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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERALD NUNN, et al.,

Plaintiffs,

v.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, et al.,

Defendants.

Case No. [18-cv-03862-WHO](#)**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 66

Plaintiffs Gerald and Judith Nunn, in their first amended complaint (“FAC”), again seek injunctive and declaratory relief to stop an unlawful detainer proceeding against them in state court. The FAC names Gavin Newsom, in his official capacity as governor of California; Xavier Becerra, in his official capacity as state attorney general of California; and JP Morgan Chase Bank, N.A. (“Chase”) as defendants.¹ On January 25, 2019, I granted Chase’s motion to dismiss the Nunns’ claims against it with prejudice. Newsom and Becerra (the “State Defendants”) now move to dismiss the Nunns’ remaining claims for a variety of reasons, at least two of which are dispositive: the Eleventh Amendment and the prior exclusive jurisdiction doctrine bars them. Those arguments are correct. This case is dismissed with prejudice.

BACKGROUND

The Nunns filed their initial complaint against Chase and the State of California on June 27, 2018. [Dkt. No. 1]. Shortly after, the Nunns moved for a permanent injunction [Dkt. No. 8] on July 11, 2018 and a temporary restraining order [Dkt. No. 10] on July 12, 2018. I denied both

¹ As the successor in office to Edmund G. Brown Jr., Gavin Newsom is automatically substituted as a party-defendant. Fed. R. Civ. P. 25(d).

1 motions, holding that under the Anti-Injunction Act divested me of the power to enjoin the Napa
2 County Superior Court or the State of California, that Chase was not responsible for the existence
3 of the allegedly unconstitutional unlawful detainer statutes, and that the Nunns were not entitled to
4 injunctive relief based on the record. [Dkt. No. 30]. Chase and the State of California then moved
5 to dismiss the initial complaint. [Dkt. Nos. 31, 35]. The Nunns moved to voluntarily dismiss the
6 State of California pursuant to Federal Rule of Civil Procedure 41. [Dkt. No. 44]. I then granted
7 Chase’s motion to dismiss, the Nunns’ motion to dismiss the State of California, and denied the
8 State of California’s motion to dismiss as moot. [Dkt. No. 47]. In granting Chase’s first motion to
9 dismiss, I held that the Anti-Injunction Act still applied, and that Chase could not be liable for
10 federal or state constitutional claims because it was not a state actor. *Id.*

11 On November 20, 2018, the Nunns filed the operative FAC against the State Defendants
12 and Chase, seeking essentially the same relief as articulated in their initial complaint. [Dkt. No.
13 53]. The Nunns contend that the expedited procedures under California’s unlawful detainer laws
14 deprive them, and other mortgagors, of equal protection and procedural due process under the
15 federal and California constitutions because unlawful detainer plaintiffs cannot challenge their
16 right to title within the compressed unlawful detainer hearing schedule. *Id.* at ¶¶ 3, 29.

17 As the FAC has already been dismissed with prejudice as to Chase for the same reason as
18 the initial complaint, only the State Defendants remain. [Dkt. No. 69]. The State Defendants now
19 move to dismiss, arguing that the Nunns’ claims are barred by the Eleventh Amendment, comity
20 and abstention require dismissal, the fifth amendment claim does not apply to state action, the
21 Anti-Injunction Act bars all of the Nunns’ non § 1983 claims, and that the FAC fails as a matter of
22 law.² Defendants Gavin Newsom’s and Xavier Becerra’s Notice of Motion and Motion to
23 Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (the “MTD”) [Dkt. No. 66].

24 **LEGAL STANDARD**

25 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
26 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
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28 ² The State Defendants ask that I take judicial notice of two bills in the State legislature. As I do not rely on them, the State Defendants’ request is denied as moot.

1 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
2 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when
3 the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant
4 is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
5 omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.*
6 While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts
7 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

8 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
9 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
10 plaintiff. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is
11 not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
12 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
13 2008). If the court dismisses the complaint, it “should grant leave to amend even if no request to
14 amend the pleading was made, unless it determines that the pleading could not possibly be cured
15 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

16 A motion to dismiss filed pursuant to Rule 12(b)(1) is a challenge to the court's subject
17 matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). “Federal courts are courts of limited
18 jurisdiction,” and it is “presumed that a cause lies outside this limited jurisdiction.” *Kokkonen v.*
19 *Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994). The party invoking the jurisdiction of the
20 federal court bears the burden of establishing that the court has the requisite subject matter
21 jurisdiction to grant the relief requested. *Id.*

22 A challenge pursuant to Rule 12(b)(1) may be facial or factual. *See White v. Lee*, 227 F.3d
23 1214, 1242 (9th Cir. 2000). In a facial attack, the jurisdictional challenge is confined to the
24 allegations pled in the complaint. *See Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).
25 The challenger asserts that the allegations in the complaint are insufficient “on their face” to
26 invoke federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.
27 2004). To resolve this challenge, the court assumes that the allegations in the complaint are true
28 and draws all reasonable inferences in favor of the party opposing dismissal. *See Wolfe*, 392 F.3d

1 at 362.

2 “By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by
3 themselves, would otherwise invoke federal jurisdiction.” *Safe Air*, 373 F.3d at 1039. To resolve
4 this challenge, the court “need not presume the truthfulness of the plaintiff’s allegations.” *Id.*
5 (citation omitted). Instead, the court “may review evidence beyond the complaint without
6 converting the motion to dismiss into a motion for summary judgment.” *Id.* (citations omitted).
7 Once the moving party has made a factual challenge by offering affidavits or other evidence to
8 dispute the allegations in the complaint, the party opposing the motion must “present affidavits or
9 any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses
10 subject matter jurisdiction.” *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *see also*
11 *Savage v. Glendale Union High Sch.*, Dist. No. 205, 343 F.3d 1036, 1040 n.2 (9th Cir. 2003).

12 DISCUSSION

13 I. THE ELEVENTH AMENDMENT

14 A. The Nunns’ Federal Constitution Claims

15 The State Defendants move to dismiss all of the Nunns’ claims against them for lack of
16 jurisdiction because the claims are barred by the Eleventh Amendment of the United States
17 Constitution. MTD at 5-7. They argue that although the *Ex parte Young* exception permits “suits
18 for prospective and injunctive relief against state officers, sued in their official capacities, to enjoin
19 an alleged ongoing violation of law[,]” the State Defendants are not the correct state officials from
20 whom relief may be sought. *Id.* at 6.

21 “The Eleventh Amendment prohibits federal courts from hearing suits brought against an
22 unconsenting state. Though its language might suggest otherwise, the Eleventh Amendment has
23 long been construed to extend to suits brought against a state by its own citizens, as well as by
24 citizens of other states.” *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th
25 Cir. 1991) (internal citations omitted). The Eleventh Amendment does not bar suits for
26 prospective declaratory or injunctive relief for violations of federal law against state officials in
27 their official capacity under the *Ex parte Young* exception to the Eleventh Amendment. *Idaho v.*
28 *Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997); *see also Ex parte Young*, 209 U.S. 123

1 (1908). In order to fall within the *Ex parte Young* exception, the Nunns would need to allege that
 2 defendants Newsom and Becerra have a “direct connection” to enforcing the challenged act. *Ass’n*
 3 *des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013). A
 4 “generalized duty to enforce state law or general supervisory power over the persons responsible
 5 for enforcing the challenged provision will not subject an official to suit.” *Los Angeles Cnty. Bar*
 6 *Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992).

7 The only allegation made against Governor Newsom is that “it is his responsibility
 8 to ensure the laws of the State of California are properly enforced.” FAC at ¶ 18. Similarly, the
 9 only allegation against Attorney General Becerra is that it “is his duty to see that the laws of the
 10 State are uniformly and adequately enforced.” *Id.* at ¶ 19. This sort of general supervisory power
 11 or general duty is insufficient to constitute the direct connection required under *Ex parte Young*.
 12 *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992) (general supervisory powers of the
 13 attorney general are insufficient to establish the required connection with enforcement); *Litmon v.*
 14 *Brown*, No. 10-cv-3894-EMC, 2011 WL 4079227, at *2 (N.D. Cal. Sept. 12, 2011) (same, as to
 15 the general responsibilities of a governor).

16 In opposition, the Nunns argue that the State Defendants cannot invoke the protections of
 17 the Eleventh Amendment because “the Governor and State Attorney General are the ultimate
 18 authority on enforcement of state laws, whether it be through the state courts or any other agency
 19 of the state.” Plaintiff’s Opposition to Defendants, Gavin Newsom and Xavier Becerra’s Motion
 20 to Dismiss at 14-15 (“Oppo.”) [Dkt. No. 70]. This is an unsupported and incorrect statement of
 21 law. In the absence of any “direct” allegations that Newsom or Becerra have an active role with
 22 respect to the California’s unlawful detainer statutes (or the application of the unlawful detainer
 23 statutes against the Nunns), the Nunns’ claims based on the federal Constitution against the State
 24 Defendants must be dismissed with prejudice.

25 **B. The Nunns’ State Constitution Claims**

26 The State Defendants also move to dismiss the Nunns’ claims based on alleged violations
 27 of the California Constitution because (i) state law claims are not cognizable under § 1983, (ii) this
 28 court lacks jurisdiction over such a supplemental state law claim, and (iii) they are barred by the

1 Eleventh Amendment. MTD at 7-8. The State Defendants are correct. A violation of state law
 2 may not form the basis of a claim under § 1983. *Hume v. Maynard*, 108 F.3d 1385 (9th Cir. 1997)
 3 (finding an alleged violation of state law to be an inadequate basis to support a § 1983 action)
 4 (internal citations omitted). The Nunns’ claims for violation of the California Constitution are
 5 supplemental state law claims to which *Ex parte Young* does not apply. *Pennhurst State Sch. &*
 6 *Hosp. v. Halderman*, 465 U.S. 89, 119-121 (1984). Because *Ex parte Young* does not apply to the
 7 Nunns’ supplemental state law claims, they too are barred by the Eleventh Amendment.

8 **II. PRIOR EXCLUSIVE JURISDICTION DOCTRINE**

9 Even if the Nunns were able to identify the correct defendants for the purposes of the *Ex*
 10 *parte Young* exception, the State Defendants argue that the Nunns’ claims would necessarily fail
 11 under the prior exclusive jurisdiction doctrine, which holds that “when one court is exercising *in*
 12 *rem* [or *quasi in rem*] jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction
 13 over the same *res*.” *Chapman v. Deutsche Bank Nat. Tr. Co.*, 651 F.3d 1039, 1043 (9th Cir. 2011)
 14 (citing *Marshall v. Marshall*, 547 U.S. 293, 311 (2006)). The doctrine applies “where parallel
 15 state and federal proceedings seek to determine interests in specific property as against the whole
 16 world (*in rem*), or where the parties' interests in the property . . . serve as the basis of the
 17 jurisdiction for the parallel proceedings (*quasi in rem*).” *Id.* at 1044 (internal quotation marks and
 18 citations omitted); *see also Knaefler v. Mack*, 680 F.2d 671, 675 (9th Cir. 1982) (“Where
 19 concurrent proceedings in state and federal court are both suits in rem or quasi in rem, the court
 20 first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the
 21 exclusion of the other.”). Although the doctrine is judge-made, and not statutory, it is a
 22 “[mandatory] common law rule of judicial abstention.” *Sexton v. NDEX W., LLC*, 713 F.3d 533,
 23 536 n.5 (9th Cir. 2013). The Nunns did not respond to this argument.

24 In California, foreclosure actions are considered *in rem*. *See Cent. Bank v. Super. Ct.*, 106
 25 Cal. App. 3d 913, 917 (1973). Unlawful detainer actions are considered *quasi in rem*. *Gustafson*
 26 *v. Bank of Am., N.A.*, No. 16-cv-1733-BTM(KSC), 2016 WL 7438326, at *6 (S.D. Cal. Dec. 27,
 27 2016) (internal citation omitted).

28 The Nunns have two parallel cases in state court, both of which were filed before this

1 action. In the first case, the Nunns filed their third amended complaint on September 27, 2017 in
2 the Superior Court of Napa County for cancellation of instruments, wrongful foreclosure, slander
3 of title, quiet title, breach of implied covenant of good faith and fair dealing, and negligence. Ex.
4 F, Request for Judicial Notice in Support of JPMorgan Chase Bank, N.A.’s Motion to Dismiss the
5 First Amended Complaint [Dkt. No. 58-1].³ In the second case, the Superior Court of Napa
6 County assumed *quasi in rem* jurisdiction over the subject property on February 26, 2018, when
7 Chase filed its unlawful detainer action against the Nunns. FAC at 8. The Nunns filed their
8 complaint in this action on June 27, 2018, over four months after the initiation of the unlawful
9 detainer case and nine months after the third amended complaint in their other state case for,
10 among other claims, wrongful foreclosure. [Dkt. No. 1]. Because both state court actions were
11 filed first and are based on *in rem* and *quasi in rem* jurisdiction, the prior exclusive jurisdiction
12 doctrine applies. *Chapman*, 651 F.3d at 1045; *Gatpandan v. Wilmington Sav. Fund Soc’y FSB*,
13 No. 17-cv-04001-LB, 2017 WL 5751208, at *4 (N.D. Cal. Nov. 28, 2017) (dismissing claims in
14 federal court in favor of prior-filed state unlawful-detainer action and civil action to quiet title).
15 As a result, the Nunns are barred from asserting their claims in federal court as a matter of law.

16 CONCLUSION

17 Although the Nunns argue that this court “has the omnipresent authority and duty to
18 protect the citizens’ rights[,]” *Oppo*. at 5, in fact, “Federal courts are courts of limited jurisdiction.
19 They possess only that power authorized by Constitution and statute[.]” *Kokkonen*, 511 U.S. at
20 377 (internal citations omitted). The Eleventh Amendment and the prior exclusive jurisdiction
21 doctrine doom the Nunns’ claims. Therefore, I need not consider the State Defendants’ other
22 meritorious arguments concerning comity, abstention, the Anti-Injunction Act, or the merits of the
23 Nunns’ legal theory.

24 The law in this case is quite clear. Amendment would be futile, so the State Defendants
25 are dismissed with prejudice. I have previously dismissed Chase with prejudice. Judgment in
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27 ³ State court filings are appropriate for judicial notice. *See Burbank-Glendale-Pasadena Airport*
28 *Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998). It is unclear when the initial
complaint in this case was filed, but it is necessarily before September 22, 2017.

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favor of all defendants and against the Nunns will be entered accordingly.

IT IS SO ORDERED.

Dated: March 14, 2019



William H. Orrick
United States District Judge