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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Cindy Alegre, et al.,

Plaintiff,

v.

United States of America, et al.

Defendants.

Case No.: 16-cv-2442-AJB-KSC

**ORDER:
GRANTING DEFENDANTS’
MOTION TO DISMISS (Doc. No. 46),

MOOTING KUTSCHKE’S AND
MOORE’S MOTION TO DISMISS
(Doc. No. 50), and

GRANTING PLAINTIFFS LEAVE
TO FILE A THIRD AMENDED
COMPLAINT.**


In their motion to dismiss, defendants argue, among other things, that the second amended complaint “fails to comply with the Court’s instructions” because it still does not state the basis for defendants’ waiver of sovereign immunity. (Doc. No. 46-1 at 4.) The Court’s prior order dismissing the first amended complaint warned plaintiffs to “state the basis for the Court’s subject matter jurisdiction and Defendants’ waiver of sovereign immunity as to each cause of action. Failure to comply with Rule 8(a) may result in dismissal with prejudice under Rule 41(b).” (Doc. No. 43 at 13.) Indeed, the FAC does not state the plaintiffs’ basis for sovereign immunity waiver. (See Doc. No. 48 ¶¶ 1–8, 83

1 discussing subject matter jurisdiction.) As noted by defendants, those paragraphs
2 purporting to comply with the Court’s instructions “merely list several statutes and
3 constitutional provisions without any reference to the specific causes of action or any
4 discussion of how these provisions relate to sovereign immunity.” (Doc. No. 19 at 2.)
5 Plaintiffs finally reveal their sovereign immunity waiver arguments in their opposition
6 brief, where they detail how each claim stated in the complaint has been waived.
7 (Doc. No. 48 at 20–25.) In response, defendants argue plaintiff should not “be permitted to
8 reveal their waiver theories for the first time in their Opposition briefs—theories that
9 expose other bases for dismissal.” (Doc. No. 49 at 3.) Defendants illustrate their point in a
10 footnote, explaining these newly revealed theories may give rise to dismissal of money
11 damages and statute of limitations issues. (*Id.* fn 3.)

12 The Court agrees that plaintiffs failed to comply with its previous instructions to
13 include sovereign immunity waiver explanations in their second amended complaint, again
14 failing Rule 8(a). Thus, the Court **GRANTS** defendants’ motion to dismiss plaintiffs’
15 second amended complaint. (Doc. No. 46.) The Court **GRANTS** plaintiffs leave to amend
16 and file a third amended complaint by **January 31, 2018**. The complaint must—in addition
17 to curing noted deficiencies, (*see* Doc. No. 48 at 13, fn 1)—address sovereign immunity as
18 articulated in their opposition. In the interests of judicial efficiency, plaintiffs are reminded
19 to artfully apply Rule 8’s canon requiring only “a short and plain statement of the claim.”
20 Further, the Court urges plaintiffs to consider defendants’ objections from both dismissal
21 motions in redrafting the complaint to avoid repetitive motion work. Because the Court is
22 allowing plaintiff to file a third amended complaint, defendants Kutschke’s and Moore’s
23 motion to dismiss is now **MOOT**. (Doc. No. 50.)

24 IT IS SO ORDERED.

25 Dated: January 8, 2018

26 
27 Hon. Anthony J. Battaglia
28 United States District Judge