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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVEN R. GREEN, in his capacity
as trustee of the Steven R. Green
Living Trust Dated July 10, 2000,

Plaintiff,

vs.

UNITED STATES FOREST
SERVICE, and DOES 1-100,
inclusive,

Defendants.

CASE NO. 20cv1046-LAB-AGS

ORDER:

- 1) GRANTING IN PART AND DENYING WITHOUT PREJUDICE IN PART MOTION TO DISMISS [Dkt. 10]; and**
- 2) DIRECTING PLAINTIFF TO SHOW CAUSE**

Plaintiff Steven R. Green, in his capacity as trustee of the Steven R. Green Living Trust Dated July 10, 2000, owns a ranch in the Cleveland National Forest.¹ Only one road, McCoy Ranch Road, offers access to his property. But after the United States Forest Service (the “Forest Service”) purchased the land under the road, the road fell into disrepair, and he lost the ability to access his property with an ordinary vehicle.

Green asked the Forest Service to repair the road, but was told that,

¹ For the purposes of a motion to dismiss for failure to state a claim, the Court accepts the well-pleaded allegations of the Complaint as true. *South Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 782 (9th Cir. 2008).

1 because the road was not in its Forest Road System, the Forest Service
2 couldn't allocate funds to repair it. The Forest Service then granted Green's
3 neighbor a permit to maintain all but a 135-yard stretch of the road, which it
4 stated could not be maintained without a special use permit due to
5 environmental and archaeological concerns.

6 The Forest Service sought to bring McCoy Ranch Road into the Forest
7 Road System, telling Green that, once it completed that process, it would
8 maintain the remaining stretch of road to a standard that would neither
9 accommodate passenger cars nor be passable during periods of inclement
10 weather. It told him further that if he wanted to maintain the road to a higher
11 standard, he would need to apply for a special use permit.

12 Green didn't apply for that permit and instead filed the Complaint in this
13 action, alleging that the Forest Service had taken his property in violation of
14 the Fifth Amendment and violated his property rights without affording him
15 procedural due process. The Complaint also includes a claim purporting to
16 seek relief under the Declaratory Judgment Act, 28 U.S.C. § 2201. Defendant
17 United States of America ("Defendant") moved to dismiss Green's claims for
18 lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure
19 to state a claim under Fed. R. Civ. P. 12(b)(6).

20 As discussed below, the Motion is **GRANTED IN PART** as to Green's
21 Fifth Amendment takings claim and his Declaratory Judgment Act claim. It is
22 **DENIED WITHOUT PREJUDICE** as to his due process claim, and Green is
23 **ORDERED TO SHOW CAUSE** why that claim should not be dismissed for
24 lack of subject matter jurisdiction.

25 **STANDARD OF REVIEW**

26 Federal courts have limited subject matter jurisdiction. A motion to
27 dismiss under Rule 12(b)(1) calls on the Court to evaluate whether the
28 plaintiff's claims fall within that jurisdiction. The plaintiff bears the burden of

1 showing that they do. *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541
2 F.3d 1189, 1197 (9th Cir. 2008).

3 A Rule 12(b)(6) motion to dismiss, on the other hand, places the burden
4 on the movant and tests whether the pleading provides “a short and plain
5 statement of the claim showing that the pleader is entitled to relief, in order to
6 give the defendant fair notice of what the claim is and the grounds upon which
7 it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal
8 marks and citation omitted). The required short and plain statement “does not
9 need detailed factual allegations,” only “factual allegations . . . enough to raise
10 a right to relief above the speculative level . . . on the assumption that all the
11 allegations in the complaint are true.” *Id.* (internal marks and citations
12 omitted). The Court must make all reasonable inferences that can be made
13 in the plaintiff’s favor. *Dahlia v. Rodriguez*, 735 F.3d 1060, 1066 (9th Cir.
14 2013).

15 If the defendant can’t be liable, even after making those inferences and
16 accepting the pleading’s allegations as true, the pleading does not “show[] that
17 the pleader is entitled to relief,” and so the Court must dismiss it. See
18 *Twombly*, 550 U.S. at 555.

19 The Court may also grant a motion to dismiss where the non-movant
20 fails to oppose it. See CivLR 7.1(f)(3)(c).

21 DISCUSSION

22 I. Green Fails to State a Claim under the Takings Clause

23 Green first seeks injunctive relief under the Fifth Amendment’s Takings
24 Clause, which “proscribes taking [private property] without just compensation.”
25 *Williamson Cty. Regional Planning Com’n v. Hamilton Bank of Johnson City*,
26 473 U.S. 172, 194 (1985), *overruled on other grounds by Knick v. Twp. of*
27 *Scott*, 139 S. Ct. 2162 (2019). Because the Takings Clause protects only the
28 right to *compensation* for a taking of private property for public use, “[e]quitable

1 relief is not available to enjoin [such a] taking.” *Ruckelshaus v. Monsanto*, 467
2 U.S. 986, 1016 (1984). A takings claim that seeks only injunctive relief must
3 be dismissed under Fed. R. Civ. P. 12(b)(6).

4 Green seeks only injunctive relief in connection with his takings claim,
5 and he offers no argument in opposition to Defendant’s motion to dismiss this
6 claim. The Motion is **GRANTED** as to Green’s Takings Clause claim, which
7 is **DISMISSED WITHOUT PREJUDICE BUT WITH LEAVE TO AMEND**. If
8 Green responds to the order to show cause discussed below by filing an
9 amended complaint, his takings claim may be amended by the same deadline.
10 Otherwise, Green may file an amended pleading no later than 14 days after
11 the Court resolves the order to show cause discussed below.

12 **II. The Court Doesn’t Appear to Have Jurisdiction over Green’s** 13 **Procedural Due Process Claim**

14 Defendant next asks the Court to dismiss Green’s claim for violation of
15 procedural due process, arguing that the claim is derivative of his Takings
16 Clause claim and so must be dismissed. The Court has subject matter
17 jurisdiction over a claim for violation of procedural due process so long as the
18 plaintiff alleges facts sufficient to state such a violation. *Anderson v. Babbitt*,
19 230 F.3d 1158, 1163 (9th Cir. 2000).

20 Defendant argues only that *substantive* due process claims for harm
21 arising from governmental interference with private property interests are
22 barred by the Takings Clause, because such claims are “addressed by the
23 explicit textual provisions of [that Clause].” *Madison v. Graham*, 316 F.3d 867,
24 871 (9th Cir. 2002); *see also Ventura Mobilhome Communities Owners Ass’n*
25 *v. City of San Buenaventura*, 371 F.3d 1046, 1054 (9th Cir. 2004). That
26 premise does not hold for procedural due process claims, which “[are] not
27 rooted in the notions of adequate compensation and economic restitution but
28 [are] based on . . . an expectation that the system is fair and has provided an

1 adequate forum for the aggrieved to air his grievance.” *Weinberg v. Whatcom*
2 *County*, 241 F.3d 746, 752 (9th Cir. 2001).

3 But an additional problem remains—one that the parties didn’t brief. To
4 state a violation of procedural due process, and thus establish subject matter
5 jurisdiction, the Complaint must allege “two distinct elements: (1) a deprivation
6 of a constitutionally protected liberty or property interest, and (2) a denial of
7 adequate procedural protections.” *Brewster v. Bd. of Educ. of Lynwood*
8 *Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998). Green’s Complaint
9 appears to fail to allege the second element.

10 He alleges that Defendant’s refusal to allow him to maintain McCoy
11 Ranch Road deprived him of his right to access his property, and he argues
12 that he “received neither notice nor an opportunity to be heard regarding
13 Defendants’ deprivation of his right to access [his property].” (Dkt. 1 ¶ 114).
14 But he acknowledges that he would be able to maintain McCoy Ranch Road,
15 and so access his property, if he received a special use permit. (*Id.* ¶ 92).
16 And he doesn’t allege that he ever applied for a permit.

17 Instead, he explains that Defendant has already told him that it will not
18 grant the permit, so applying for it would be futile. That contention is at odds
19 with his own allegations. Defendant allegedly stated that it “considers the road
20 to provide reasonable access to the property” and that, if it added the road to
21 its Forest Road System, Defendant itself would maintain the road only to a
22 level that “[m]ay not be passable during periods of inclement weather” and
23 would not accommodate “passenger car traffic.” (*Id.* ¶ 91). But the same
24 communication informed Green that a special use permit would allow Green
25 himself to maintain the road “to a higher standard.” (*Id.* ¶ 92). This does not
26 indicate, as Green concludes, that Defendant had determined that no further
27 maintenance would be allowed. Instead, Defendant gave Green notice that
28 Defendant intended to maintain McCoy Ranch Road to a certain level and that

1 he would need to seek a special use permit to maintain it himself. And it
2 offered Green the opportunity to be heard in the form of the permit application
3 process, but he declined that opportunity.

4 The Court doubts that it has subject matter jurisdiction, but not for the
5 reasons addressed in the briefing. The Motion to Dismiss is **DENIED**
6 **WITHOUT PREJUDICE**. Green is **ORDERED TO SHOW CAUSE** why the
7 Court should not dismiss his procedural due process claim for the reasons
8 described above. He may do so by filing a brief no longer than five pages or
9 an amended pleading on or before **March 28, 2022**. If Green responds with
10 a brief, Defendant may file a responsive brief no longer than four pages on or
11 before **April 4, 2022**.

12 III. Declaratory Relief

13 Finally, the Complaint includes a claim purportedly under the
14 Declaratory Judgment Act, 28 U.S.C. § 2201. As Defendant argues, that
15 statute does not support a standalone claim, but instead provides a remedy
16 for other claims. Green offers no opposition to the dismissal of the Complaint's
17 Declaratory Judgment Act claim. The Motion to Dismiss is **GRANTED** as to
18 that claim, which is **DISMISSED WITH PREJUDICE**.²

19 CONCLUSION

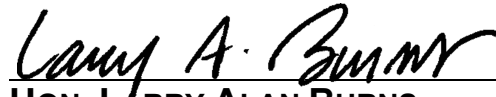
20 Green's Takings Clause claim seeks relief not available to redress a
21 violation of that Clause, so the Motion to Dismiss is **GRANTED IN PART** as
22 to that claim, which is **DISMISSED WITHOUT PREJUDICE** under Rule
23 12(b)(6). The Declaratory Judgment Act doesn't establish a claim at all, but a
24 remedy, so Green's Declaratory Judgment Act claim is **DISMISSED WITH**
25 **PREJUDICE** under the same Rule.

26
27 ² The Court does not decide whether Green may rely on the Declaratory
28 Judgment Act to seek the remedies provided by that statute in connection with
his other claims.

1 The Motion is **DENIED IN PART** and **WITHOUT PREJUDICE** as to
2 Green's procedural due process claim. Green is **ORDERED TO SHOW**
3 **CAUSE** why that claim should not be dismissed for lack of subject matter
4 jurisdiction.

5 **IT IS SO ORDERED.**

6 Dated: March 15, 2022



7 **HON. LARRY ALAN BURNS**
8 United States District Judge
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