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IN THE DISTRICT COURT OF GUAM

THE ESTATE OF RITA AQUINO SALAS,
for itself and on behalf of all others similarly
situated,

Plaintiffs,

vs.

THE GOVERNMENT OF GUAM, by and
through EDDIE BAZA CALVO, in his official
capacity as Governor of Guam, and JOHN P.
CAMACHO, in his official capacity as the
Director of Revenue and Taxation,
Government of Guam, and DOES ONE (1)
THROUGH FIFTY (50),

Defendants.

CIVIL CASE NO. 15-00011

**DECISION AND ORDER ON
DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(1)
AND (6)**

I. INTRODUCTION

Defendant Government of Guam (“GovGuam”) has moved the Court to dismiss the petition of Plaintiff Estate of Rita Aquino Salas (“the Estate”) for a writ of mandamus and to dismiss the claim for injunctive relief against the Director of the Department of Revenue and Taxation (“the Director”) as barred by the Tax Injunction Act and principles of comity. The matter came on for a hearing on February 25, 2016. Movant GovGuam was represented by Deputy Attorney General Kenneth Orcutt, and the Estate was represented by Curtis C. Van de

1 velt. At the end of the hearing, the Court granted the motion as to the second cause of action (the
2 claim for injunctive relief) and took the motion under advisement as to the first cause of action
3 (for a writ of mandamus).

4 After careful consideration of the papers filed by the parties¹ and arguments of counsel at
5 the hearing, the Court now dismisses the first cause of action, with leave to amend, and expands
6 on the reasons it dismissed the second cause of action.

7 **II. BACKGROUND**

8 In 1992, the Inspector General of the Department of the Interior issued a report exposing
9 the decades-long practice of GovGuam to take and use private lands for public purposes without
10 just compensation. On February 16, 1994, the Guam Legislature enacted Public Law 22-73,
11 which required the Governor to develop, within 120 days of the law’s passage, a list of all
12 landowners whose lands had been taken and to compensate those landowners. Section 6(b) of
13 Public Law 22-73 mandated the removal from the property tax rolls of private property being
14 used for public roadways and utility easements.

15 The Estate owns an interest in two lots of land in Mangilao. (Compl. ¶ 31.) The lots “are
16 used by the Government of Guam as public roads or public utilities easements without any
17 compensation.” (*Id.*) These lots will be referred to as the “Estate easements.”

18 Plaintiff Estate asserts that the Governor never compiled the list required by Public Law
19 22-73 (Compl. ¶ 24) and alleges that had it been compiled, the Estate easements would have
20 been included and the Estate compensated (Compl. ¶¶32–34). Plaintiff alleges that after the
21 passage of Public Law 22-73, GovGuam continued to collect property taxes on the Estate
22 easements from decedent Rita Aquino Salas (Compl. ¶ 35). Plaintiff alleges that since 1994,
23

24 ¹ Class Action Petition for Writ of Mandamus and Complaint for Injunctive Relief, ECF No. 1, filed Apr. 27, 2015; Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (“MTD”), ECF No. 6, filed May 11, 2015; Opposition, ECF No. 8, filed June 5, 2015; Reply, filed June 18, 2015, ECF No. 10.

1 GovGuam has compensated some similarly situated landowners for public takings and excused
2 some of them from paying property taxes on easements on an ad hoc basis (Compl. ¶¶ 25, 35).

3 The Estate brings this petition as a class action on behalf of similarly situated Guam
4 landowners. However, Plaintiff has not yet moved for class certification, and the Motion to
5 Dismiss does not challenge the class or the Estate as class representative. Therefore, class
6 certification is not before the Court at this time, and the Court will consider only whether the
7 claims of the Estate, the named plaintiff, should be dismissed. *See Speyer v Avis Rent a Car*
8 *System, Inc.*, 415 F. Supp. 2d 1090, 1094 (S.D. Cal. 2005) (citing *Barth v. Firestone Tire and*
9 *Rubber Co.*, 661 F. Supp. 193, 203 (N.D. Cal. 1987)).

10 Plaintiff brings two causes of action:

11 (1) Mandamus (Compl. ¶¶ 42–49): Plaintiff alleges that the Governor and the Director
12 have violated the Fourteenth Amendment’s Equal Protection Clause by compensating some
13 owners of public-use easements and excusing some from having to pay property taxes, while not
14 compensating and excusing others who are similarly situated, without a rational basis to so
15 discriminate. Plaintiff seeks a writ of mandamus ordering the Governor and the Director to
16 comply with Public Law 22-73, the Organic Act, other laws of Guam, and the United States
17 Constitution.

18 (2) Injunctive Relief (Compl. ¶¶ 50–52): Plaintiff seeks an injunction prohibiting the
19 Director from collecting property taxes “in violation of Public Law 22-73 for all properties
20 equally which are described in Public Law 22-73” (Compl. ¶ 51).

21 As a preliminary matter, it should be noted that the writ of mandamus and injunctive
22 relief are remedies, not causes of action. “Injunctive relief is a remedy, not a cause of action.”
23 *Sandoval v. PharmaCare US, Inc.*, ___ F. Supp. 3d. ___, 2015 WL 7351512, *9, 2015 U.S. Dist.
24 LEXIS 157108, *26 (S.D. Cal. 2015). “It is well-settled that a claim for ‘injunctive relief’

1 standing alone is not a cause of action.” *Long v. JP Morgan Chase Bank, Nat’l Ass’n*, 848 F.
2 Supp. 2d 1166, 1180 (D. Hawaii 2012). The real causes of action are under 18 U.S.C. § 1983 for
3 violation of the Equal Protection Clause of the Fourteenth Amendments. (Compl. ¶¶ 6, 43–44.)

4 **III. LEGAL STANDARDS**

5 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may challenge
6 the court’s subject matter jurisdiction. A court must dismiss a matter at any time it determines it
7 lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). The party asserting jurisdiction bears
8 the burden of establishing that it exists. *Rattlesnake Coalition v. EPA*, 509 F.3d 1095, 1102 n.1
9 (9th Cir. 2007). Challenges to subject matter jurisdiction may be facial or factual. *Safe Air for*
10 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial challenge, “the challenger
11 asserts that the allegations in a complaint are insufficient on their face to invoke federal
12 jurisdiction.” *Id.* In a factual challenge, “a court may look beyond the complaint to matters of
13 public record without having to convert the motion into one for summary judgment.” *White v.*
14 *Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). The party opposing a 12(b)(1) motion may “present
15 affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in
16 fact, possesses subject matter jurisdiction.” *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir.
17 1989). If the Tax Injunction Act applies, the district court lacks subject matter jurisdiction. *Air*
18 *Polynesia, Inc. v. Freitas*, 742 F.2d 546, 547 (9th Cir. 1984).

19 Rule 12(b)(6) provides that, in response to a claim for relief, a party may assert a defense
20 of “failure to state a claim upon which relief can be granted” by way of motion. Fed. R. Civ. P.
21 12(b)(6). Whether a party has sufficiently stated a claim for relief is viewed in light of Rule 8 of
22 the Federal Rules of Civil Procedure. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
23 claim for relief must include “a short and plain statement of the claim showing that the pleader is
24 entitled to relief.” Fed. R. Civ. P. 8(a)(2). The pleading standard under Rule 8 “does not require

1 detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-
2 harmed-me accusation.” *Ashcroft v. Iqbal*, 555 U.S. 662, 678 (2009) (internal quotation marks
3 omitted).

4 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
5 accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (citing *Twombly*, 550
6 U.S. at 570) (internal quotation marks omitted). The court must engage in a two-step procedure
7 to determine the plausibility of a claim. *Id.* at 678–79. First, the court must weed out the legal
8 conclusions—that is “threadbare recitals of the elements of a cause of action, supported by mere
9 conclusory statements”—in the pleading that are not entitled to a presumption of truth. *Id.* at 678.
10 Second, the court should presume the remaining factual allegations are true and determine
11 whether the claim is plausible. *Id.* at 679.

12 A claim is facially plausible if “the plaintiff pleads factual content that allows the court to
13 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678
14 (citing *Twombly*, 550 U.S. at 556). The court must “draw on its judicial experience and common
15 sense” to determine the plausibility of a claim given the specific context of each case. *Id.* at 679.

16 **IV. DISCUSSION**

17 **A. Writ of Mandamus**

18 GovGuam asserts that the first cause of action should be dismissed because Rule 81(b) of
19 the Federal Rules of Civil Procedure expressly abolished the writ of mandamus in district court
20 practice. (MTD 4.) It acknowledges that under the rule, relief previously available through a
21 mandamus writ could be obtained by an action for mandatory injunctive relief, and that the
22 Estate could amend the complaint accordingly. (*Id.*; Reply 2.) It asserts, however, that such
23 amendment would be futile because injunctive relief is barred by the Tax Injunction Act and the
24 principle of comity. (MTD 4.)

1 The Estate responds that the petition for mandamus is already pled in the alternative as a
2 request for injunctive relief in ¶ 30 of the complaint, which ¶ 42 incorporates by reference into
3 the first cause of action. (Opp’n 3.) It asserts that federal courts still have subject matter
4 jurisdiction to grant relief in the nature of mandamus, even though the writ of mandamus as such
5 has been abolished. (*Id.* 4.)

6 In the first cause of action, the Estate expressly petitions for a writ of mandamus, not
7 injunctive relief. Plaintiff captions the first cause of action “Mandamus.” The first two prayers
8 for relief, which concern the first cause of action, are “[f]or a Writ of Mandamus . . .” (Compl.,
9 p. 14). A straightforward reading of the shorthand phrase “except to seek mandamus and/or
10 injunctive relief” in introductory paragraph 30 of the complaint is that “mandamus” applies to
11 the first cause of action, which exclusively speaks of the writ of mandamus, and “injunctive
12 relief” refers to the second cause of action, which is captioned “Injunctive Relief.”

13 Rule 81(b) states: “The writs of scire facias and mandamus are abolished.” However,
14 “[r]elief previously available through them may be obtained by appropriate action or motion
15 under these rules.” Relief “in the nature of mandamus” is available in federal district court
16 pursuant to the All Writs Act. *Finley v. Chandler*, 377 F.2d 548, 548 (9th Cir. 1967) (per
17 curiam); 28 U.S.C. § 1651(a) (All Writs Act) (“The Supreme Court and all courts established by
18 Act of Congress may issue all writs necessary or appropriate in aid of their respective
19 jurisdictions and agreeable to the usages and principles of law.”). “The principles that governed
20 the former writ now govern attempts to secure similar relief.” *Sanchez-Espinoza v. Reagan*, 770
21 F.2d 202, 207 (D.C. Cir. 1985) (Scalia, J.).

22 That is not the end of the inquiry into the Court’s jurisdiction to issue the requested
23 mandamus-like relief. Three prerequisites must be satisfied: “Mandamus jurisdiction exists when
24 a plaintiff has a clear right to relief, a defendant has a clear duty to act and no other adequate

1 remedy is available.” *Piledrivers’ Local Union No. 2375 v. Smith*, 695 F.2d 390, 392 (9th Cir.
2 1982). The duty must be “ministerial and so plainly prescribed as to be free from doubt.” *Id.*
3 (quoting *Jarrett v. Resor*, 426 F.2d 213, 216 (9th Cir. 1970)). Moreover, the court’s power to
4 grant relief in the nature of mandamus expressly emanates from 18 U.S.C. § 1361: “The district
5 courts shall have original jurisdiction of any action in the nature of mandamus to compel an
6 officer or employee of the United States or any agency thereof to perform a duty owed to the
7 plaintiff.” Writs in the nature of mandamus “are to compel an administrative officer to do a
8 nondiscretionary administrative act.” *Finley*, 377 F.2d at 548. Under these legal authorities, the
9 power of the Court to compel the Governor of Guam and the Director of the Department of
10 Revenue and Taxation “to comply with his obligations under Public Law 22-73” (Compl., p. 14)
11 is less than apparent.

12 This basis to question the Court’s jurisdiction was not raised in GovGuam’s motion to
13 dismiss and did not come up in the motion hearing. The parties have not had the opportunity to
14 brief it. For this reason, the Court will not decide the question at this time. Instead, the Court will
15 grant the motion to dismiss on the grounds asserted in the motion—namely, that the writ of
16 mandamus has been abolished—and give the Estate leave to amend to request relief in the nature
17 of mandamus and assert the authority for the Court’s jurisdiction to grant such relief.

18 GovGuam’s argument that the Tax Injunction Act (discussed in detail in the next section)
19 and the principle of comity prohibit the first cause of action has merit. The act prohibits the
20 Court from ordering Guam to issue a tax refund. Although the act’s language “does not
21 specifically cover actions for refund . . . , federal court consideration of such cases must be
22 barred lest the Tax Injunction Act be deprived of its full effect.” *Marvin F. Poer and Co. v.*
23 *Counties of Alameda*, 725 F.2d 1234, 1236 (9th Cir. 1984) (barring action against counties for
24 refund of property taxes). At its core, however, the first cause of action petitions the Court to

1 compel the Governor and the Director to comply with their obligations under Public Law 22-73
2 and enforce their own law. The Court could grant relief without ordering a refund in violation of
3 the TIA. Therefore, the Court does not find that the first cause of action, as presented in this
4 complaint, violates the Tax Injunction Act.

5 B. Tax Injunction Act and Principles of Comity

6 GovGuam moves to dismiss the second cause of action, in which the Estate requests a
7 prospective injunction prohibiting the Director from collecting property tax in violation of Public
8 Law 22-73, on grounds that such relief is prohibited by the Tax Injunction Act.

9 The TIA states: “The district courts shall not enjoin, suspend or restrain the assessment,
10 levy or collection of any tax under State law where a plain, speedy and efficient remedy may be
11 had in the courts of such State.” 28 U.S.C. § 1341. The TIA “deprives federal district courts of
12 subject matter jurisdiction over actions for injunctive relief from state taxation schemes.” *Marvin*
13 *F. Poer*, 725 F.2d at 1235. The TIA reflects “the fundamental principle of comity between
14 federal courts and state governments . . . , particularly in the area of state taxation.” *Fair*
15 *Assessment in Real Estate Ass’n, Inc. v. McNary*, 454 U.S. 100, 103 (1981). The principle of
16 comity survived the passage of the TIA in 1937. The Supreme Court applied it to bar federal
17 court declaratory judgments in challenges to state tax laws, *Great Lakes Dredge & Dock Co. v.*
18 *Huffman*, 319 U.S. 293 (1943), and to bar § 1983 actions for damages, which would require
19 district courts to determine whether a state tax scheme is unconstitutional. *Fair Assessment in*
20 *Real Estate*, 454 U.S. at 115.

21 GovGuam asserts that it offers adequate remedies. The taxpayer can apply for a refund
22 under 11 G.C.A. §§ 24906–07, and if denied can seek judicial review; under P.L. 22-73 § 6, the
23 taxpayer can ask to be removed from the tax rolls; under 7 G.C.A. § 11311.1, the taxpayer can
24 sue for inverse condemnation; and the taxpayer can sue in Guam Superior Court. (MTD 6–7.)

1 In the alternative, GovGuam asserts that the Court should refrain from accepting
2 jurisdiction as a matter of comity when a lawsuit challenges the constitutionality of state tax
3 laws. (MTD 7.) The principle of comity bars taxpayers “from asserting § 1983 actions against
4 the validity of state tax systems in federal courts[,] . . . provided of course that those remedies are
5 plain, adequate, and complete[.]” *Fair Assessment*, 454 U.S. at 116.

6 The Estate responds that the TIA does not bar the second cause of action because (1)
7 Public Law 22-73 does not restrain or impede the collection of taxes, but rather takes certain
8 landowners off the tax rolls (Opp’n 7); and (2) Guam does not provide a plain, speedy, and
9 efficient remedy (Opp’n 8–10). As to the second point, the Estate argues that none of the alleged
10 remedies that GovGuam has put forward are available unless and until the Governor determines,
11 as he is required to do by Public Law 22-73, which landowners have had their land taken for
12 public use. The Director, it avers, cannot make that determination. The Estate asserts that the
13 whole purpose of the public law is to provide remedies that are not otherwise available to long-
14 suffering landowners whose property has been taken. GovGuam replies that the plain language
15 of Plaintiff’s third prayer for relief calls for restraining the Director from collecting taxes. (Reply
16 3.)

17 The injunction the Estate seeks in the second cause of action would prevent the collection
18 of a tax under state law. Plaintiff’s prayer is for exactly that: “For injunctive relief enjoining and
19 restraining the Director of the Department of Revenue and Taxation from collecting any real
20 property taxes in violation of Public Law 22-73 as to all landowners described in Public Law 22-
21 73” (Compl., p. 14 ¶ 3).

22 Plaintiff tries to overcome this conclusion by asserting that because under Public Law 22-
23 73 GovGuam has no right to collect a property tax on land it has taken from Plaintiff, a
24 prohibitory injunction would not interfere with GovGuam’s collection of taxes. “In this case

1 there is no ‘tax’ to be collected that could implicate the Tax Injunction Act. The tax at issue was
2 eliminated by Public Law 22-73. Therefore there is no ‘tax’ to collect . . .” (Opp’n 7.) This
3 argument is meritless. Regardless of whether GovGuam is lawfully assessing the tax on Plaintiff,
4 it remains a tax.

5 The only way to escape the TIA is if the Estate can show that Guam does not provide a
6 “plain, speedy, and efficient remedy.” 28 U.S.C. § 1341. The Estate maintains that such a
7 remedy does not exist. But on paper, at least, it appears one does. The Estate could ask for a
8 refund of illegally collected taxes under 11 G.C.A. § 24906: “The tax collector shall . . . refund
9 any taxes . . . if they were . . . (b) [e]rroneously or illegally collected[.]” The Estate asserts that
10 this statute applies only in “a normal setting where a partial taking of property without
11 compensation is not an issue.” (Opp’n 8.) At the motion hearing, the Court asked counsel
12 whether the Estate had gone to the Department of Revenue and Taxation to ask for a refund, and
13 he stated that it had not. It is not apparent that such an effort would be futile.

14 Moreover, Public Law 22-73 provides a self-help mechanism for landowners who believe
15 their land should be removed from the tax rolls. “All landowners whose real estate tax payments
16 would be reduced by such removal may present to the Director on forms suppl[i]ed by the
17 Director, proof by way of affidavit or otherwise that part of their property upon which they are
18 paying real property taxes is actually occupied by the government. Upon verification of the truth
19 of such statement, the Director shall remove such government-occupied property from the
20 taxpayers’ taxable property.” Pub. L. 22-73 § 6(b). It is not clear why this cannot be done, as the
21 Estate asserts, until the Governor has issued a report. It does not matter that the Director has not
22 discharged his independent duty under § 6 to “forthwith remove” such lands from the tax rolls –
23 the landowners can take the initiative. At the hearing, counsel asserted that such a request would
24 be futile because the law does not give the Director the authority to decide which portions of the

1 Estate's property have been taken, and that such a determination could only be made through an
2 inverse condemnation action. Even if counsel is correct, inverse condemnation is provided for in
3 Guam law, 7 G.C.A. § 11311.1.

4 Because the TIA applies and Plaintiff has not carried its burden to show that a "plain,
5 speedy, and efficient" state court remedy exists, GovGuam's motion to dismiss the second cause
6 of action will be granted.

7 **V. CONCLUSION**

8 For the reasons stated above, the Court ORDERS as follows:

9 (1) GovGuam's motion to dismiss the first cause of action is granted. The Estate is given
10 leave to amend its complaint within 14 days of the date of this Order so as to request relief in the
11 nature of mandamus and assert the legal authority for the Court's jurisdiction to grant such relief.

12 (2) GovGuam's motion to dismiss the second cause of action is granted without leave to
13 amend.

14 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Mar 31, 2016

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