern an employment dispute between a man and his former caretakers.<sup>1</sup> That being so, it  
2 is clear that further amendment cannot cure the complaint’s jurisdictional defects without  
3 contradicting the original allegations. See Reddy v. Litton Indus., 912 F.2d 291, 296 (9th  
4 Cir. 1990). The Court therefore “must dismiss the action.” Fed. R. Civ. P. 12(h)(3)  
5 (emphasis added); see also FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 230 (1990) (“The  
6 federal courts are under an independent obligation to examine their own jurisdiction.”). The  
7 case is therefore DISMISSED WITH PREJUDICE as to all defendants for lack of subject-  
8 matter jurisdiction. Plaintiffs’ claims might have merit, but they may not bring them in  
9 federal court. Instead, they must bring them in state court.<sup>2</sup>

10 Plaintiffs also ask the Court to recuse because, in their words, it is “not going to be  
11 fair,” it “ignored” two of their motions, and it belongs “to the American Jewish Heritage, a  
12 monolithic powerful community that controls everything in the U.S.A.” FAC at 11–12. The  
13 request is DENIED. None of Plaintiffs’ allegations suggest that the Court’s “impartiality  
14 might reasonably be questioned.” Clemens v. United States Dist. Ct., 428 F.3d 1175, 1178  
15 (9th Cir. 2005) (internal quotation marks omitted); see also United States v. Hernandez, 109  
16 F.3d 1450, 1453 (9th Cir. 1997) (noting that this standard applies for recusal under both 28  
17 U.S.C. § 144 and 28 U.S.C. § 455). And where “there is no legitimate reason to recuse,” the  
18 Court has a “strong duty” not to step aside. Clemens, 428 F.3d at 1179 (quoting United  
19 States v. Cooley, 1 F.3d 985, 996 (10th Cir. 1993)).

20 **IT IS SO ORDERED.**

21 Dated: March 10, 2017

  
22 CHARLES R. BREYER  
23 UNITED STATES DISTRICT JUDGE  
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26 <sup>1</sup> Plaintiffs also allege that the man’s sister, Defendant Tiki Belkin, had arranged their work  
27 schedules. See FAC at 3. She moved to dismiss the original complaint as well as the first amended  
28 complaint. See MTD Compl. (dkt. 12); MTD FAC (dkt. 34). Because the Court has determined that  
it does not have subject matter jurisdiction, it need not address whether Ms. Belkin is a proper  
defendant.

<sup>2</sup> The state courthouse in San Francisco is located at 400 McAllister Street.