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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT J. KULICK,)	NO. CV 19-7630-E
)	
Plaintiff,)	
)	
v.)	ORDER OF DISMISSAL
)	
LEISURE VILLAGE ASSOCIATION,)	
INC., et al.,)	
)	
Defendants.)	
)	

BACKGROUND

Plaintiff filed a "Complaint and Request for Injunction and Declaratory Relief" on September 3, 2019. Plaintiff, a resident of Leisure Village in Camarillo, California, alleges wrongdoing by the Leisure Village Association and/or its board of directors. The Complaint purports to allege claims for: (1) alleged use of improper nomination procedures in violation of California Civil Code section 5105; and (2) alleged enforcement of invalid operating rules in violation of California Civil Code section 4350. Plaintiff seeks declaratory and injunctive relief.

1 On September 5, 2019, the Magistrate Judge issued a Minute Order
2 stating that it appeared the Court lacks subject matter jurisdiction
3 over Plaintiff's claims.¹ The Magistrate Judge ordered Plaintiff to
4 show cause in writing, if there be any, why the Court should not
5 dismiss the action for lack of subject matter jurisdiction.

6
7 On September 19, 2019, Plaintiff filed "Plaintiff's Statement
8 Regarding the Court's Jurisdiction" ("Plaintiff's Statement").

9
10 **DISCUSSION**

11
12 In response to the September 5, 2019 Order to Show Cause,
13 Plaintiff argues that, although the Complaint "concerns violations of
14 California law. . . Plaintiff has brought the case in this federal
15 district court based on a federal question" (Plaintiff's Statement, p.
16 2).² As the Court advised Plaintiff in the September 5, 2019 Order,
17 "[a] mere error of state law is not a denial of due process."
18 Swarthout v. Cooke, 562 U.S. 216, 222 (2011) (internal quotations
19 omitted); see also Cornejo v. County of San Diego, 504 F.3d 853, 855

20
21 _____
22 ¹ A court may consider the issue of subject matter
23 jurisdiction sua sponte at any time. See Fed. R. Civ. P.
12(h)(3); WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1135
(9th Cir. 1997) (en banc).

24 ² Plaintiff does not allege, nor could he, any basis for
25 diversity jurisdiction pursuant to 28 U.S.C. section 1332. See
26 Strawbridge v. Curtiss, 7 U.S. (Cranch) 267 (1806), overruled on
27 other grounds, Louisville C & C. R. Co. v. Letson, 43 U.S. (2
28 How.) 497 (1844). Plaintiff alleges that he is a "resident" of
California, and that Defendant Leisure Village Association
Inc. is a California corporation doing business in California
(Complaint, ¶¶ 1-2). Plaintiff allegedly has been "a member and
owner of LVA property for more than thirty-two (32) years
(Complaint, ¶ 11).

1 n.2 (9th Cir. 2007) ("a claim for violation of state law is not
2 cognizable under [42 U.S.C.] § 1983") (citation omitted). The
3 Complaint fails to allege any claim under federal law.
4

5 Moreover, even if the Court were to interpret the Complaint to
6 attempt to allege a constitutional claim pursuant to 42 U.S.C. section
7 1983, jurisdiction would still be lacking. As the Court advised
8 Plaintiff in the September 5, 2019 Order, section 1983 creates a
9 remedy only against a person acting under color of state law. See 42
10 U.S.C. § 1983; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled
11 on other grounds, Daniels v. Williams, 474 U.S. 327 (1986); Haygood v.
12 Younger, 769 F.2d 1350, 1353 (9th Cir. 1985), cert. denied, 478 U.S.
13 1020 (1986). The "color of law" or "state actor" requirement is "a
14 jurisdictional requisite for a § 1983 action." West v. Atkins, 487
15 U.S. 42, 46 (1988); see Gritchen v. Collier, 254 F.3d 807, 812 (9th
16 Cir. 2001). "[P]rivate parties" such as Defendant Leisure Village
17 Association, Inc. "are not generally acting under color of state law."
18 Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991), cert.
19 denied, 503 U.S. 938 (1992).
20

21 Plaintiff argues that Defendant is a "quasi-government entity"
22 (Plaintiff's Statement, p. 2). Plaintiff cites state law case for
23 propositions that homeowners' associations "function in many respects
24 as small municipal governments regulating many aspects of the daily
25 lives of their members" and that a homeowners' association is "in
26 effect a quasi-government entity paralleling in almost every case the
27 powers, duties, and responsibilities of a municipal government"
28 (Plaintiff's Statement, p. 2, citing Chantiles v. Lake Forest II

1 Master Homeowners Assn., 37 Cal. App. 4th 914, 45 Cal. Rptr. 2d 1
2 (1995) (concerning the right of a homeowners' association director to
3 inspect association's records under state law), and Cohen v. Kite Hill
4 Community Assn., 142 Cal. App. 3d 642, 191 Cal. Rptr. 209 (1983)
5 (concerning association's approval of a nonconforming fence)).
6 Plaintiff also argues that homeowners' associations perform "public-
7 service functions" such as utility services, road maintenance, common
8 area lighting and refuse removal, assertedly financed through
9 "assessments or taxes" levied by the association (Plaintiff's
10 Statement, pp. 2-3, citing Damon v. Ocean Hills Journalism Club, 85
11 Cal. App. 4th 468, 102 Cal. Rptr. 2d 205 (2000) (former association
12 manager's defamation action against members of board of directors and
13 others raising anti-SLAPP issue)).

14
15 Plaintiff's arguments for subject matter jurisdiction are
16 unpersuasive. In none of the cases cited by Plaintiff did the court
17 rule that a homeowners' association constitutes a state actor for
18 purposes of section 1983. A private homeowners' association is not
19 the functional equivalent of a municipality or a purported "quasi-
20 governmental" entity. See Snowdon v. Preferred RV Resort Owners
21 Ass'n, 379 Fed. App'x 636, 637 (9th Cir. 2010) (Nevada homeowners'
22 association not a state actor; association did not perform the
23 traditional and exclusive function of municipal governance; rather it
24 provided "an assortment of basic amenities and simple services to its
25 paying members, all within the fenced-in confines of its private
26 property"); Hupp v. Solera Valley Greens Ass'n, 2015 WL 13447707, at
27 *3 (C.D. Cal. Oct. 8, 2015) (rejecting contention that homeowners'
28 association was a "quasi-government agency" and hence acted under of

1 color of law within the meaning of section 1983); Wong v. Village
2 Green Owners' Ass'n, 2014 WL 12587040, at *4 (C.D. Cal. June 26, 2014)
3 (the fact that state law governs the formation and operation of a
4 homeowners' association does not make the association a state actor);
5 Yan Sui v. 2176 Pacific Homeowners Ass'n, 2012 WL 6632758, at *11-12
6 (C.D. Cal. Aug. 30, 2012), adopted, 2012 WL 4900427 (C.D. Cal.
7 Oct. 16, 2012), aff'd in part, remanded in part on other grounds, 582
8 Fed. App'x 733 (9th Cir.), cert. denied, 135 S. Ct 709 (2014)
9 (homeowners' association not a state actor; distinguishing state cases
10 referring to an association's functions as "quasi-governmental," none
11 of which concerned issue of whether the association acted under color
12 of law for purposes of section 1983); see also O'Connor v. Village
13 Green Owners Ass'n, 33 Cal. 3d 790, 796, 191 Cal. Rptr. 320, 662 P.2d
14 427 (1983) (homeowners' association is analogous to a landlord and
15 hence is a "business establishment" for purposes of California's Unruh
16 Act); Talega Maintenance Corp. v. Standard Pacific Corp., 225 Cal.
17 App. 4th 722, 730-32, 170 Cal. Rptr. 3d 453 (2014) (homeowners'
18 association meetings not official proceedings under California's anti-
19 SLAPP statute California Code of Civil Procedure section 425.16(e)(1);
20 associations do not perform or assist in the performance of the actual
21 government's duties).

22
23 Because of the fundamental nature of the jurisdictional defect
24 discussed herein, amendment of the Complaint would be futile.

25 ///

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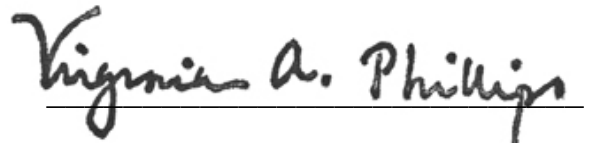
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1 Therefore, the action is dismissed without prejudice for lack of
2 subject matter jurisdiction.

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4 IT IS SO ORDERED.

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6 Dated: October 2, 2019.

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10 UNITED STATES DISTRICT JUDGE

11
12 Presented this 24th day
13 of September, 2019, by:

14
15 _____
16 CHARLES F. EICK
17 UNITED STATES MAGISTRATE JUDGE