

1 and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512. Detailed factual
2 allegations are not required, but “[t]hreadbare recitals of the elements of the cause of action,
3 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, ___ U.S. ___, 129
4 S.Ct. 1937, 1949 (2009), *citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
5 “Plaintiff must set forth sufficient factual matter accepted as true, to ‘state a claim that is
6 plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949, *quoting Twombly*, 550 U.S. at 555. While
7 factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 129 S.Ct. at 1949.

8 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to
9 relief above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff
10 must set forth “the grounds of his entitlement to relief,” which “requires more than labels and
11 conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56
12 (*internal quotation marks and citations omitted*). To adequately state a claim against a defendant,
13 a plaintiff must set forth the legal and factual basis for his claim.

14 If a court determines that the complaint fails to state a claim, leave to amend should be
15 granted to the extent that the plaintiff could cure the complaint’s deficiencies through
16 amendment or supplementation. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).
17 But when it becomes obvious that the plaintiff cannot prevail on the facts that he has alleged and
18 that further amendment would be futile, the court may properly dismiss a pro se complaint. *Id.* at
19 1128.

20 **II. Plaintiff’s Complaint**

21 **A. Plaintiff’s Complaint**

22 Plaintiff alleges that, after he purchased a truck at a yard sale and paid the full purchase
23 price, defendant Payless Towing stole the vehicle from his home, ostensibly to repossess it for
24 unpaid debt. Thereafter, defendants Payless Towing, American Lien Sales, Jacqueline M.
25 Clowes, Rickenbacker Collection Services, Angel Perez, and Angel Smith (collectively, the
26 “private defendants”) Services wrongfully acted to collect from plaintiff \$722.00 for expenses
27 associated with repossessing the truck. Plaintiff alleges claims against the private defendants
28 under 42 U.S.C. § 1983 and California law.

1 Plaintiff further alleges that the Bakersfield Police Department violated his constitutional
2 rights by refusing to accept his report of the vehicle's theft.

3 **B. Civil Rights Claims**

4 Section 1983 provides, on pertinent part:

5 Every person who, under color of [state law] . . . subjects, or causes to be
6 subjected, any citizen of the United States . . . to the deprivation of any rights,
7 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress.

8 To state a claim pursuant to § 1983, a plaintiff must plead (1) that defendants acted under
9 color of state law at the time of the commission of the act about which he or she complains and
10 (2) that the defendants deprived the plaintiff of rights, privileges, or immunities secured by the
11 Constitution or laws of the United States. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir.
12 1986), *cert. denied*, 479 U.S. 1054 (1987). The statute requires an actual connection between the
13 defendants' actions and plaintiff's alleged deprivation. *See Monell v. Department of Social*
14 *Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). "A person 'subjects'
15 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does
16 an affirmative act, participates in another's affirmative acts or omits to perform an act which he
17 is legally required to do that causes the deprivation of which the complaint is made." *Johnson v.*
18 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19 To state a claim under § 1983, a plaintiff must allege that the defendant acted under color
20 of state law. *Gibson*, 781 F.2d at 1338. Generally, private parties do not act under color of state
21 law. *See Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991), *cert. denied*, 503 U.S. 938
22 (1992). Because the Constitution only protects individual rights against government action, a
23 plaintiff's right are only violated under § 1983 if the defendants' actions are fairly attributable to
24 the government, as when the state is significantly involved in the actions in question. *Franklin v.*
25 *Fox*, 312 F.3d 423, 444-45 (9th Cir. 2002).

26 In this case, the private defendants are not state actors. Mere acquiescence by police in
27 repossession of a plaintiff's property does not convert repossession into state action. *Meyers v.*
28 *Redwood City*, 400 F.3d 765, 767-68 (9th Cir. 2005); *Harris v. City of Roseburg*, 664 F.2d 1121,

1 1126-27 (9th Cir. 1981). Because plaintiff alleges only that the Bakersfield Police Department
2 acquiesced in the private defendants' repossession of his truck, he does not allege the state action
3 resulting in deprivation of federally protected rights that is required to maintain a § 1983 action.
4 Accordingly, the undersigned recommends dismissal, without prejudice, of plaintiff's § 1983
5 claims against all defendants.

6 **C. State Claims**

7 Plaintiff also alleges multiple state claims, including conversion (theft), infliction of
8 mental and emotional distress, and extortion. Section 1983 does not provide a cause of action for
9 violations of state law. *See Weilburg v. Shapiro*, 488 F.3d 1202, 1207 (9th Cir. 2007); *Galen v.*
10 *County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007); *Ove v. Gwinn*, 264 F.3d 817, 824 (9th
11 Cir. 2001); *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997); *Lovell v. Poway*
12 *Unified School Dist.*, 90 F.3d 367, 370 (9th Cir. 1996); *Draper v. Coombs*, 792 F.2d 915, 921 (9th
13 Cir. 1986); *Ybarra v. Bastian*, 647 F.2d 891, 892 (9th Cir.), *cert. denied*, 454 U.S. 857 (1981).

14 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
15 jurisdiction (as by §1983), the district court "shall have supplemental jurisdiction over all other
16 claims in the action within such original jurisdiction that they form part of the same case or
17 controversy under Article III," except as provided in subsections (b) and (c). *Acri v. Varian*
18 *Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). If judicial power exists under § 1367(a), a
19 federal court may exercise of supplemental jurisdiction over state law claims. *Id* "[I]f the federal
20 claims are dismissed before trial . . . the state claims should be dismissed as well." *United Mine*
21 *Workers of Amer. v. Gibbs*, 383 U.S. 715, 726 (1966). Because no cognizable federal claims
22 have been alleged in this case, the undersigned recommends that plaintiff's state claims should
23 also be dismissed.

24 **III. Recommendation**

25 The undersigned **HEREBY RECOMMENDS** that this case be dismissed without
26 prejudice. These findings and recommendations are submitted to the Honorable Lawrence J.
27 O'Neill, United States District Court Judge, pursuant to the provisions of 28 U.S.C.
28 § 636(b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District

1 Court, Eastern District of California. Within thirty (30) days after being served with a copy,
2 plaintiff may file written objections with the court. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” The Court will then review
4 the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is advised that
5 failure to file objections within the specified time may waive his right to appeal the District
6 Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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10 IT IS SO ORDERED.

11 **Dated: January 10, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE