

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 29 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GRANT S. KIM,

Plaintiff-Appellant,

v.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF RIVERSIDE, Executive  
Office,

Defendant-Appellee.

No. 21-55603

D.C. No. 5:21-cv-00644-JGB-SP

**MEMORANDUM\***

Appeal from the United States District Court  
for the Central District of California  
Jesus G. Bernal, District Judge, Presiding

Submitted June 15, 2022\*\*

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

Grant S. Kim appeals pro se from the district court's order dismissing his action against the Superior Court of California seeking to overturn an unfavorable judgment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appendix A (1 of 2): MEMORANDUM

dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We affirm.

The district court properly dismissed Kim's action because defendant is entitled to Eleventh Amendment immunity. *See Simmons v. Sacramento County Super. Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003) (state courts are "arms of the state" entitled to Eleventh Amendment immunity); *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) ("The Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies." (citation and internal quotation marks omitted)).

All pending motions are denied.

**AFFIRMED.**

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PENALTY FOR PRIVATE USE, \$300

Grand S. Kim  
9106 Dumond Drive  
Fontana, CA 92335

Appendix B-1 : stamped envelope

CLERK, U.S. COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
PO. BOX 193939  
SAN FRANCISCO, CA 94119-3939

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$500

Grant S. Kim  
9106 Dumont Drive  
Fontana, CA 92335

Appendix B-2: stamped envelope

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Form 11. Certificate of Compliance for Petitions for Rehearing/Responses**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form11instructions.pdf>*

9th Cir. Case Number(s) 21-55603

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is (*select one*):

Prepared in a format, typeface, and type style that complies with Fed. R. App.

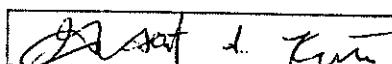
P. 32(a)(4)-(6) and **contains the following number of words:**  .

*(Petitions and responses must not exceed 4,200 words)*

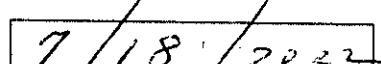
**OR**

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

**Signature**



**Date**



*(use "s/[typed name]" to sign electronically-filed documents)*

*Appendix C-1: petition for rehearing en banc*

“petition for rehearing en banc”

9th Cir. Case No. 21-55603

1. What do you want the court to do?

Grant S. Kim (Appellant) request to reverse the Judgment on Case #RIC1903610, and to reverse Grant S. Kim's default ordered by the Superior Court, County of Riverside:

I am asking to re-take the land, Parcel #305-060-010, and for all stakes and obligations on the property to be set as it was prior to RCTC's filing of LIS PENDENS-action in Eminent Domain as to assessor parcel No. 305-060-010 dated July 2, 2019.

\*\*\*\*\*

\*\*\*\*\*

2. Why should the court do this?

Grant S. Kim received MEMORANDUM dated June 29, 2022 that Grant received on 7/15/2022.

1) MEMORANDUM shows “We have jurisdiction under 28 U.S.C. 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”

----- Grant answer -----

I filed a “SUMMONS” at US District Court on April 12, 2021, case #5:21-cv-00644-JGB-SP.

Reason: The judgment made by Superior Court, County of Riverside, case #RIC1903610 resulted in Grant S. Kim losing his claim to property, land Parcel #305-060-010, which violated my rights as stated in Servicemembers Civil Relief Act:

(SCRA), 50 USC 3931. Protections of servicemembers against default judgments, and (SCRA), 50 USC 3902. Provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil right of servicemembers during their military service.

Grant's answer: If Grant Case lose, then which Court I have to go? SCRA handle at Federal Court.

-----  
2) MEMORANDUM shows “The district court properly dismissed Kim's action because defendant is entitled to Eleventh Amendment immunity”

----- Grant answer -----

The issue is Form CIV-100 that I was defaulted:

SCRA 50 USC 3902 and SCRA 50 USC 3931 protects Servicemembers from being defaulted against while on active duty.

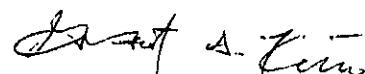
I was defaulted against while on active duty on case #RIC1903610 by the Superior Court, County of Riverside, on March 8, 2021.

Grant's answer: If Grant Case lose, then where Servicemember (Grant) be protected? See SCRA Law.  
50 USC 3931 – Protection of Servicemembers against default judgments. And  
50 USC 3902 – Purpose..to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of Servicemembers during their military service.

9th Cir. Case No. 21-55603

Grant S. Kim  
9106 Dumond Drive  
Fontana, CA 92335

7/18/2022



Grant signature

Pages 2 of 2

Appendix C-3: petition for rehearing en banc

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUL 21 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GRANT S. KIM,

Plaintiff - Appellant,

v.

SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF  
RIVERSIDE, Executive Office,

Defendant - Appellee.

No. 21-55603

D.C. No. 5:21-cv-00644-JGB-SP  
U.S. District Court for Central  
California, Riverside

**MANDATE**

The judgment of this Court, entered June 29, 2022, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Jessica Flores  
Deputy Clerk  
Ninth Circuit Rule 27-7

*Appendix D: MANDATE*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE**

<b>TITLE:</b> <b>Riverside County Transportation Commission,</b>  <b>v.</b>  <b>Chang Kim, et al.</b>	<b>DATE</b> 03/08/21 <b>DEPT.</b> 03  <b>Trial Date:</b> 02/26/21	<b>NUMBER:</b> <b>RIC1903610</b>
<b>COUNSEL</b>  <b>Scott Difurth, BEST, BEST, &amp; KRIEGER, LLP, for Plaintiff</b>  <b>Chang Kim, Young Kim, Pro Per, for Defendant</b>	<b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE  <b>MAR 08 2021</b>  <i>FJM</i>	

**RULING ON SUBMITTED MATTER AFTER TRIAL**

**I. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

In this Eminent Domain proceeding, Plaintiff Riverside County Transportation Commission (“RCTC” or “Plaintiff”) seeks to acquire a fee simple interest in the real property owned by Defendants Chang Kim, Young Kim and Grant Kim.<sup>1</sup> The Property does not have a situs address, but is identified as Assessor Parcel No. 305-060-010 (RCPN 1012) (the “Property”). The purpose of the acquisition is to construct a large public works project, namely an interchange at the intersection of Interstate 215 and Placentia Avenue in Riverside County, California (the “Project.”) This Project will include construction of new northbound and southbound on-and-off ramps on the east and west side of I-215 at Placentia, relocation of the East Frontage Road and related

<sup>1</sup> This ruling will sometimes refer to the Defendants collectively, and other times to Defendants Chang and Young Kim, the only defendants who appeared at trial. As described in further detail below, Defendant Grant Kim had his default taken on 11/25/19.

transportation improvements in the area. It is designed to reduce delays, improve air quality, allow faster emergency responses times for police and fire, and relieve local street congestion. The Project is estimated to be completed sometime in the summer of 2022.

The Court shall address both Plaintiff's and Defendants' trial contentions.

**A. Valuation of the Defendants' Property**

The Plaintiff's position is very clear: as a governmental entity, Plaintiff seeks to acquire the entirety of Defendants' Property for the benefit of the Project under Code of Civil Procedure sections 1240.110 and 1240.120 and Public Utilities Code section 130220.5. As such, Plaintiff's position is that the only relevant issue for the Court to decide is the value of the Property. The Court agrees. Per the statutes cited above, Plaintiff is entitled by law to take the Defendants' Property provided Defendants receive just compensation for its acquisition.

To that end, Plaintiff presented the testimony of Brad Thompson, a real estate appraisal expert hired by Plaintiff. After witnessing Mr. Thompson's testimony, the Court finds Mr. Thompson's valuation credible, both from his testimony and from Ex. 6, which is a copy of his Appraisal Report.

Mr. Thompson's uncontroverted testimony established that the Property is worth \$764,258.00. It should be noted that Mr. Thompson opined that it is common in trials such as these to round down the amount of the property to \$764,000, but the Court finds that the Property should be valued at its exact fair market value. Code of Civil Procedure section 1263.320, subd. (a), states that the "fair market value is the highest price on the date of valuation that would be agreed to by a seller." As there is nothing in the code that

indicates that this amount should be rounded either up or down, the Court finds that the exact amount should be used.

Nevertheless, the Court finds Mr. Thompson's testimony credible that the fair market value on the date of acquisition, which was 6/28/19, (the date of the deposit of probable compensation), is \$5.50/sq. ft. Multiplying the square footage of the Property, which is 3.19 acres or 138,956 sq. feet, provides a total amount of compensation of \$764,258.00.

Defendants offered no testimony or evidence to refute Mr. Thompson's opinion. Indeed, they refused to even consider offering any testimony or evidence as to the value of their Property. As there is no testimony or evidence that would suggest a different valuation for this Property, and because the Court finds Mr. Thompson's testimony and report credible, the Court finds just compensation for the Property to be \$764,258.00.

#### **B. Defendants' contentions**

The Defendants made several contentions during trial. Their first contention is that the Court should decide that Plaintiff need not have taken all of Defendants' Property, but only a portion. The second is that the default of Grant Kim, the Defendants' son and third defendant, is improper under the Servicemembers Civil Relief Act (50 USC App. § 3901, et seq, as amended.) ("SCRA"). Lastly, in their closing argument, Defendants argued that the Court should not allow the acquisition of their Property despite the law of eminent domain. RCTC objected to all of these contentions.

The Court finds that Plaintiff's objections are well-taken; Defendants' contentions are either not relevant to the issues at trial or unsupported by the law or evidence. However, the Court shall address each contention in turn.

Appendix E-3 The judgement, Case # RIC1903610

## 1. The Acquisition of the Entire Property

The Defendants' first contention that the Court should find that RCTC does not need to acquire the entirety of Defendants' property, and as such, the Court should set aside the prejudgment possession order it made on 10/18/19 per Code of Civil Procedure section 1255.460. The Court finds Defendants' arguments fail as they have no legal or factual basis.

Hector Casillas, a right-of-way manager for RCTC, clearly demonstrated in his testimony that the Project required approximately ten acres to construct a detention basin on the Property and surrounding areas. Ex. 8-1 and 8-3 are CalTrans' right-of-way Appraisal Maps that describe the size of the Project. The Kim's Property, which again is approximately 3.19 acres in size, falls squarely within the needed space for the detention basin. (*See also*, Ex. 1, Resolution No. 19-006, dated 5/8/19 [describing the need for acquisition of the Property].)

Defendants have disputed that Plaintiff needs to acquire the entire Property to complete the Project. To that end, Defendants argued that a map attached as an exhibit to their Case Management Conference Statement filed on 11/19/19 demonstrates that Plaintiff only needed to take a portion of Defendants' Property. This map purportedly is from Tylin International and is dated 5/23/18. On that map, the Kim Property is located where the no. 8 and 9 legend markers are indicated. Defendants argued that in the legend box, the Property indicates that only a partial take is required. There are several deficiencies with Defendants' argument.

First, the map from Defendants' CMC was not entered into evidence, nor was any foundation presented by Defendants for its admission.

However, even if the Court were to consider this map, the Court finds that it does not accurately describe the situation of the detention basin. Indeed, the Court finds that Exhibits 8-1 and 8-3 precisely describe Plaintiff's need for the acquisition for the entirety of the Property. Put simply, the Court finds Plaintiff's evidence and maps convincing; the Defendants' evidence is not.

Furthermore, Defendants' testimony that Plaintiff only needs a portion of the Property is entirely unsupported by the evidence. Defendants are not experts in public works projects, nor did they offer any expert testimony to support their contentions. Their claims are wholly unsubstantiated and without foundation, to which RCTC consistently objected throughout the trial.

As such, the Court finds no merit in Defendants' argument that Plaintiff only needed to take a portion of Defendants' Property.

## 2. SCRA

The second issue raised was that the default of Grant Kim, the Defendants' son and third owner of the Property, was improper under the SCRA. The Court also finds no merit to this contention.

As an initial matter, the Court had already ruled on this issue on 8/25/20 when it denied the Defendants' "Request that Plaintiff Lose Case Because of Mailing Problem" and "Request to Reverse Prejudgment Possession." Nothing in Defendants' arguments at trial persuade the Court to reconsider that ruling. For purposes of this ruling, the Court incorporates the prior rulings on this issue into this document. (See 8/26/20 Notice of Ruling by Plaintiff; 8/25/20 Tentative Ruling Dated 8/25/20 – Ordered Filed, on file with the Court.)

The Court rejects Defendants' SCRA arguments for several reasons. First, as stated, neither Defendant Chang Kim nor Young Kim is an attorney and as such, neither can represent the interest of their son as it would constitute the unauthorized practice of law. Second, Grant Kim has never filed a motion to set aside his default or seek other relief.

Third, Grant Kim's default was properly taken, as stated in the 8/25/20 ruling and 8/26/20 notice of ruling. The Court will not revisit that ruling, but the Court finds that Defendant Grant Kim was properly served per the SCRA on August 30, 2019, as reflected in the Court's prior ruling. As no answer was on file, his default was also properly taken on 11/25/19.

### **3. Eminent Domain**

Lastly, Mrs. Kim in closing argument argued to the Court that it should find that Plaintiff should be precluded from taking their private property. This argument is clearly against the law, specifically Code of Civil Procedure sections 1240.110 through 1240.120 and Public Utilities Code section 130220.5. The issue is not whether a governmental entity can take private property; the issue is what would constitute just compensation for that taking. The Defendants' proffered no evidence as to the value of the Property, and based on the uncontested testimony of Mr. Thompson, the Court finds the Defendants' Property to be \$764,258.00.

## **II. CONCLUSION**

Therefore, the Court finds Judgment in favor of RCTC as follows:

1. Just compensation is ascertained for the taking and the amount of the award for the Property to be \$764,248.00;

*Appendix E-6 The judgment, Case # 1903610<sup>6</sup>*

2. RCTC is entitled to a Final Order of Condemnation, and the interest in the Property is condemned to RCTC as against Defendants, for the use and purposes set forth in RCTC's Complaint and RCTC shall have those interests in the Property;
3. The Court further finds that the use and purposes for which the interests in the Property are condemned are for public right-of-way purposes and the construction of an interchange at the intersection of Interstate 215 and Placentia Avenue, in Riverside County, California, which includes construction of new northbound and southbound on and off ramps on the east and west sides of Interstate 215 at Placentia Avenue, in the City of Perris, for realignment of the East Frontage Road, and related improvements in Riverside County, California, and for such other uses as are permitted by section 130220.5 of the Public Utilities Code and Code of Civil Procedure sections 1240.110 and 1240.120.

\* \* \*

The Court orders Counsel for Plaintiff to prepare and submit Judgment in accordance with the above ruling.

The Court will note one remaining issue: the disposition of the remaining DOE defendants. Plaintiff has dismissed all unknown defendants on 12/5/19, but has not dismissed all DOE defendants.

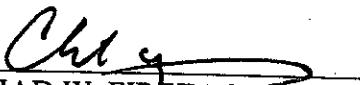
Thus, the Court will set an OSC re Submission of Judgment on May 20, 2021, at 8:30 am in D-3. The Court also sets an OSC why the Court should not dismiss all remaining DOES 1-100 on the same date and time. The Court will take off calendar the

Appendix E-7 The judgment, Case # 1903610<sup>7</sup>

OSCs if the Judgment is signed prior to the next hearing and/or whether RCTC has dismissed all remaining DOES Defendants.

GOOD CAUSE APPEARING, IT IS SO ORDERED:

Dated: 3/8/21

  
CHAD W. FIRETAG  
Judge of the Superior Court

Appendix E-8 The <sup>8</sup>judgment, Case # RIC 1903610

Case # RIC 1903610. Eminent Domain. (Parcel # 305-060-010).  
Owners : Chang Z. Kim, Young Hee. Kim and Grant S. Kim.  
Plaintiff : Riverside County Transportation Commission (RCTC).

To: Superior Court of California, County of Riverside.  
4050 Main Street  
Riverside 92501

And To: Best Best & Krieger LLP.  
Mark A. Easter / Scott W. Ditfurth  
3390 University Ave., 5<sup>th</sup> Floor  
Riverside, CA 92501  
Tel: (951)686-1450

- Re: 1) Plaintiff request for "Entry of Default" of defendant (Grant S. Kim)" on form CIV-100.  
2) Grant S. Kim oppose Plaintiff's request for "Entry of Default" of defendant (Grant S. Kim).  
3) Grant S. Kim request to reverse prejudgment possession this case # RIC 1903610".

Regarding "Form CIV-100" dated November 21, 2019 from Best Best & Krieger LLP.

I am the one of owner Grant S. Kim (Parcel # 305-060-010).

Now, I am on job duty as NAVY Reserve.

Now, I am at far from California.

I received the summons on August 30, 2019 (60 days later after Plaintiff filed on July 2, 2019).

I do not waive my right regarding my lot (Parcel # 305-060-010).

I oppose to be default that RCTC filed the "form CIV-100".

Plaintiff did not sign on Form CIV-100, page 2 of 2, line 6.

Plaintiff did not sign on Form CIV-100, page 2 of 2, line 7.

Plaintiff did not sign on Form CIV-100, page 2 of 2, line 8.

I can not accept Court allow prejudgment possession this case #RIC 1903610.

Note: I sent same this letter to both place :  
(Best Best & Krieger LLP) and (Superior Court of California, County of Riverside).

Grant S. Kim. I am the one of owner (Parcel # 305-060-010).  
4762 English Ave. Apt. 305-B  
Fort Meade, MD 20755

Date : November 29, 2019

*Grant S. Kim*  
Grant S. Kim

Appendix F Grant S. Kim 11-29-2019 Letter

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. EDCV 21-644 JGB (SPx)

Date June 4, 2021

Title Grant S. Kim v. Superior Court of California, County of Riverside

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: **Order (1) GRANTING Defendant's Motion to Dismiss (Dkt. No. 9); and (2) VACATING the June 7, 2021 Hearing (IN CHAMBERS)**

Before the Court is a motion to dismiss filed by Defendant Superior Court of California, County of Riverside. ("Motion," Dkt. No. 9.) The Court determines this matter is appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of and in opposition to the Motion, the Court GRANTS Defendant's Motion. The June 7, 2021 hearing is VACATED.

## I. BACKGROUND

On April 12, 2021, Plaintiff filed a complaint against Defendant Superior Court of California, County of Riverside, seeking to reverse judgment in an underlying state action. ("Complaint," Dkt. No. 1.) On May 3, 2021, Defendant filed the Motion, along with a request for judicial notice. ("RJN," Dkt. No. 10.) Plaintiff filed an opposition to the Motion ("Opposition," Dkt. No. 12), as well as an opposition to the RJN ("RJN Opposition," Dkt. No. 13.) Defendant replied on May 24, 2021. ("Reply," Dkt. No. 14.)

## II. FACTUAL ALLEGATIONS

Plaintiff Grant S. Kim was on active duty as a Navy Reserve from July 18, 2018 to March 31, 2021. (Compl. at 1.) Kim was real owner of a parcel in California ("Property"). (*Id.* at Ex. 2.) He received an Entry of Default against him in an underlying eminent domain case, Riverside County Transportation Commission v. Kim, No. RIC1903610, granting the Riverside County Transportation Commission ("Commission") prejudgment possession of the Property. (*Id.* at

Exs. C-D.) Plaintiff alleges that he was not properly served with the summons or the entry of default in that action, pursuant to the provisions of the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. § 3901, et seq. (*Id.* at 2.) Plaintiff alleges that he did not receive service via the base commanding officer, and he was out-of-state. (*Id.*) Plaintiff seeks to reverse judgment in that case, and to re-take the Property.

### III. LEGAL STANDARD

#### A. Rule 12(b)(1)

Defendant moves to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) (“Rule 12(b)(1)”). A Rule 12(b)(1) motion challenges the court’s subject matter jurisdiction, without which, a federal district court cannot adjudicate the case before it. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). Pursuant to Rule 12(b)(1), a party may seek dismissal of an action for lack of subject matter jurisdiction “either on the face of the pleadings or by presenting extrinsic evidence.” Sierra v. Dep’t. of Family and Children Servs., 2016 WL 3751954, at \*3 (C.D. Cal. Feb. 26, 2016) (quoting Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003)). Thus, a jurisdictional challenge can be either facial or factual. White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000).

In a facial attack, the moving party asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). When evaluating a facial attack, the court must accept the factual allegations in the plaintiff’s complaint as true. Comm. for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma, 644 F. Supp. 2d 1177, 1189 (N.D. Cal. 2009). “By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” Safe Air for Everyone, 373 F.3d at 1039. In resolving a factual challenge, the court “need not presume the truthfulness of the plaintiff’s allegations” and “may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment.” White, 227 F.3d at 1242. “Where jurisdiction is intertwined with the merits, [the Court] must ‘assume the truth of the allegations in the complaint . . . unless controverted by undisputed facts in the record.’” Warren, 328 F.3d at 1139 (quoting Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)).

#### B. Rule 12(b)(6)

Defendant also seeks to dismiss this action under Federal Rule of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”). Rule 12(b)(6) provides that a party may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a). Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Horosny v. Burlington Coat Factory, Inc., No. 15-05005, 2015 WL 12532178, at \*3 (C.D. Cal. Oct. 26, 2015). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving

party. See Doe v. U.S., 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, 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 (citations omitted). Rather, the allegations in the complaint “must be enough to raise a right to relief above the speculative level.” Id.

To survive a motion to dismiss, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it stops short of the line between possibility and plausibility of ‘entitlement to relief.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively,” and (2) “the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

### C. Leave to Amend

Federal Rule of Civil Procedure 15 provides that leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The Ninth Circuit has held that “[t]his policy is to be applied with extreme liberality.” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). Despite this liberal standard, leave to amend may be denied if amendment would be futile to rectify the deficiencies in a pleading. Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008).

## IV. DISCUSSION

Defendant moves to dismiss this action for lack of subject matter jurisdiction and failure to state a claim, arguing that (1) the complaint is barred by the Eleventh Amendment; (2) the Complaint is barred by the Rooker-Feldman doctrine; (3) the Complaint is barred by the Younger doctrine; (4) Defendant has judicial immunity; and (5) the Complaint fails on the merits. (Mot.)

### A. Eleventh Amendment

Defendant asserts that the Eleventh Amendment bars the Complaint. The Eleventh Amendment bars suits for damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies. Durning v. Citibank, N.A., 950 F.2d 1419, 1422-23 (9th Cir. 1991). A suit against the Superior Court is a suit against the state and is thus barred by the

Eleventh Amendment. Greater Los Angeles Council on Deafness v. Zolin, 812 F.2d 1103, 1107 (9th Cir. 1987); Los Angeles Cty. Ass'n of Envtl. Health Specialists v. Lewin, 215 F. Supp. 2d 1071, 1078 (C.D. Cal. 2002).

A citizen may sue a state in federal court if the state waives its immunity and consents to suit. Welch v. Tex. Dep't of Highways & Pub. Transp., 483 U.S. 468, 473 (1987). “A State’s consent to suit must be ‘unequivocally expressed’ in the text of the relevant statute.” Sossamon, 563 U.S. at 284. The SCRA contains no such waiver. Webb v. California, 2018 WL 6184776, at \*4 (C.D. Cal. Mar. 15, 2018); see also Karen P. v. Terman Assocs., 2013 WL 2156273, at \*9 (N.D. Cal. May 17, 2013) (“Neither the [Fair Housing Act] nor the SCRA contain express waivers of sovereign immunity.”); Hofelich v. Hawaii, 2007 WL 4372805, at \*7 (D. Haw. Dec. 13, 2007) (holding that SCRA claims were barred by sovereign immunity where California asserted Eleventh Amendment immunity in its motion to dismiss). Absent an express and unequivocal waiver of California’s sovereign immunity, Plaintiff may not seek relief against the Superior Court.

#### B. Rooker-Feldman Doctrine

Even if the Eleventh Amendment sovereign immunity did not apply, this suit is also barred by the Rooker-Feldman doctrine. The Rooker-Feldman doctrine prevents a federal district court from exercising jurisdiction over a direct appeal or a “de facto appeal” from a state court decision. Cooper v. Ramos, 704 F.3d 772, 777 (9th Cir. 2012) (citing Noel v. Hall, 341 F.3d 1148 (9th Cir. 2003)). That is, “[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in a federal district court.” Wolfe v. Strankman, 392 F.3d 358, 363 (9th Cir. 2004). When a plaintiff brings a de facto appeal, the doctrine also precludes district court jurisdiction over any issue that is “inextricably intertwined” with the state court’s decision. Cooper v. Ramos, 704 F.3d 772, 777 (9th Cir. 2012). A claim is “inextricably intertwined” with a state court decision “if the general claim succeeds only to the extent that the state court wrongly decided the issues before it.” Id. at 778 (quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987)).

Defendant argues that this action is a de facto appeal of the judgment rendered in the underlying action. The Court agrees. In Plaintiff’s own words, he seeks to “Reverse Judgement of Case # RIC1903610 with Grant S. Kim not to be Defaulted.” (Compl. at 3 (emphasis on original).) As Defendant points out, Superior Court Judge Chad W. Firetag considered and rejected Plaintiff’s SCRA arguments, finding that he was properly served under the SCRA, and that he had failed to properly seek any relief. (RJN Exs. 1-2.<sup>1</sup>) This action is therefore an

<sup>1</sup> Defendant asks the Court to take judicial notice of documents pertaining to the state case at issue, Riverside County Transportation Commission v. Kim, No. RIC1903610. (See RJN.) These documents are public records and are therefore proper for judicial notice. See, e.g., Porter v. Ollison, 620 F.3d 952, 954–55 (9th Cir. 2010) (noting that judicial notice of “any state (continued . . . )

improper de facto appeal, and the Rooker-Feldman doctrine bars the Court from exercising jurisdiction over this matter.

Because the Court finds that the Eleventh Amendment and the Rooker-Feldman doctrine bar this action, the Court need not reach Defendant's remaining arguments. The Court GRANTS Defendant's Motion and DISMISSES the action WITHOUT LEAVE TO AMEND.

#### **V. CONCLUSION**

For the reasons above, the Court GRANTS Defendant's Motion, and DISMISSES the Complaint WITHOUT LEAVE TO AMEND. The June 7, 2021 hearing is VACATED. The Clerk is directed to close the case.

**IT IS SO ORDERED.**

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court dockets or pleadings that have been located (including on the Internet)" is proper). The Court therefore GRANTS the RJD and takes judicial notice of these documents.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Form 27. Motion for**  amending Defendant's name.

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form27instructions.pdf>

**9th Cir. Case Number(s)**  9th Cir. Case No. 21-55603

**Case Name**  Grant S. Kim v. Superior Court, County of Riverside

**Lower Court or Agency Case Number**  5:21-cv-00644-JGB-SP

What is your name?  Grant S. Kim

**1. What do you want the court to do?**

Defendant "Superior Court of California, County of Riverside, Executive Office" amend to "Superior Court of California, County of Riverside".

**2. Why should the court do this? Be specific. Include all relevant facts and law that would persuade the court to grant your request. (Attach additional pages as necessary. Your motion may not be longer than 20 pages.)**

"Time Schedule Order" Filed on June 9, 2021, it showed Defendant-Appellee Superior Court of California, County of Riverside, Executive Office. It is wrong, it needs to delete Executive Office.

9th Cir. Case No. 21-55603 Defendant is Superior Court of California, County of Riverside.

(See attached Case No EDCV 21-644 JGB (SPx) Order dated June 4, 2021. Title shows Grant S. Kim v. Superior Court of California, County of Riverside.

Your mailing address:

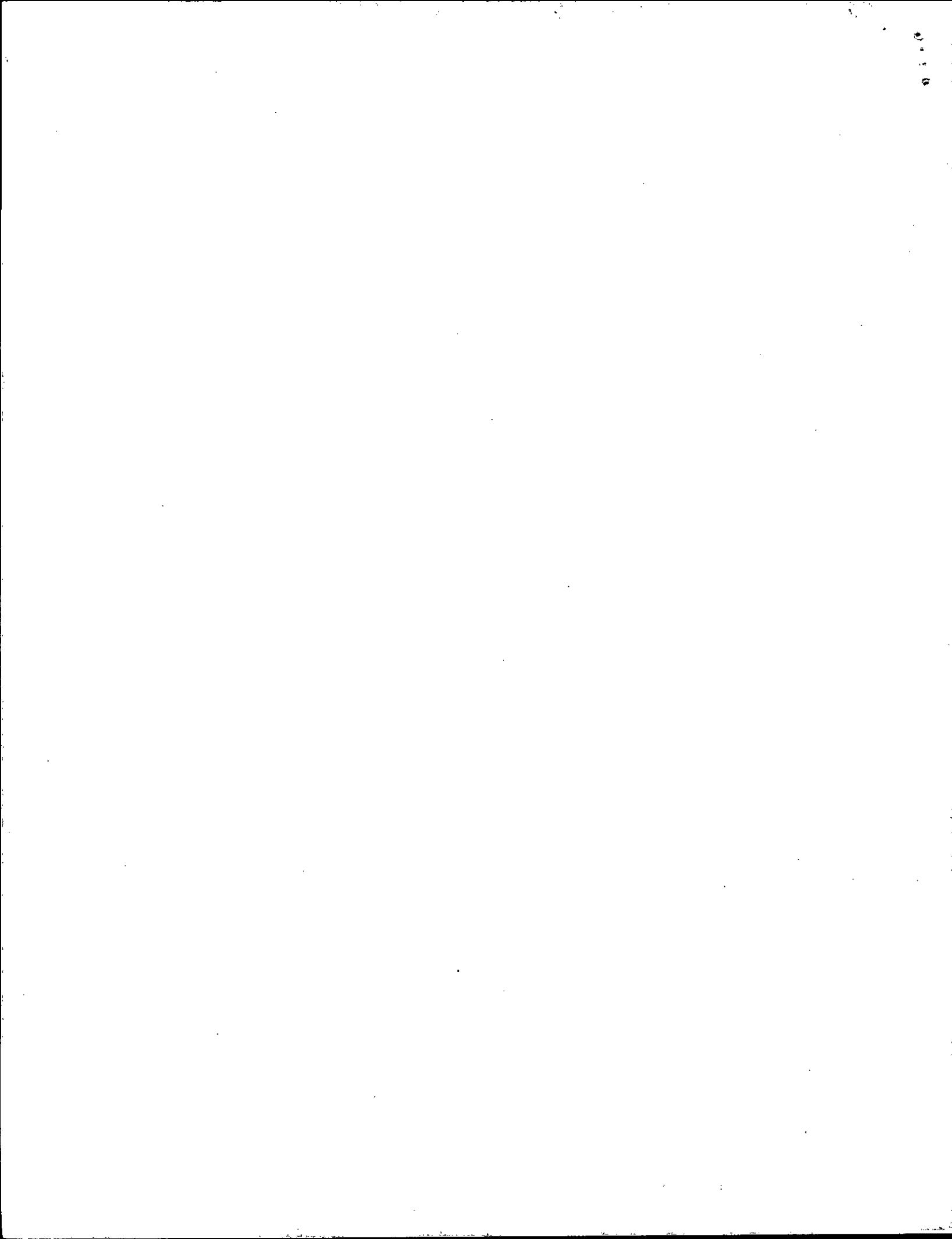
9106 Dumond Drive

City  Fontana State  CA Zip Code  92335

Prisoner Inmate or A Number (if applicable)

Signature  Grant S. Kim Date  JUNE 29, 2021

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)



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EXEMPT FROM RECORDING FEES,  
PURSUANT TO GOVERNMENT CODE  
SECTION 27383

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUL 02 2019

E. Escobedo

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11 Attorneys for Plaintiff  
12 RIVERSIDE COUNTY TRANSPORTATION  
13 COMMISSION

14  
15 SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF RIVERSIDE

17 RIVERSIDE COUNTY TRANSPORTATION  
18 COMMISSION,

19 Plaintiff,

20 v.

21 CHANG Z. KIM, an individual;  
22 YOUNG H. KIM, an individual;  
23 GRANT S. KIM, an individual;  
24 DOES 1-100, inclusive; and  
25 ALL PERSONS UNKNOWN CLAIMING  
26 ANY INTEREST IN THE PROPERTY,

27 Defendants.

28 Case No **RIC 1903610**

LIS PENDENS—ACTION IN EMINENT  
DOMAIN, AS TO ASSESSOR PARCEL  
NO. 305-060-010 (RCPN 1012)

[Filed concurrently with:

1. Complaint in Eminent Domain;
2. Notice of Deposit; Declaration of Joyce L. Riggs, MAI, SR/WA;
3. Notice of Motion and Motion for Order for Prejudgment Possession; Memorandum of Points and Authorities;
4. Declaration of Mark Lancaster in Support of Motion for Order for Prejudgment Possession;
5. (Proposed) Order for Prejudgment Possession.]

17336.0111232031354.1

LIS PENDENS—ACTION IN EMINENT DOMAIN

1 NOTICE IS HEREBY GIVEN that the Plaintiff has filed a proceeding against the above-  
2 named Defendants in the above-entitled Court affecting the title to, and the right of possession of,  
3 the hereinafter described real property, or interest in said real property, which proceeding is now  
4 pending.

5 The object of the proceeding is to acquire, under the laws of eminent domain, a fee  
6 interest in the entire parcel of certain real property hereinafter described, for the public use and  
7 purpose of constructing an interchange at the intersection of Interstate 215 and Placentia Avenue,  
8 in the City of Perris, in Riverside County, California, and for such other uses as are permitted by  
9 section 130220.5 of the Public Utilities Code and the Code of Civil Procedure sections 1240.110  
10 and 1240.120.

11 The real property affected by the proceeding is located in Perris, Riverside County,  
12 California, more particularly described as Assessor Parcel No. 305-060-010, as designated in  
13 *Exhibit A*, attached hereto and made a part hereof.

14 The names of the parties who may have an interest in the real property are: CHANG Z.  
15 KIM, an individual (record owner); YOUNG H. KIM, an individual (record owner); and  
16 GRANT S. KIM, an individual (record owner).

17 Dated: June 28, 2019, 2019

18 BEST BEST & KRIEGER LLP

19 By: 

20 MARK A. EASTER  
21 SCOTT W. DITFURTH  
22 Attorneys for Plaintiff  
23 RIVERSIDE COUNTY  
24 TRANSPORTATION COMMISSION