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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN BAUTISTA,

Plaintiff,

v.

ALEJANDRO MAYORKAS,
SECRETARY, UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; CHRIS MAGNUS,
COMMISSIONER, U.S. CUSTOMS
AND BORDER PROTECTION; AND
SIDNEY AKI, DIRECTOR, FIELD
OPERATIONS, US CUSTOMS AND
BORDER PROTECTION, SAN DIEGO
FIELD OFFICE,

Defendants.

Case No.: 22cv1185-GPC(KSC)

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS WITHOUT
LEAVE TO AMEND**

[Dkt. No. 14.]

Before the Court is Defendants’ motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). (Dkt. No. 14.) Plaintiff filed an opposition and Defendants replied. (Dkt. Nos. 16, 17.) Based on the reasoning below, the Court GRANTS Defendants’ motion to dismiss for lack of jurisdiction without leave to amend.

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Background

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2 On August 12, 2022, Plaintiff Martin Bautista¹ (“Plaintiff”) filed a complaint²
3 against Defendants Alejandro Mayorkas, Secretary of the Department of Homeland
4 Security (“DHS”); Chris Magnus, Commissioner, U.S. Customs and Border Protection
5 (“CBP”); and Sidney Aki, Director, Field Operations, U.S. Customs and Border
6 Protection, San Diego Field Office seeking the return of an unauthorized seizure of his
7 Gray 2021 Nissan Sentra VIN # 3N1AB8CV1MY329566 (“the Vehicle”). (Dkt. No. 1,
8 Compl.) He alleges violations of the Fourth Amendment right to be free from
9 unreasonable searches and seizures and Fifth and Fourteenth Amendment right to due
10 process. (*Id.* at 10-11.³) He seeks the return of the Vehicle, an award of attorney’s fees
11 and costs under the Equal Access to Justice Act and storage fees accumulated in this
12 matter. (*Id.* at p. 12.)

13 Lidia Bautista (“Mrs. Bautista”), Plaintiff’s wife, is the registered owner of the
14 Vehicle and domiciled in Los Angeles County, California. (*Id.* ¶ 6.) On November 4,
15 2021, Mrs. Bautista met a friend in Tijuana Mexico to give her a ride to her job in San
16 Diego. (*Id.* ¶ 15.) While there, Mrs. Bautista loaned her car to her friend while Mrs.
17 Bautista went to the store and eventually her friend picked her up in her Vehicle. (*Id.*)

18 Without Mrs. Bautista knowing, her friend had picked up two people who did not
19 have legal status in the United States and concealed them in the trunk of the Vehicle. (*Id.*
20 ¶ 16.) Mrs. Bautista learned about the two individuals concealed in the trunk when they
21 were stopped at the San Ysidro checkpoint. (*Id.*) Mrs. Bautista was released without
22 criminal charge because her friend was operating the Vehicle at the time of seizure. (*Id.* ¶
23 17.)

24
25 ¹ The Complaint also alleges that Lidia Bautista, Plaintiff’s wife, brings a civil action; however, she is
26 not a named Plaintiff in the case. (Dkt. No. 1, Compl. at p. 2, l. 1-3.)

27 ² On March 21, 2022, Plaintiff previously filed the same complaint but it was dismissed on July 1, 2022
28 after failing to show cause why he failed to file a proof of service or failed to serve. (Case No. 22cv378-
JLS(BLM), Dkt. No. 8.)

³ Page numbers are based on the CM/ECF pagination.

1 On the same day, DHS seized the Vehicle. (*Id.* ¶ 18.) Mrs. Bautista received a
2 Notice of Seizure on November 9, 2021 indicating that the CBP was commencing
3 forfeiture action against the Vehicle and provided guidance on how to proceed. (*Id.* ¶
4 19.) Mrs. Bautista timely filed a petition for return of seized vehicle with the CBP on
5 November 19, 2021. (*Id.*)

6 On December 4, 2021, Plaintiff retained counsel and sent a letter to CBP
7 requesting a 30-day extension of time to respond which the CBP granted on December
8 15, 2021. (*Id.* ¶ 20.) Based on judicially noticed document, the December 4, 2021 letter
9 informed CBP that Mrs. Bautista had retained counsel and she was seeking a 30-day
10 extension of time. (Dkt. No. 6-1, Ex. B at 4.⁴) The extension of time was granted as to
11 Mrs. Bautista and she had until January 15, 2021 to respond. (*Id.*, Ex. C at 11.)

12 On January 22, 2022, Plaintiff’s counsel notified CBP that he was withdrawing
13 representation of Mrs. Bautista and would be representing Plaintiff. (Dkt. No. 1, Compl.
14 ¶ 21.) Counsel also submitted Plaintiff’s petition for return of seized vehicle on the same
15 day. (*Id.*)

16 On January 27, 2022, according to the complaint, CBP acknowledged acceptance
17 of Plaintiff’s submission when it inquired as to whether he intended to pursue recovery of
18 his vehicle administratively and that Plaintiff needed to respond within 15 days of the
19 date of the letter. (*Id.* ¶ 22.) On February 1, 2022, Plaintiff responded to CBP’s January
20 27th letter indicating that Plaintiff intended to pursue the petition administratively. (*Id.* ¶
21 23.) On February 1, 2022, CBP Officer Smithburg sent an email stating “We are in
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23

24 ⁴ Defendants asks the Court to consider documents attached to Plaintiff’s motion for preliminary
25 injunction under the incorporation by reference doctrine. (*See* Dkt. No. 6-1.) Plaintiff did not object.
26 The incorporation by reference doctrine “is a judicially created doctrine”, where the court “treats certain
27 documents as though they are part of the complaint itself.” *Khoja v. Orexigen Therapeutics, Inc.*, 899
28 F.3d 988, 999 (9th Cir. 2018); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Here
because the complaint references the details of the judicial proceedings, the Court considers them under
the incorporation by reference doctrine. *See Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1208
(N.D. Cal. 2009) (taking judicial notice of forfeiture proceedings on motion to dismiss).

1 receipt of your correspondence indicating that it is your office’s intention to petition
2 administratively for the seized vehicle. Please provide your client’s proof of ownership
3 of the vehicle.” (*Id.* ¶ 24.) On February 1, 2022, Plaintiff’s counsel responded that
4 Plaintiff and Mrs. Bautista were married and the Vehicle is considered community
5 property under California law. (*Id.* ¶ 25.)

6 On February 15, 2022, Plaintiff’s counsel received a letter stating the “Mr.
7 Bautista’s notice was received January 24, 2022, thus it was untimely” and that the
8 Vehicle would be disposed of. (*Id.* ¶ 26.) On February 22, 2022, Plaintiff responded
9 arguing that Defendants had tolled any deadlines because they had accepted all responses
10 as timely and had notice of the petition and notice of Plaintiff’s ownership of the Vehicle.
11 (*Id.* ¶ 27.) On March 2, 2022, Defendants responded that Plaintiff’s petition was not
12 timely and the 30-day extension had been granted only as to Mrs. Bautista and they were
13 not aware that anyone else had a claim to the Vehicle when the extension was granted.
14 (*Id.* ¶ 28.) Plaintiff claims that CBP waived any deadlines through its conduct. (*Id.* ¶
15 30.)

16 On September 21, 2022, Plaintiff filed an ex parte motion for preliminary
17 injunction enjoining Defendants from disposing of his 2021 Nissan Sentra. (Dkt. No. 6.)
18 After full briefing, on October 11, 2022, the Court denied the ex parte motion for
19 preliminary injunction as moot because Defendants declared they would hold onto the
20 Vehicle until judgment is entered in the case. (Dkt. No. 13 at 4-5.)

21 Now pending before the Court is Defendants’ motion to dismiss for lack of subject
22 matter jurisdiction because the Civil Asset Forfeiture Reform Act of 2000, (“CAFRA”),
23 18 U.S.C. § 983 divests the Court of jurisdiction. Plaintiff opposes.

24 Discussion

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

26 “It is a fundamental principle that federal courts are courts of limited jurisdiction.
27 The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress,
28 must be neither disregarded nor evaded.” *Owen Equip. & Erection Co. v. Kroger*, 437

1 U.S. 365, 374 (1978). Under Rule 12(b)(1), a party may move to dismiss for lack of
2 subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) jurisdictional
3 challenge may be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039
4 (9th Cir. 2004). “In a facial attack, the challenger asserts that the allegations contained in
5 a complaint are insufficient on their face to invoke federal jurisdiction.” *Id.* When
6 evaluating a facial attack, the court assumes the truth of the complaint's allegations and
7 draws all reasonable inferences in plaintiff's favor. *See Wolfe v. Strankman*, 392 F.3d
8 358, 362 (9th Cir. 2004). Where the attack is factual, however, “the court need not
9 presume the truthfulness of the plaintiff's allegations.” *Safe Air for Everyone*, 373 F.3d at
10 1039. In resolving a factual dispute as to the existence of subject matter jurisdiction, a
11 court may review extrinsic evidence beyond the complaint without converting a motion
12 to dismiss into one for summary judgment. *Id.*; *McCarthy v. United States*, 850 F.2d
13 558, 560 (9th Cir. 1988). “A party invoking the federal court's jurisdiction has the
14 burden of proving the actual existence of subject matter jurisdiction.” *Thompson v.*
15 *McCombe*, 99 F.3d 352, 353 (9th Cir. 1996). Defendants raise a facial challenge. (*See*
16 *Dkt. No. 17 at 2 n.2* (“While the Court must presume the well-pleaded facts of the
17 Complaint to be true for the purposes of Defendants’ facial challenge to Plaintiff’s
18 pleading . . .”).

19 **B. Analysis**

20 Defendants argue that the Court lacks subject matter jurisdiction under CAFRA to
21 review an agency’s decision on Plaintiff’s petition or its ultimate forfeiture of the
22 Vehicle. (*Dkt. No. 14 at 5-6.*) Plaintiff responds that the Court has federal question
23 jurisdiction under the Administrative Procedure Act (“APA”) and under the Fourth, Fifth
24 and Fourteenth Amendments to the United States Constitution. (*Dkt. No. 16 at 4-5.*)
25 Defendants reply that Plaintiff cannot avoid the exclusive remedy provided under
26 CAFRA by raising claims under the APA and U.S. Constitution. (*Dkt. No. 17 at 3-4.*)

27 In 2000, Congress enacted the Civil Asset Forfeiture Reform Act of 2000
28 (“CAFRA”), 18 U.S.C. § 983, which amended the seizure and forfeiture of property used

1 to facilitate criminal activity by the federal government. *See Synagogue v. United States*,
2 482 F.3d 1058, 1060 (9th Cir. 2007). CAFRA authorizes a seizing agency to
3 administratively forfeit assets valued at or less than \$500,000 but any seized assets valued
4 at more than \$500,000 must be made only upon a judicial decree after judicial forfeiture
5 proceedings. 19 U.S.C. §§ 1607, 1610. The complaint alleges the value of the Vehicle to
6 be about \$21,000 at the time of seizure. (Dkt. No. 1, Compl. ¶ 14.)

7 Once property has been seized during the commission of a crime, the seizing
8 agency must send a notice of its intent to forfeit the property to potential claimants within
9 60 days of the seizure. 18 U.S.C. § 983(a)(1)(A)(i). Once a claimant receives notice
10 from the agency advising of the forfeiture, the claimant must decide whether he or she
11 seeks to pursue forfeiture administratively or judicially. *See Conservation Force v.*
12 *Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). A claimant may seek either administrative
13 or judicial forfeiture, but not both. *Id.* (quoting *Malladi Drugs & Pharms., Ltd. v. Tandy*,
14 552 F.3d 885, 889-90 (D.C. Cir. 2009) (“The forfeiture statutes and regulations provide
15 alternative, not sequential, administrative and legal remedies for an administrative
16 forfeiture.”). “A petition for remission ‘asks the agency for discretionary return of the
17 property,’ while a claim ‘initiates the judicial process to decide whether the property
18 should be forfeited.’” *Id.* (quoting *Malladi Drugs & Pharms., Ltd.*, 552 F.3d at 889-90).

19 If an administrative petition is timely submitted and is subsequently denied by the
20 seizing agency, the only remedy CAFRA provides is a motion to set aside a declaration
21 of forfeiture for failing to receive a “written notice in any nonjudicial civil forfeiture
22 proceeding” 18 U.S.C. § 983(e)(1), and “[a] motion filed under this subsection shall be
23 the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil
24 forfeiture statute.” 18 U.S.C. § 983(e)(5).

25 Because the exclusive remedy for a claimant seeking return of forfeited property is
26 limited by 18 U.S.C. § 983(e)(5), district courts lack jurisdiction to review a federal
27 agency's decision to deny an administrative petition. *Conservation Force*, 646 F.3d at
28 1243 (barring judicial review when claimant received proper notice of the proposed

1 forfeitures, elected to pursue an administrative remedy and filed petitions for remission
2 which were subsequently denied); *Mesa Valderrama v. United States*, 417 F.3d 1189,
3 1196 (11th Cir. 2005) (“This court has determined that it lacks jurisdiction to review the
4 merits of administrative or nonjudicial forfeiture determinations.”). Therefore, the
5 district court’s review is limited to “whether [the claimant] received the appropriate
6 notice in sufficient time to contest the agency's action of summarily forfeiting the check.”
7 *Mesa Valderrama*, 417 F.3d at 1196.

8 In this case, the Vehicle was subject to forfeiture under 18 U.S.C. § 1324(b) for
9 alien smuggling. (Dkt. No. 1, Compl. ¶ 18; Dkt. No. 6-1, Ex G at 39 (citing 18 U.S.C. §
10 1324(b)(1) (“Any . . . vessel, . . . that has been or is being used to the commission of a
11 violation of subsection (a) . . . shall be seized and subject to forfeiture.”)). The complaint
12 alleges Plaintiff had notice of the forfeiture proceedings through the Notice of Seizure
13 that Mrs. Bautista received and does not challenge the notice provided. (Dkt. No. 1,
14 Compl. ¶ 19; *see* Dkt. No. 16.) While Mrs. Bautista filed her petition on November 19,
15 2021, (Dkt. No. 1, Compl. ¶ 19), Plaintiff did not file his petition until January 22, 2022,
16 over two months after the Notice of Seizure. Ultimately, on February 15, 2021, the CBP
17 denied Plaintiff’s petition because it was untimely. (Dkt. No. 6-1, Ex. G at 39.)

18 In opposition, Plaintiff does not challenge the notice of seizure but challenges the
19 merits of CBP’s determination that his petition was not timely which is barred by
20 CAFRA. *See Conservation Force*, 646 F.3d at 1243. Therefore, the Court lacks
21 jurisdiction over his challenge to the CBP’s denial of his petition as untimely.

22 However, even if the Court were to consider his argument, it is questionable. The
23 complaint alleges that by responding to his petition as if it were timely and requiring him
24 to submit documents to show his ownership of the Vehicle, the CBP accepted his petition
25 as timely and by its conduct tolled or waived any deadlines. (Dkt. No. 1, Compl. ¶¶ 24-
26 30.) Relying on the complaint’s allegations, Plaintiff attempted to substitute in the place
27 of Mrs. Bautista as the claimant in her petition. However, Plaintiff and Mrs. Bautista are
28 distinct persons and Plaintiff has not provided any legal authority that his attempted

1 substitution was proper. Further, even if Plaintiff could step into the shoes of Mrs.
2 Bautista, he still failed to timely file a petition or response by January 15, 2022, the
3 deadline Mrs. Bautista was granted to file a response. Finally, Plaintiff has not provided
4 any legal authority that the CBP's response to his untimely petition is deemed an
5 acceptance of the petition as timely, and thus, any deadlines would be tolled or waived.

6 Because Plaintiff received proper notice of the seizure, the Court lacks jurisdiction
7 over the merits of the CBP's decision in the underlying forfeiture. *See* 18 U.S.C. §
8 983(a)(2)(B); *Plumhof v. U.S. Customs and Border Patrol*, No. 12cv2521 AJB(NLS),
9 2013 WL 2295666, at *7 (S.D. Cal. May 24, 2013) (court may only consider whether the
10 plaintiff received proper and timely notice of the vehicle seizure and because parties do
11 not dispute that plaintiff received timely notice, the court lacked jurisdiction); *Rodriguez*
12 *v. United States Dept. of Justice*, 4 Fed. Appx. 104, 106 (2nd Cir. 2001) (court lacked
13 subject matter jurisdiction over motion for return of forfeited property because plaintiff
14 filed claim with agency two weeks late); *Pert v. United States*, No. 3:10-cv-0739-LRH-
15 RAM, 2011 WL 1792767, at *5 (D. Nev. 2011) (court lacked subject matter jurisdiction
16 over challenge to forfeiture because plaintiff's notice of claim to the agency was
17 untimely).

18 In his opposition, Plaintiff summarily argues that the Court has jurisdiction under
19 federal question jurisdiction because he is bringing claims under the Administrative
20 Procedure Act ("APA") and under the Fourth and Fifth/Fourteenth Amendments of the
21 United States Constitution. (Dkt. No. 16 at 4-5.) However, a plaintiff may not bypass
22 the exclusive jurisdiction of CAFRA by seeking to set aside a forfeiture under CAFRA
23 through the APA. *See Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1209 (N.D.
24 Cal. 2009) *aff'd* 646 F.3d 1240 (9th Cir. 2011) (dismissing APA claim as not reviewable
25 because of agency discretion to administratively forfeit property and CAFRA is the
26 exclusive remedy seeking to set aside a declaration of forfeiture); *United States v. Simon*,
27 609 Fed. App'x 1002, 1007 (11th Cir. 2015) ("The district court was also correct to
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1 conclude that Mr. Simon could not seek review of the underlying administrative
2 forfeiture decision via the APA.”).

3 Under the APA, Congress has waived sovereign immunity over actions “seeking
4 relief other than monetary damages and stating a claim that an agency or an officer or
5 employee thereof acted or failed to act in an official capacity or under color of legal
6 authority.” 5 U.S.C. § 702. But the waiver does not apply when “statutes preclude
7 judicial review” or “agency action is committed to agency discretion by law.” 5 U.S.C. §
8 701(a). Here, CAFRA provides for the exclusive remedy and Congress has committed
9 to the agencies discretion to conduct administrative forfeitures; therefore, review under
10 the APA is not permitted. *See Browne v. Gossett*, 259 Fed. App’x 928, 929 (9th Cir.
11 2007) (rejecting argument that APA waives sovereign immunity because only claim for
12 non-monetary relief was the return of the forfeited property and the exclusive remedy is
13 under CAFRA); *Conservation Force*, 677 F Supp. 2d at 1209 (because petitions for
14 remissions are determined by the Solicitor in his or her discretion, APA cannot be
15 reviewed); *United States v. Pickett*, No. 07–CR–117, 2012 WL 694712, at *1 (E.D.N.Y.
16 Mar. 1, 2012) (“The APA does not waive sovereign immunity for challenges to civil
17 forfeiture proceedings; rather, a motion under § 983(e) of CAFRA is the ‘exclusive
18 remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture
19 statute.”).

20 Also, Plaintiff may not avoid the exclusive jurisdiction of CAFRA by seeking to
21 set aside a forfeiture under CAFRA through constitutional claims. *See Mikhaylov v.*
22 *United States*, 29 F. Supp. 3d 260, 272 (E.D.N.Y. 2014) (plaintiff’s exclusive remedy
23 concerning the forfeiture of his money is a § 983(e) motion and not additional *Bivens*⁵
24 claims); *Williams v. O'Donnell*, 3:19-CV-00418-BR, 2020 WL 6686416 at *6, 10 (D. Or.
25 Nov. 12, 2020) (dismissing Fourth Amendment claim for unlawful seizure of funds
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28 ⁵ *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

1 because CAFRA provides the exclusive remedy); *Lefler v. United States*, No. 11CV220-
2 LAB POR, 2011 WL 2132827, at *2 (S.D. Cal. May 26, 2011) (“Even if [the plaintiff] ..
3 . could show . . . he would have contested the forfeiture . . . , a *Bivens* action would not
4 lie because [the plaintiff] has a remedy under § 983(e.”); *United States v. Hall*, 2:06-cr-
5 00310-HDM-PAL, 2010 WL 11531405, at *6 (D. Nev. Mar. 31, 2010) (dismissing the
6 plaintiff’s claim brought pursuant to *Bivens* for the return of currency seized and forfeited
7 on the ground that “CAFRA is the exclusive remedy” for the plaintiff’s claim).

8 However, to the extent that the Court could consider the constitutional claims, the
9 Court notes the complaint alleges that Defendants are heads of federal agencies and are
10 being sued in their official capacities. (Dkt. No. 1, Compl. ¶¶ 7-9.) A suit against federal
11 employees in their official capacities is a suit against the United States and subject to
12 sovereign immunity. *See Hodge v. Dalton*, 107 F.3d 705, 707 (9th Cir. 1997) (“The
13 doctrine of sovereign immunity applies to federal agencies and to federal employees
14 acting within their official capacities.”). Plaintiff fails to explain how sovereign
15 immunity has been waived for these Defendants.

16 Accordingly, the Court GRANTS Defendants’ motion to dismiss for lack of
17 jurisdiction. In the event the Court grants dismissal, Plaintiff requests leave to amend the
18 complaint in order to demonstrate compliance with the APA. (Dkt. No. 16 at 6.)
19 However, as stated above, Plaintiff may not seek relief through the APA. Accordingly,
20 the Court denies Plaintiff’s request for leave to amend as any amendment would be futile.
21 *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008)
22 (dismissal without leave to amend is improper unless amendment would be clearly
23 futile).

24 **Conclusion**

25 Accordingly, the Court GRANTS Defendants’ motion to dismiss for lack of
26 subject matter jurisdiction under Rule 12(b)(1) and DENIES Plaintiff’s request for leave

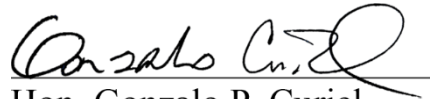
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1 to file an amended complaint. The Clerk of Court shall close the case.

2 IT IS SO ORDERED.

3 Dated: December 8, 2022



Hon. Gonzalo P. Curiel
United States District Judge

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