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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GARR OOLEY, et al.,	)	Case No. 2:12-cv-00095-JAM-CKD
	)	
Plaintiffs,	)	<u>ORDER GRANTING THE NEIGHBOR</u>
	)	<u>DEFENDANTS' MOTION TO DISMISS</u>
v.	)	
	)	
CITRUS HEIGHTS POLICE	)	
DEPARTMENT, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter is before the Court on Defendants Michelle R. Kirwan, Trevor Kirwan, Leland Murray, Jr., Mary Murray, Stephanie Murray, Anthony Larish, Alan Spinner, and Jonathan Hanly's (collectively the "Neighbor Defendants") Motion to Dismiss (Doc. #9).<sup>1</sup> Plaintiffs Garr Ooley and Janis Starkey (collectively "Plaintiffs") oppose the motion (Doc. #32).

I. FACTUAL ALLEGATIONS

This action arises out of Plaintiffs' allegations that the

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled for April 18, 2012.

1 Neighbor Defendants, acting to aid and abet officers associated  
2 with the Citrus Heights Police Department (the "CHPD Defendants"),  
3 engaged in a campaign to violate Plaintiffs' civil rights.  
4 Plaintiffs allege in a 98 page complaint and 50 pages of exhibits  
5 that the Neighbor Defendants engaged in a campaign of harassment  
6 consisting of a series of minor incidents and confrontations  
7 including newspaper theft, cursing, angry verbal exchanges,  
8 flipping "the bird," applications for restraining orders, chest  
9 bumping, false accusations of assault, poisoning of decorative  
10 vegetation, irregular postal service, lies, and general  
11 denigration. See Compl. (Doc. #2) ¶¶ 49-53. Plaintiff Ooley was  
12 eventually convicted of vandalizing Defendant Leland Murray's  
13 truck, but he was acquitted of assault and battery charges arising  
14 from the same incident. Plaintiffs allege that the majority of  
15 these incidents were recorded on Plaintiffs' home surveillance  
16 system.

17 Plaintiffs allege that the Neighbor Defendants' campaign of  
18 harassment was precipitated by neighborhood meetings organized by  
19 CHPD officers. At these meetings, Plaintiffs allege that the  
20 officers defamed Plaintiff Ooley by telling his neighbors that he  
21 was a sexual pervert and pedophile. Plaintiffs allege that the  
22 Neighbor Defendants became antagonistic toward them following these  
23 meetings.

24 The parties dispute the Court's subject matter jurisdiction.  
25 Plaintiff brings one federal cause of action, violation of 42  
26 U.S.C. § 1983, and several state law claims against the Neighbor  
27 Defendants. The Neighbor Defendants seek dismissal of the federal  
28 cause of action for failure to state a claim under Federal Rule of

1 Civil Procedure 12(b)(6), and the remaining state law claims for  
2 lack of federal subject matter jurisdiction under Federal Rule of  
3 Civil Procedure 12(b)(1) .

4  
5 II. OPINION

6 A. Legal Standard for Motion to Dismiss

7 1. Failure to State a Claim

8 A party may move to dismiss an action for failure to state a  
9 claim upon which relief can be granted pursuant to Federal Rule of  
10 Civil Procedure 12(b)(6). In considering a motion to dismiss, the  
11 court must accept the allegations in the complaint as true and draw  
12 all reasonable inferences in favor of the plaintiff. Scheuer v.  
13 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
14 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,  
15 322 (1972). Assertions that are mere "legal conclusions," however,  
16 are not entitled to the assumption of truth. Ashcroft v. Iqbal,  
17 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
18 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a  
19 plaintiff needs to plead "enough facts to state a claim to relief  
20 that is plausible on its face." Twombly, 550 U.S. at 570.  
21 Dismissal is appropriate where the plaintiff fails to state a claim  
22 supportable by a cognizable legal theory. Balistreri v. Pacifica  
23 Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

24 Upon granting a motion to dismiss for failure to state a  
25 claim, the court has discretion to allow leave to amend the  
26 complaint pursuant to Federal Rules of Civil Procedure 15(a).  
27 "Dismissal with prejudice and without leave to amend is not  
28 appropriate unless it is clear . . . that the complaint could not

1 be saved by amendment.” Eminence Capital, L.L.C. v. Aspeon, Inc.,  
2 316 F.3d 1048, 1052 (9th Cir. 2003).

3 2. Lack of Subject Matter Jurisdiction

4 A court may dismiss an action under Rule 12(b)(1) “when the  
5 District Court lacks subject matter jurisdiction over the claim.”  
6 Fed. R. Civ. P. 12(b)(1). A motion made pursuant to Rule 12(b)(1)  
7 “may either attack the sufficiency of the pleadings to establish  
8 federal jurisdiction, or allege an actual lack of jurisdiction  
9 which exists despite the formal sufficiency of the complaint.”  
10 Meaunrit v. ConAgra Foods Inc., 2010 WL 2867393, \*3 (N.D. Cal. July  
11 20, 2010) (internal citations omitted). A plaintiff bears the  
12 burden of proving jurisdiction “with the manner and degree of  
13 evidence required at the successive stages of the litigation.”  
14 Barnum Timber Co. v. U.S. E.P.A., 633 F.3d 894, 899 (9th Cir. 2011)  
15 (quoting Lujan v. Defenders of Wildlife, 504 U.S. at 561, 112 S.Ct.  
16 2130 (1992)). At the motion to dismiss stage, a plaintiff must  
17 plead facts sufficient to show that the jurisdictional elements are  
18 plausibly met. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
19 570 (2007).

20  
21 B. Failure to State a Claim Under 42 U.S.C. § 1983

22 The Neighbor Defendants argue that Plaintiffs fail to properly  
23 state a § 1983 claim against them. The Neighbor Defendants seek  
24 dismissal of this claim on the grounds that they are private actors  
25 to whom § 1983 liability applies only in limited circumstances.  
26 The Neighbor Defendants contend that Plaintiffs failed to allege  
27 that the Neighbor Defendants exercised control over state actors, a  
28 necessary element of private actor liability under § 1983.

1 Plaintiffs respond that under an aiding and abetting theory of  
2 liability, the Neighbor Defendants are liable for the CHPD  
3 Defendants' conduct so long as the Neighbor Defendants were the  
4 proximate cause of Plaintiffs' injuries. Plaintiffs' theory is  
5 that the Neighbor Defendants "furthered the agenda of the defendant  
6 police officers by knowingly and improperly carrying out a campaign  
7 of harassment [against Plaintiffs]." Opp. at 6.

8 "A § 1983 plaintiff must demonstrate a deprivation of a right  
9 secured by the Constitution or laws of the United States, and that  
10 the defendant acted under color of state law." Kirtley v. Rainey,  
11 326 F.3d 1088, 1092 (9th Cir. 2003) (citing West v. Atkins, 487  
12 U.S. 42, 48 (1988)). Private conduct is presumed not to be state  
13 action. Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826,  
14 835 (9th Cir. 1999) (citing Harvey v. Harvey, 949 F.2d 1127, 1130  
15 (11th Cir. 1992) ("Only in rare circumstances can a private party  
16 be viewed as a "state actor" for section 1983 purposes.")). In  
17 order to state a claim against a private party for the conduct of a  
18 state official, a plaintiff must allege that the private party  
19 exercised some control over the state official's decision.  
20 Franklin v. Fox, 312 F.3d 423, 445-46 (9th Cir. 2002) (citing King  
21 v. Massarweh, 782 F.2d 825, 829 (9th Cir. 1986)).

22 In this case, Plaintiffs claim that the Neighbor Defendants  
23 aided and abetted the CHPD Defendants in violating Plaintiffs'  
24 civil rights. Accordingly, to state a claim Plaintiffs must  
25 credibly allege that the Neighbor Defendants exercised some control  
26 over the CHPD Defendants, thereby causing them to violate  
27 Plaintiffs' civil rights. Id. Plaintiffs cite paragraphs 49-51 of  
28 the Complaint, arguing that those paragraphs contain sufficient

1 allegations to state a § 1983 claim against the Neighbor  
2 Defendants. Those paragraphs detail a campaign of harassment  
3 against Plaintiffs. Paragraphs 39-49 contain allegations that the  
4 CHPD Defendants took steps to turn the Neighbor Defendants against  
5 Plaintiffs. Compl. ¶¶ 39-49. Absent from the Complaint, however,  
6 are allegations that the Neighbor Defendants exercised control over  
7 the CHPD Defendants. To the contrary, the Complaint alleges that  
8 the CHPD Defendants exercised control over the Neighbor Defendants,  
9 convincing them to harass Plaintiffs by falsely announcing at  
10 neighborhood meetings that Plaintiff Ooley was a sex offender.  
11 Compl. ¶ 41.

12 Plaintiffs theory of liability, aiding and abetting, is simply  
13 not applicable to the private conduct alleged in the Complaint  
14 under 42 U.S.C. § 1983. See Sutton, 192 F.3d at 835. Accordingly,  
15 this claim is dismissed. Since Plaintiff's theory of liability is  
16 not legally cognizable, this claim cannot be saved by amendment and  
17 it is therefore dismissed without leave to amend. See Eminence  
18 Capital, 316 F.3d at 1052.

19 C. Subject Matter Jurisdiction Over the State Law Claims

20 The Neighbor Defendants seek dismissal of Plaintiffs'  
21 remaining state law claims due to a lack of federal subject matter  
22 jurisdiction. The Neighbor Defendants argue that once the single  
23 federal claim against them is dismissed, the remaining state law  
24 claims must also be dismissed because the Court lacks jurisdiction  
25 pursuant to 28 U.S.C. § 1331. The Neighbor Defendants also  
26 characterize the remaining state law claims as "petty neighborhood  
27 disputes which have no factual relationship the civil rights  
28 claims" against the CHPD Defendants. Reply 7. Plaintiffs oppose

1 dismissal arguing that the court retains jurisdiction, at its  
2 discretion, pursuant to 28 U.S.C. § 1367(c) because the state law  
3 claims are related to Plaintiffs' federal claims against the CHPD  
4 Defendants.

5 Federal courts have jurisdiction over federal claims pursuant  
6 to 28 U.S.C. § 1331 and over pendent state law claims pursuant to  
7 28 U.S.C. § 1367(a). Federal jurisdiction over a pendent state law  
8 claim pursuant to 28 U.S.C. § 1367(a) is constitutional so long as  
9 the state law claim is part of the same case or controversy as a  
10 substantial federal claim. Trs. of Constr. Indus. & Laborers  
11 Health & Welfare Trust v. Desert Valley Landscape & Maint., Inc.  
12 (Desert Valley Landscape), 333 F.3d 923, 925 (9th Cir. 2003).

13 State and federal claims are part of the same case when they arise  
14 from the same "common nucleus of operative fact" and "are such that  
15 a plaintiff 'would ordinarily be expected to try them in the one  
16 judicial proceeding.'" Id. (quoting United Mine Workers of Am. v.  
17 Gibbs, 383 U.S. 715, 725 (1966)). Federal courts may, at their  
18 discretion, decline to exercise supplemental jurisdiction over  
19 parties over whom there is no independent basis for federal  
20 jurisdiction. Mendoza v. Zirkle Fruit Co., 301 F.3d 1163, 1174  
21 (9th Cir. 2002).

22 In light of the Court's dismissal of Plaintiffs' sole federal  
23 claim against the Neighbor Defendants, the Court no longer has  
24 federal question jurisdiction over the Neighbor Defendants pursuant  
25 to 28 U.S.C. § 1331. It is therefore within the Court's discretion  
26 to exercise or not exercise jurisdiction over the state law claims  
27 against the Neighbor Defendants because there is no basis of  
28 jurisdiction independent of 28 U.S.C. § 1367. Mendoza, 301 F.3d at

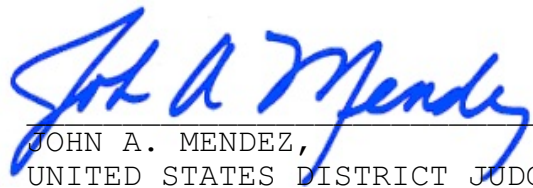
1 1174. The Court finds that the state law claims against the  
2 Neighbor Defendants arise from a minor neighborhood dispute that is  
3 better adjudicated in a state forum. Accordingly, the Court  
4 declines to exercise jurisdiction over the Neighbor Defendants,  
5 their motion to dismiss the state law claims is granted without  
6 prejudice, and they are hereby dismissed from this lawsuit. Since  
7 the Court declines jurisdiction over the state law claims against  
8 the Neighbor Defendants, leave to amend the state law claims is  
9 denied because any amendment would be futile for lack of  
10 jurisdiction.

11  
12 III. ORDER

13 For the reasons given, the Neighbor Defendants' Motion to  
14 Dismiss is GRANTED with respect to Plaintiffs' third cause of  
15 action, Aiding and Abetting a Civil Rights Violation. The third  
16 cause of action is hereby dismissed with prejudice. The Neighbor  
17 Defendants' Motion to Dismiss Plaintiff's fourth through seventh  
18 causes of action is GRANTED and those claims are dismissed without  
19 prejudice. Leave to amend the state law claims is denied.

20 IT IS SO ORDERED.

21 Dated: May 29, 2012

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24 JOHN A. MENDEZ,  
25 UNITED STATES DISTRICT JUDGE  
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