UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-8781 PA (MRWx)	Date	March 1, 2021
Title	Dennis Seider et al. v. City of Malibu		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Gabriela Garcia	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
None		None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion to Dismiss filed by defendant City of Malibu ("Defendant" or "City"). (Dkt. 13 ("Mot.").) Plaintiffs Dennis Seider and Leah Seider ("Plaintiffs") have filed an Opposition, and Defendant has filed a Reply. (Dkts. 19 and 20.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds these matters appropriate for decision without oral argument.

I. Background

Plaintiffs have an oceanfront property in Malibu, California. (Dkt. 1 ("Compl.") ¶2.) Plaintiffs' predecessor-in-interest received a coastal development permit ("CDP") to build a single-family home on the property. (Id. at ¶¶2, 23; Ex. 1.) CDP No. P-10-1-76-9059 was conditioned on the predecessor-in-interest recording a deed restriction that granted lateral public access up to 25 feet inland of the mean high tide line, except not where 25 feet inland would be within 5 feet of the permitted structure. (Id.) Plaintiffs' property is located within the coastal zone in the City of Malibu, and all development in the coastal zone requires a Coastal Development Permit ("CDP"), unless otherwise exempt. (Id. at Ex. 3); see also Cal. Pub. Res. Code §§ 30600(a), 30106; Malibu LCP § 2.1.

Installation of signs constitutes placement of solid material, and is thus a "development" that requires a CDP. (Compl. at Ex. 3.) For those signs requiring a permit, a permit applicant must seek a CDP by submitting a form provided by Malibu's Planning Department. (Id. at ¶18.) Permit applicants must pay a fee and provide certain information, including the proposed location of the sign; the proposed design, size, and colors of the sign; how the sign will be attached; and "[s]uch other information as the Planning Department may require to secure compliance with this Chapter." (Id. (citing Malibu LIP § 3.15.4(A)(9)).) Certain signs are prohibited altogether, such that no permit will issue for them. (Id. at ¶20 (citing Malibu LIP § 3.15.3).) For example, Section 3.15.3(X) explicitly prohibits "[s]igns which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property[.]" (Id.)

In 2018, Plaintiffs posted two signs on the crossbeams below their house that stated, "PRIVATE BEACH." (Id. at ¶25; Exs. 2-3.) On April 29, 2020, the California Coastal Commission (hereinafter

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"CCC") sent Plaintiffs a Notice of Violation of the California Coastal Act. (Id. at ¶26; Ex. 3.) The "PRIVATE BEACH" signs were installed on Plaintiffs' property "without the benefit of a CDP from the City of Malibu or the Commission." (Id.) The signs also "constitute[d] non-compliance with Condition No. 1 of CDP No. P-10-1-76-9059." (Id.) "Commission staff must reject an application to amend a previously issued CDP if that amendment would lessen the intended effect of the previously issued CDP, as an application to authorize the signs at issue would do, since the signs interfere with public use of beach area required by a previously issued CDP to be open to the public." (Id.) In addition, "[e]ven if a CDP for the signs had been applied for (which was not the case here), it is unlikely that Commission staff would recommend approval of the signs since the signs are inconsistent with the Coastal Act and City of Malibu [Local Coastal Plan ("LCP")] public access policies." (Id.) Specifically, the CCC determined that "[t]he subject signs, in representing that the beach seaward of the property is private, purport to represent the boundary between the state tidelands and the adjacent private property, and thus violate Section 3.15.3(X)" of Malibu's Local Implementation Plan ("LIP"). (Id.) The CCC requested Plaintiffs voluntarily remove the signs, or else it would pursue a formal enforcement action. (Id.)

Plaintiffs took down the signs, but sought to put up a replacement sign that would explain the existence of the lateral access easement. (Id. at ¶27.) On June 1, 2020, Plaintiffs emailed the Malibu Planning Director and asked about the permit process. (Id. at ¶¶30-31; Ex. 4.) Plaintiffs proposed the following language for a new sign to post on their property: "PRIVATE PROPERTY FROM THIS SIGN __ FEET SEAWARD AFTER WHICH THE PUBLIC HAS A LATERAL ACCESS ALONG THE SHORE." (Id.) On June 9, 2020, Blue responded that "a sign like this is not allowed" and cited LIP § 3.15.3(X) for support. (Id.) On June 15, 2020, Plaintiffs emailed Blue and members of the Malibu City Council and "urged that the City Council repeal the prohibition on [the] proposed sign." (Id. at ¶34, Exs. 5-6.) On June 26, 2020, Blue responded that any changes to the LIP would have to be approved by the CCC. (Id. ("In terms of amending the LCP to revise the language it would be up to the Council to add that amendment to the adopted Work Plan for the staff. That change would also ultimately have to be certified by the Coastal Commission in order to become effective.").)

On September 10, 2020, Plaintiffs emailed Blue and proposed alternative sign language: PRIVATE PROPERTY EXTENDS TO HOUSE FROM 25 FEET LANDWARD OF MEAN HIGH TIDE LINE TO INCLUDE 25 FOOT LATERAL PUBLIC ACCESS. (Id. at ¶38; Ex. 8.) Blue responded that this proposed sign would also be prohibited "because it 'purports to identify the boundary between state tidelands and private property.'" (Id.) Blue noted, however, that there was "nothing stopping [Plaintiffs] from applying" for a permit to post their sign. (Id.) Ultimately, Plaintiffs did not apply for a permit because they were unwilling to sign an indemnification clause contained in the permit application. (Id. at ¶¶33, 36, 39.) On June 17, 2020, Plaintiffs emailed Blue and asked whether "an agreement to indemnify the city" was a "necessary part of the application for a CDP regarding a beach property sign." (Compl. ¶35; Exs. 4, 6.) Plaintiffs noted they "certainly don't have the money to engage in that kind of Litigation." (Id.) Blue responded that "[t]he indemnification is a standard requirement for filing any type of application with the city and for accepting any permit that is approved by the city. I don't have any flexibility to change that." (Id.)

On September 24, 2020, Plaintiffs filed a Complaint against the City that raises five claims for relief: (1) violation of the First Amendment, on the basis that Section 3.15.3(X) of Malibu's LIP is a content based speech restriction; (2) violation of the First Amendment, on the basis that Section 3.15.4(C) of Malibu's LIP is an unconstitutional prior restraint on speech; (3) unconstitutional condition imposed by the permit application's indemnification clause; (4) unconstitutional infringement on Plaintiffs' free speech rights imposed by the permit application's indemnification clause; and (5) ultra vires. The City has now filed a Motion to Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In the alternative, the City asks the Court to join the CCC as a required party pursuant to Federal Rule 12(b)(7).

II. Legal Standard

A. Federal Rule of Civil Procedure 12(b)(1)

Under Federal Rule 12(b)(1), a complaint may be dismissed for lack of jurisdiction over the subject matter of the action. "Federal courts are courts of limited jurisdiction" and "[i]t is presumed that a cause lies outside this limited jurisdiction," unless otherwise shown. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). Plaintiff, as the party seeking to invoke jurisdiction, has the burden of establishing that jurisdiction exists. Id. When moving under Rule 12(b)(1), a party may either show that the allegations of the complaint, taken as true, are insufficient to invoke federal jurisdiction, or present evidence that disputes allegations that, by themselves, would otherwise be sufficient to invoke jurisdiction. See Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). "[T]he district court is not confined by the facts contained in the four corners of the complaint—it may consider facts and need not assume the truthfulness of the complaint." Americopters, LLC v. FAA, 441 F.3d 726, 732 n.4 (9th Cir. 2006). Further, "[w]here the jurisdictional issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary." Thornhill Pub. Co. v. General Tel. & Electronics Corp., 594 F.2d 730, 733 (9th Cir. 1979); see also Corrie v. Caterpillar, 503 F.3d 974, 980 (9th Cir. 2007); see also Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011) ("[T]he jurisdictional question of standing precedes, and does not require, analysis of the merits.") (collecting cases).

"[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)." Maya, 658 F.3d at 1067. "Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss." Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010). "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshhold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." City of Los Angeles v. Lyons, 461 U.S. 95, 101 (1993). To satisfy Article III's standing requirements, a plaintiff must show (1) he has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely as opposed to merely speculative, that the injury will be redressed by a favorable

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decision. See Friends of the Earth, Inc. v. Laidlaw Envt'l Srvs. (TOC), Inc., 528 U.S. 167, 180-81 (2000) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). "Ripeness and standing are closely related because they originate from the same Article III limitation." Montana Envt'l Info. Ctr. v. Stone-Manning, 766 F.3d 1184, 1188-89 (9th Cir. 2014) (quotations and citation omitted). The Ninth Circuit has recognized that "in many cases, ripeness coincides squarely with standing's injury in fact prong." Id.; see also Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc) ("The constitutional component of the ripeness inquiry is often treated under the rubric of standing . . . . Indeed, because the focus of our ripeness inquiry is primarily temporal in scope, ripeness can be characterized as standing on a timeline.").

"In the context of a declaratory judgment suit, the inquiry depends upon whether the facts alleged, under all the circumstances, show that there is a real substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Montana Envt'l Info. Ctr., 766 F.3d at 1188-89 (quotations and citation omitted). Importantly, the Court's "role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." Thomas, 220 F.3d at 1138.

B. Federal Rule of Civil Procedure 12(b)(6)

For purposes of a Motion to Dismiss brought pursuant to Federal Rule 12(b)(6), plaintiffs in federal court are generally required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e); see also Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

In Twombly, however, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All

allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)).

"[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

C. Federal Rule of Civil Procedure (12)(b)(7)

Finally, a party may move to dismiss a case for failure to join a necessary and indispensable party, as defined by Federal Rule 19. See Fed. R. Civ. P. 12(b)(7); E.E.O.C. v. Peabody Western Coal Co., 400 F.3d 774, 779-80 (9th Cir. 2005). "The inquiry is a practical, fact-specific one, designed to avoid the harsh results of rigid application." Dawavendewa v. Salt River Project Agric. Improvement & Power Dist., 276 F.3d 1150, 1154 (9th Cir. 2002). The moving party bears the burden of persuasion in arguing for dismissal. See Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). The Court first determines "whether an absent party is necessary to the action." Dawavendewa, 276 F.3d at 1154-55. Under Federal Rule 19(a), a party is necessary if, among other reasons: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. See Fed. R. Civ. P. 19(a)(1).

If an absentee is a necessary party under Federal Rule 19(a), the Court then determines whether it is feasible to order that the absent necessary party be joined. See Peabody Western Coal Co., 400 F.3d at 779. "Rule 19(a) sets forth three circumstances in which joinder is not feasible: when venue is improper, when the absentee is not subject to personal jurisdiction, and when joinder would destroy subject matter jurisdiction." Id. If joinder of the absentee is necessary, but not feasible, the Court must consider several factors in determining whether the case should proceed. See Fed. R. Civ. P. 19(b). In balancing Rule 19(b)'s factors, the Court must determine "whether the case can proceed without the absentee, or whether the absentee is an 'indispensable party' such that the action must be dismissed." Peabody Western Coal Co., 400 F.3d at 779.

III. Analysis

A. Judicial Notice

The City asks the Court to take judicial notice of the following documents in support of the Motion to Dismiss: (1) Section 2.1 ("General Definitions"), Section 3.15 ("Signs"), and Chapter 13 ("Coastal Development Permits") of the Malibu Local Coastal Program ("LCP") Local Implementation Plan ("LIP"); (2) the City of Malibu Planning Department Uniform Application; and (3) Section 17.68.070 of the Malibu Municipal Code. (Mot. at Exs. A-C.) This Request for Judicial Notice is unopposed by Plaintiffs. "[A] court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "A court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment. But a court may not take judicial notice of a fact that is 'subject to reasonable dispute.'" Lee v. City of L.A., 250 F.3d 668, 689-90 (9th Cir. 2001) (citation omitted).

Here, the City represents that the Malibu LIP is a certified public record, Section 17.68.070 of the Malibu Municipal Code is a certified public record, and the City's Uniform Application is a public record on file with the City of Malibu Planning Department—all of which an be accessed on the City's official website.[1/] These documents are "matters of public record" that are appropriate subjects of judicial notice. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (courts "may take judicial notice of court filings and other matters of public record"); Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (taking judicial notice of city ordinances, City of Santa Monica Defense, Indemnity, and Hold Harmless Agreement, and Event Permit Application); O'Neil v. Cal. Coastal Comm'n, 2020 U.S. Dist. LEXIS 87012, at *7 (C.D. Cal. May 18, 2020) ("As the text is not subject to dispute, the Court grants SB's request for judicial notice of SB's Local Zoning Ordinance.") (citing Tollis, Inc. v. Cty. of San Diego, 505 F.3d 935, 938 n.1 (9th Cir. 2007) ("Municipal ordinances are proper subjects for judicial notice.")). Therefore, the Court grants the City's Request for Judicial Notice.

B. First Amendment Claims

Plaintiffs raise two claims for relief under the First Amendment: (1) violation of the First Amendment, on the basis that Section 3.15.3(X) of Malibu's LIP is a content based speech restriction; and (2) violation of the First Amendment, on the basis that Section 3.15.4(C) of Malibu's LIP is an

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[1/] See http://qcode.us/codes/malibu-coastal/; https://qcode.us/codes/malibu/; https://www.malibucity.org/DocumentCenter/View/13101/Application_Uniform?bidId.

unconstitutional prior restraint on speech. The City contends that the CCC is a required party for these two claims. (Mot. at 32.) The Court agrees.

"The California Coastal Commission is the state agency created by, and charged with administering, the Coastal Act of 1976." (Compl. at Ex. 3.) "In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to . . . provide maximum public access to the coast." (Id.) "The City of Malibu implements coastal resource protection policies through its Local Coastal Program ("LCP"), which was certified by the Commission in 2002." (Id.) In fact, the California legislature enacted a special law directing the CCC to draft and certify Malibu's LCP. See Cal. Pub. Res. Code § 30166.5. "A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission." Cal. Pub. Res. Code § 30514(a). One portion of an LCP is a Local Implementation Plan ("LIP"), which consists of ordinances enacted to implement the LCP, and which Plaintiffs now challenge in their first and second claims for relief. (Compl. ¶16; Mot. at 15, n.3 ("The LCP includes the sign regulations in LIP Section 3.15. (See RJN Ex A at 33-48.)").)

It appears that the CCC has "an interest relating to the subject of the action and is so situated that disposing of the action in the [CCC's] absence may . . . as a practical matter impair or impede [its] ability to protect the interest." See Fed. R. Civ. P. 19(a)(1). Plaintiffs concede in their Opposition brief that "the [CCC] surely has some interest in the outcome of this litigation" and the CCC "could also seek to intervene in this case to defend the LIP provisions." (Opp. at 18.) Plaintiffs challenge LIP language that the CCC—not the City—drafted and ratified. The City is bound by state law to process CDPs according to the terms of the LCP, but the City says it will not defend the constitutionality of the LIP in this action. See Cal. Pub. Res. Code § 30166.5; Malibu v. CCC, 121 Cal. App. 4th 989, 993 (2004); see also Mot. at 33 ("[T]he Commission would likely argue that it should not be bound because no party had defended the LIP before this Court—as the City will not defend it."). Thus, the CCC has an interest in defending the constitutionality of the LIP language that it drafted and ratified, and the CCC's ability to protect this interest may be impaired or impeded if it is not joined in this action.

The Court also notes that the CCC has an interest in enforcing the existing CDP on Plaintiffs' property, CDP No. P-10-1-76-9059. (Compl. at Ex. 3 ("Though the signs have been placed on property that is within the jurisdiction of the City of Malibu, the Commission may assume primary responsibility for enforcement of Coastal Act violations that restrict access to state tidelands and that constitute non-compliance with a Commission-issued CDP, as is the case here.") (emphasis added).) The City has stated in its motion, "[a]s the City is not the State's representative in this matter, these interests would not be protected absent joinder." (Mot. at 33.) Based on the parties' briefing and evidence presented, the Court finds that the CCC is a necessary party under Federal Rule 19(a).

The Court now addresses whether it is feasible to order that the absent necessary party be joined. See Peabody Western Coal Co., 400 F.3d at 779. "Rule 19(a) sets forth three circumstances in which

joinder is not feasible: when venue is improper, when the absentee is not subject to personal jurisdiction, and when joinder would destroy subject matter jurisdiction." Id. Here, the parties have not presented any arguments that joinder is not feasible, and the Court sees no reason to make such a finding. Accordingly, the Court dismisses Plaintiffs' first and second claims with leave to amend so that Plaintiff can join the CCC, which is a necessary party. See Rivera v. Wells Fargo Bank, N.A., 2019 U.S. Dist. LEXIS 106230, at *23 (C.D. Cal. June 19, 2019) ("Based on the 'necessary' party showing alone, it is appropriate to dismiss the [complaint] with leave to amend so that Plaintiff can join the necessary parties."); Edwards v. Fed. Home Loan Mortg. Corp., 2012 U.S. Dist. LEXIS 162179, at *10-11 (N.D. Cal. Nov. 13, 2012) ("Because Mr. Edwards is 'required' as a party, the Court must determine whether joinder is feasible. . . . Here, Defendants do not argue, and the Court does not find any reason, why joinder of Mr. Edwards would not be feasible. As discussed below, the Court is dismissing all of Plaintiff's claims, but is granting leave to amend. If Plaintiff elects to file an amended complaint, she must join Mr. Edwards as a party.").[2/]

C. Indemnification Clause Claims

Plaintiffs' third and fourth claims challenge the constitutionality of the City's indemnification clause in the permit application. Specifically, Plaintiffs argue that the indemnification clause constitutes an unconstitutional condition, and an unconstitutional infringement on Plaintiffs' free speech rights. The City's permit application includes an indemnification clause that all permit applicants must sign. (Compl. ¶¶21-22; Def.'s RJN, Ex. B at 91, Ex. C at 95.) The indemnification clause reads:

> The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

(Id.) Plaintiffs did not apply for a permit because they were unwilling to sign the indemnification clause. (Compl. ¶¶33, 36, 39.) Plaintiffs argue that "Malibu may have a significant interest in protecting itself from financial liability in the form of third-party challenges to its permit decisions, but it does not follow that Malibu may pass along any and all costs associated with defending a sign permit application to the

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[2/] Because the Court dismisses Plaintiffs first and second claims pursuant to Rule 12(b)(7) for failure to join a necessary party, the Court declines to address Defendants' alternative arguments for dismissal under Federal Rules 12(b)(1) and 12(b)(6) at this time.

speaker without running afoul of the First Amendment." (Opp. at 7.) "[T]he prospect of indemnifying Malibu for litigation costs over which [Plaintiffs] have no control has chilled the exercise of [Plaintiffs'] speech rights—to the point that they decided not to seek a permit at all." (Id.) The City counters that Plaintiffs' third and fourth claims are not yet ripe, and the Court agrees.

"The ripeness doctrine seeks to identify those matters that are premature for judicial review because the injury at issue is speculative, or may never occur." Protectmarriage.com-Yes on 8 v. Bowen, 752 F.3d 827, 838-39 (9th Cir. 2014). "Concrete legal issues require more than mere 'hypothetical threat[s],' and where we can 'only speculate' as to the specific activities in which a party seeks to engage, we must dismiss a claim as nonjusticiable." Id. (citing United Pub. Workers of Am. (C.I.O.) v. Mitchell, 330 U.S. 75, 90 (1947)). "Whether we view injury in fact as a question of standing or ripeness, we consider whether the plaintiff[ ] face[s] a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement . . . or whether the alleged injury is too imaginary or speculative to support jurisdiction." Id. (quotations and citation omitted); see also Index Newspapers LLC v. United States Marshals Serv., 977 F.3d 817, 825 (9th Cir. 2020) ("A plaintiff may not rely 'on mere conjecture about possible governmental actions' to demonstrate injury, and must instead present 'concrete evidence to substantiate their fears.'") (quoting Clapper v. Amnesty Int'l USA, 568 U.S. 398, 420 (2013)).

Based on the Complaint's allegations and the parties' briefing, Plaintiffs have not yet suffered an injury, and any alleged injury is not imminent. Plaintiffs have not actually signed the indemnification clause, and have not submitted a permit application to the City. To the extent that Plaintiffs would be injured from indemnifying the City for litigation regarding Plaintiffs' permit, any such injury is still contingent on several events occurring. First, Plaintiffs must submit a permit application in which they consent to the indemnification clause. Next, the City must grant a permit to Plaintiffs. Even then, there is still a possibility that no third party will sue the City regarding Plaintiffs' permit, or that the City will decide to not enforce the indemnification clause against Plaintiffs. In addition, it is possible that the ultimate decisionmaker on Plaintiffs' permit application may be the CCC, not the City. The parties have acknowledged that the CCC could ultimately issue a ruling on Plaintiffs' permit application. See Malibu LIP §§ 13.10(A)(1), 13.10.2(B)(2), 13.20. Under such circumstances, any third-party suit regarding Plaintiffs' permit would be directed at the CCC, not the City. Thus, the indemnification clause would not be enforced against Plaintiffs, and Plaintiffs would not be injured from incurring litigation costs on the City's behalf.

Plaintiffs argue that "because of the chilling effect of restrictions on speech, the Seiders need not wait to determine the extent of the liability before challenging the provision." (Opp. at 7.) However, "[a] chilling of First Amendment rights can constitute a cognizable injury, so long as the chilling effect is not 'based on a fear of future injury that itself [is] too speculative to confer standing.'" Index Newspapers LLC, 977 F.3d at 825 (citations omitted). Unless and until certain events occur—e.g., filing the permit application, receiving the permit, a third party suing the City over the permit, and the City enforcing the indemnification clause—neither Plaintiff will have suffered an injury that is concrete and

particularized enough to survive the standing/ripeness inquiry. See Bova v. City of Medford, 564 F.3d 1093, 1096-97 (9th Cir. 2009) ("Plaintiffs' alleged injury—denial of health insurance coverage—has not yet occurred. It is contingent upon two events: (1) each Plaintiff's retirement from City service; and (2) the City's official denial of benefits to him or her. It is possible that neither of the two events will occur. Plaintiffs could change jobs, be terminated, or die (though we hope not) before retiring. Or, by the time Plaintiffs retire, the City may have abandoned its current policy in favor of one that provides insurance coverage to retired employees, mooting the substantive questions at issue."); Montana Envt'l Info. Ctr., 766 F.3d at 1190 ("This dispute is more an 'abstraction[]' than an 'actual case' because the supposed injury has not materialized and may never materialize.").

If these claims go forward now, this litigation risks "judicial entanglement in administrative agency actions before the agencies have had an opportunity to take action or make decisions." Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 671 (9th Cir. 2005) ("The ripeness doctrine is intended to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements of administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenged parties") (quotations and citation omitted). For these reasons, Plaintiffs' challenges to the indemnification clause are not yet ripe, as Plaintiffs have failed to allege an injury, or that an injury is imminent. The Court therefore dismisses Plaintiffs' third and fourth claims without leave to amend.

D. Ulta Vires Claim

Plaintiffs allege in the Complaint that this Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. (Compl. ¶7.) Because the Court has dismissed all of Plaintiffs' federal claims, the Court declines to address the validity of Plaintiffs' remaining state law claim until the Court's jurisdiction is first established.

Conclusion

The Court hereby dismisses Plaintiffs' first and second claims with leave to amend. If Plaintiffs choose to amend these claims, the Court orders that Plaintiffs join the California Coastal Commission, which is a necessary party. Plaintiffs' third and fourth claims are dismissed without leave to amend because they are not yet ripe. The Court will not address the validity of Plaintiffs' fifth claim, a state law claim, until Plaintiffs have established this Court's subject matter jurisdiction. Plaintiffs' amended complaint, if any, shall be filed no later than fourteen (14) days from the date this order is entered. No new claims may be added without leave from the Court. Failure to file an amended complaint by the designated deadline will result, without further warning, in dismissal of this action without prejudice. Plaintiffs would then be free to pursue their claims in state court.

IT IS SO ORDERED.