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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Lasse Norgaard-Larsen, et al.,

10 Plaintiffs,

11 v.

12 City of Phoenix, et al.,

13 Defendants.  
14

No. CV-20-02467-PHX-GMS

**ORDER**

15  
16 Pending before the Court is Defendant City of Phoenix’s (“Phoenix”) Motion to  
17 Dismiss. (Doc. 10.)<sup>1</sup> Also before the Court is Plaintiffs’ Motion to Compel Disclosure of  
18 Freedom of Information Act (“FOIA”) Information, (Doc. 12), and Motion for Summary  
19 Judgment, (Doc. 16). For the following reasons, Defendant’s Motion is granted in part and  
20 denied in part and Plaintiffs’ motions are denied.

21 **BACKGROUND**

22 Papago Park is a municipal park in the cities of Phoenix and Tempe, Arizona. The  
23 Papago Baseball Facility (“Baseball Facility”) is in Papago Park. (Doc. 1 at 2–3.) On  
24 November 26, 2018, Phoenix signed a lease (“Lease”) with Scottsdale, giving Scottsdale  
25 use of the Baseball Facility. *Id.* at 5. On December 1, 2018, Scottsdale signed a sublease  
26 (“Sublease”) with the San Francisco Giants Baseball Club (“Giants”), providing use of the  
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28 <sup>1</sup> Defendant City of Scottsdale (“Scottsdale”) filed notice that it joins in on Phoenix’s reply to the motion to dismiss. (Doc. 15.) Scottsdale also filed a notice that it joins Phoenix’s response to the motion for summary judgment. (Doc. 18.)

1 Baseball Facility to the Giants and allowing the Giants to make improvements to the  
2 Baseball Facility. *Id.*

3 Friends of Papago Park (“FOPP”) is an “unincorporated non-profit association of  
4 park users and visitors organized to preserve and protect the native habitat of Papa[g]o  
5 Park.” *Id.* at 1. The Complaint alleges that the Lease and Sublease violate deed restrictions  
6 in the title documents for Papago Park from the federal government. *Id.* at 5. Accordingly,  
7 Plaintiffs Lasse Norgaard-Larsen and J. Arthur Deal, on behalf of FOPP, (collectively,  
8 “Plaintiffs”) brought suit against Defendants, alleging violation of the Land and Water  
9 Conservation Fund Act of 1965 (“LWCFA”); a provision of the Federal Property and  
10 Administrative Services Act (“FPASA”), 40 U.S.C. § 550(e); the Property Clause of the  
11 U.S. Constitution; and the Contracts Clause of the U.S. Constitution. (Doc. 1 at 2.)

## 12 DISCUSSION

### 13 I. Motion to Dismiss

#### 14 a. Legal Standards

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

16 “The party asserting jurisdiction has the burden of proving all jurisdictional facts.”  
17 *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). In effect, the  
18 Court presumes lack of jurisdiction until the plaintiff proves otherwise. *See Kokkonen v.*  
19 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The defense of lack of subject  
20 matter jurisdiction may be raised at any time by the parties or the court. Fed. R. Civ. P.  
21 12(h)(3).

22 The Constitution grants the federal courts the power to hear only “Cases” and  
23 “Controversies.” U.S. Const. art. III, § 2. “Standing includes two components: Article III  
24 constitutional standing and prudential standing.” *Yakima Valley Mem’l Hosp. v. Wash.*  
25 *State Dep’t of Health*, 654 F.3d 919, 932 (9th Cir. 2011). The prudential standing analysis  
26 includes “whether a particular plaintiff has been granted a right to sue by the statute under  
27 which he or she brings suit.” *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 939  
28 (9th Cir. 2005) (internal quotation marks and citation omitted).

1                                   **2. Rule 12(b)(6)**

2           To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil  
3 Procedure 12(b)(6), a complaint must contain more than a “formulaic recitation of the  
4 elements of a cause of action”; it must contain factual allegations sufficient to “raise the  
5 right of relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
6 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). When analyzing a complaint  
7 for failure to state a claim, “allegations of material fact are taken as true and construed in  
8 the light most favorable to the non-moving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217  
9 (9th Cir. 1996). However, legal conclusions couched as factual allegations are not given a  
10 presumption of truthfulness, and “conclusory allegations of law and unwarranted  
11 inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d  
12 696, 699 (9th Cir. 1998).

13                                   **b. Analysis**

14                                   **1. Property Clause**

15           The Property Clause provides that “Congress shall have Power to dispose of and  
16 make all needful Rules and Regulations respecting the Territory or other Property  
17 belonging to the United States.” U.S. Const. art. IV, § 3, cl. 2. In other words, the clause  
18 grants Congress plenary power to “determine what are needful rules respecting the public  
19 lands.” *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (internal quotations and citation  
20 omitted).

21           Contrary to Defendants’ assertion, the third-party standing doctrine does not bar  
22 Plaintiffs from bringing their Property Clause action. The third-party standing doctrine  
23 bars litigants from raising another person’s legal rights. *Lexmark Int’l, Inc. v. Static*  
24 *Control Components, Inc.*, 572 U.S. 118, 126 (2014). In *Bond v. United States*, the  
25 Supreme Court explained that “[a]n individual has a direct interest in objecting to laws that  
26 upset the constitutional balance between the National Government and the States when the  
27 enforcement of those laws causes injury that is concrete, particular, and redressable.” 564  
28 U.S. 211, 222 (2011). Accordingly, the Supreme Court held that where a plaintiff “seeks

1 to vindicate her own constitutional interests[,]” the plaintiff, in a proper case, “can assert  
2 injury from governmental action taken in excess of the authority that federalism defines.”  
3 *Id.* at 220. Here, Plaintiffs assert that Phoenix and Scottsdale exceeded their authority by  
4 violating restrictions put on Papago Park by the federal government. (Doc. 1 at 4.)  
5 Applying the logic in *Bond*, Plaintiffs have a direct interest in objecting to this upset in  
6 balance.

7 Defendants also fail to show that the claim should be dismissed on the grounds that  
8 the federal government no longer has a property interest in Papago Park. For several  
9 different reasons, the Complaint alleges that the federal government still has a property  
10 interest in Papago Park. *Id.* at 8. As Plaintiffs’ allegations must be taken as true on a  
11 motion to dismiss, Plaintiffs’ Property Clause claim remains.

## 12 **2. LWCFA and FPASA**

13 Plaintiffs’ claims pursuant to the LWCFA and FPASA are dismissed with prejudice  
14 as to Defendants Phoenix and Scottsdale because neither statute allows for a private cause  
15 of action. Courts widely recognize that there is no private cause of action under the  
16 LWCFA. *See, e.g., Friends of Roeding Park v. City of Fresno*, 848 F. Supp. 2d 1152, 1160  
17 (E.D. Cal. 2012) (“It is well-accepted that three of the federal statutes relied upon by  
18 Plaintiffs (NEPA, LWCFA, and NHPA) do not create private rights of action.”);  
19 *Sportsmen’s Wildlife Def. Fund v. U.S. Dep’t of Interior*, 40 F. Supp. 2d 1192, 1200 (D.  
20 Colo. 1999) (“[N]o private right of action exists for alleged violations of the [LWCFA].”);  
21 *Save the Park and Build the Sch. v. Nat’l Park Serv.*, No. 20-CV-1080 TWR (AHG), 2020  
22 WL 6504946, at \*2 (S.D. Cal. Nov. 5, 2020); *Seto v. Kamai’Aina Care Inc.*, No. 10-00351  
23 SOM-BMK, 2011 WL 6780042, at \*4 (D. Haw. Nov. 30, 2011). Similarly, courts have  
24 held there is no private cause of action under the FPASA. *See, e.g., Cooper v. Haase*, 750  
25 Fed. App’x. 600, 601 (9th Cir. 2019) (“[FPASA] does not provide for a private cause of  
26 action.”); *Northrop Univ. v. Harper*, 580 F. Supp. 959, 963 (C.D. Cal. 1983).

## 27 **3. Contracts Clause**

28 The Contracts Clause restricts the power of States to disrupt contractual

1 arrangements, mandating that “[n]o state shall . . . pass any . . . Law impairing the  
2 Obligation of Contracts.” U.S. Const., Art. I, § 10, cl. 1. “The threshold issue is whether  
3 the state law has operated as a substantial impairment of a contractual relationship.” *Sveen*  
4 *v. Melin*, 138 S. Ct. 1815, 1821–22 (2018) (internal quotations and citation omitted). For  
5 there to be substantial impairment, the plaintiff must have possessed a vested contractual  
6 right. *Lazar v. Kroncke*, 862 F.3d 1186, 1200 (9th Cir. 2017). Here, Plaintiffs do not allege  
7 that they have vested contractual rights at issue. Accordingly, Plaintiffs’ Contracts Clause  
8 claim fails to state a claim on which this Court could grant relief.

### 9 3. Statute of Limitations

10 42 U.S.C. § 1983 allows private citizens to sue for the deprivation of a right secured  
11 by the United States Constitution. *See AlohaCare v. Haw., Dep’t of Human Servs.*, 567 F.  
12 Supp. 2d 1238, 1249 (D. Haw. 2008). Section 1983 does not contain a limitations period,  
13 so federal courts look to the applicable state statute of limitations to determine whether a  
14 complaint is timely. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). Section 1983  
15 actions are characterized as personal injury actions for purposes of identifying the  
16 applicable statute of limitations. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). In Arizona,  
17 the relevant provision is A.R.S. § 12-542, which provides for a limitations period of two  
18 years from the date the cause of action accrues. Although state law provides the statute of  
19 limitations, federal law determines when a civil rights claim accrues. *Morales v. City of*  
20 *Los Angeles*, 214 F.3d 1151, 1153–54 (9th Cir. 2000). Under federal law, the time limit  
21 on a cause of action begins to run when the plaintiff “knows or has reason to know of the  
22 injury which is the basis of the action.” *Trotter v. Int’l Longshoremen’s &*  
23 *Warehousemen’s Union, Local 13*, 704 F.2d 1141, 1143 (9th Cir. 1983). “Knowledge of  
24 the ‘injury,’ the Ninth Circuit has explained, means knowledge of the ‘actual injury,’ not  
25 when the plaintiff ‘suspects a legal wrong.’” *Karasek v. Regents of Univ. of Cal.*, No. 3:15-  
26 cv-03717-WHO, 2020 WL 6684869, at \*8 (N.D. Cal. Nov. 12, 2020) (quoting *Lukovsky v.*  
27 *City & Cnty. of San Francisco*, 535 F.3d 1044, 1049 (9th Cir. 2008)).

28 Plaintiffs assert that they became aware of their injury beginning on September 27,

1 2019. (Doc. 13 at 13.) In Exhibit D to the Complaint, Plaintiffs indicate that they first  
2 became curious about what was happening at Papago Park after Plaintiff Deal was blocked  
3 from walking on a trail because of a construction fence in September 2019. (Doc. 1-4 at  
4 45.) It is not clear from the Complaint whether the Lease and Sublease, entered into in  
5 2018, would have provided Plaintiffs with enough information to know that the trails they  
6 liked to walk on would be blocked. Accordingly, as September 2019 is within the statute  
7 of limitations period, Defendants fail to show Plaintiffs' claims are time barred.

## 8 **II. Motion to Compel Disclosure of FOIA Information**

9 Plaintiffs seek disclosure of documents from the United States Department of the  
10 Interior and Arizona State Parks pursuant to the FOIA. As the Department of the Interior  
11 and Arizona State Parks are not parties to this lawsuit, the Court cannot order production  
12 of their records under the FOIA. Plaintiffs' motion to compel disclosure is therefore  
13 denied.

## 14 **III. Motion for Summary Judgment**

### 15 **1. Legal Standard**

16 The purpose of summary judgment is "to isolate and dispose of factually  
17 unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary  
18 judgment is appropriate if the evidence, viewed in the light most favorable to the  
19 nonmoving party, shows "that there is no genuine issue as to any material fact and that the  
20 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Only disputes  
21 over facts that might affect the outcome of the suit will preclude the entry of summary  
22 judgment, and the disputed evidence must be "such that a reasonable jury could return a  
23 verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
24 (1986).

25 "[A] party seeking summary judgment always bears the initial responsibility of  
26 informing the district court of the basis for its motion and identifying those portions of [the  
27 record] which it believes demonstrate the absence of a genuine issue of material fact."  
28 *Celotex*, 477 U.S. at 323. Parties opposing summary judgment are required to "cit[e] to

1 particular parts of materials in the record” establishing a genuine dispute or “show[ ] that  
2 the materials cited do not establish the absence . . . of a genuine dispute.” Fed. R. Civ. P.  
3 56(c)(1). A district court has no independent duty “to scour the record in search of a  
4 genuine issue of triable fact[.]” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

## 5 **2. Analysis**

6 As discussed above, it is not yet clear whether the statute of limitations bars  
7 Plaintiffs’ claims. Accordingly, as there is a genuine dispute of material fact, Plaintiffs’  
8 motion for summary judgment is denied.

## 9 **CONCLUSION**

10 For the reasons provided above, Plaintiffs’ LWCFA and FPASA claims are  
11 dismissed with prejudice as to Phoenix and Scottsdale and Plaintiffs’ Contracts Clause  
12 claim is dismissed with leave to amend. If Plaintiffs choose to amend their Complaint,  
13 they must abide by Federal Rules of Civil Procedure 8(a)(2) and 10(b) and Local Rule of  
14 Civil Procedure 7.1. If Plaintiffs fail to follow these rules, any amended complaint will be  
15 subject to dismissal. Additionally, Plaintiffs’ motion to compel and motion for summary  
16 judgment are denied.

17 Accordingly,

18 **IT IS THEREFORE ORDERED** that Defendant City of Phoenix’s Motion to  
19 Dismiss (Doc. 10) is **GRANTED** in part and **DENIED** in part as follows:

- 20 1. Plaintiffs’ LWCFA and FPASA claims are dismissed with prejudice as to  
21 City of Phoenix and City of Scottsdale. Plaintiffs’ Contracts Clause claim  
22 is dismissed with leave to amend.
- 23 2. Plaintiffs’ Property Clause claim remains.

24 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion to Compel Disclosure of  
25 F.O.I.A. Information (Doc. 12) is **DENIED**.

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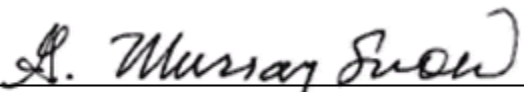
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**IT IS FURTHER ORDERED** that Plaintiffs' Motion for Summary Judgment (Doc. 16) is **DENIED**.

Dated this 9th day of July, 2021.

  
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G. Murray Snow  
Chief United States District Judge