

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HUNG NGUYEN, et al.,  
Plaintiffs,  
v.  
CALDO OIL COMPANY, et al.,  
Defendants.

Case No. 15-CV-02296-LHK

**ORDER TO SHOW CAUSE AS TO  
WHY CASE SHOULD NOT BE  
DISMISSED WITH RESPECT TO  
REMAINING DEFENDANTS FOR  
LACK OF SUBJECT MATTER  
JURISDICTION**

On June 30, 2015, (1) Defendant Flyers Energy, LLC (“Flyers Energy”) and (2) Defendants Peter McIntyre, an individual doing business as AEI Consultants, and All Environmental, Inc. (collectively, the “AEI Defendants”) filed motions to dismiss. ECF Nos. 34 & 36. After full briefing, the Court granted both motions to dismiss with prejudice because the Court lacked subject matter jurisdiction over Plaintiffs’ claims against Defendant Flyers Energy and the AEI Defendants. ECF No. 67. The Court found that there was no diversity jurisdiction and that there was no federal question jurisdiction. For the reasons stated below, the Court hereby issues an Order to Show Cause as to why the case should not be dismissed with prejudice with respect to the remaining Defendants in the case also for lack of subject matter jurisdiction.

1           The remaining Defendants in the instant case are Defendants: (1) Caldo Oil Company  
2 (“Caldo Oil”); and (2) Victor J. LoBue, as an individual and as trustee of the Victor J. LoBue  
3 Family Trust; the Victor J. LoBue Trust; the LoBue Living Trust; the LoBue Family Trust; the  
4 Estate of Salvadore R. LoBue; and the Estate of Tanie Ann LoBue (collectively, the “LoBue  
5 Defendants”). Caldo Oil and the LoBue Defendants did not join in either Flyers Energy’s or the  
6 AEI Defendants’ motions to dismiss. Caldo Oil and the LoBue Defendants have until October 9,  
7 2015, to file an answer or motion to dismiss to Plaintiffs’ complaint. ECF No. 52.

8           However, the Court notes that the caption to Plaintiffs’ complaint lists Plaintiff N & H  
9 Investments, LLC as a California limited liability company and Defendant Caldo Oil as a  
10 California corporation. In addition, the operative complaint filed in another case before this Court,  
11 *Green Valley Corp. v. Caldo Oil Co.*, states that Victor J. LoBue was the President of Caldo Oil  
12 and that some, if not all, of the other LoBue Defendants are entities located in California. *See* No.  
13 09-CV-4028-LHK (N.D. Cal.), ECF No. 125 ¶¶ 9–13. Finally, in Plaintiffs’ complaint in the  
14 instant case, Plaintiffs assert the exact same causes of action and seek the exact same form of relief  
15 “[a]gainst [a]ll Defendants.” ECF No. 1 at 9–10.

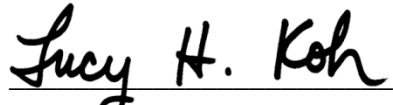
16           In light of these circumstances, the Court hereby ORDERS Plaintiffs to show cause why  
17 the remaining Defendants in the instant case—Caldo Oil and the LoBue Defendants—should not  
18 be dismissed with prejudice for lack of subject matter jurisdiction. Plaintiffs have until September  
19 30, 2015, to file a response not to exceed ten (10) pages in length to this Order to Show Cause.  
20 The remaining Defendants may file a reply not to exceed ten (10) pages in length within 14 days  
21 of the filing of Plaintiffs’ response. A hearing on this Order to Show Cause is set for November  
22 12, 2015, at 1:30 p.m. As stated in this Court’s Order granting Flyers Energy’s and the AEI  
23 Defendants’ motions to dismiss, ECF No. 67, the next case management conference is set for  
24 November 12, 2015, at 1:30 p.m.

25 **IT IS SO ORDERED.**

26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 16, 2015.



---

LUCY H. KOH  
United States District Judge