

1 I. BACKGROUND

2 A. Procedural History

3 Several motions to dismiss preceded the current motion.
4 The CHPD Defendants previously moved for dismissal of Plaintiff
5 Janis Starkey's claims, and that motion was granted with
6 prejudice (Doc. #37). A group of Plaintiffs Ooley and Starkey's
7 neighbors (the "Neighbor Defendants") successfully moved to
8 dismiss the federal claims against them with prejudice (Doc.
9 #38). The Court declined supplemental jurisdiction over
10 Plaintiffs' remaining state law claims against the Neighbor
11 Defendants. Finally, the remaining defendants Nicolas Maurer
12 and Yvonne Pickering, also neighbors, moved to dismiss the
13 claims against them. Plaintiff Ooley's claim against Nicolas
14 Maurer was dismissed with leave to amend, his claim against
15 Yvonne Pickering was dismissed with prejudice, and Plaintiff
16 Starkey's claim was dismissed with prejudice (Doc. #55). In
17 sum, all of Plaintiff Starkey's claims were either dismissed
18 with prejudice or the Court declined supplemental jurisdiction
19 over them. Plaintiff Ooley's claims against the Neighbor
20 Defendants and Yvonne Pickering were also dismissed with
21 prejudice or the Court declined jurisdiction. By the time the
22 First Amended Complaint ("FAC") was filed (Doc. #59), Plaintiff
23 Starkey's claims were eliminated from this lawsuit and Plaintiff
24 Ooley was only permitted to amend his claims with respect to the
25 CHPD Defendants and Defendant Nicolas Maurer.

26 Plaintiff's FAC contains a claim against the CHPD
27 Defendants for violation of 42 U.S.C. § 1983 and a claim against
28 Defendant Nicolas Maurer for aiding and abetting a violation of

1 Plaintiff's civil rights. The CHPD Defendants now move to
2 dismiss the claim against them.

3 B. Factual Allegations

4 This action arises out of Plaintiff's allegations that the
5 CHPD Defendants violated his civil rights. Plaintiff alleges
6 that the CHPD Defendants made false statements that he was a
7 sexual offender and pedophile during neighborhood meetings. The
8 false statements were allegedly made in retaliation for
9 Plaintiff's part in complaining to Defendant Nicholas Maurer
10 about activities occurring in Defendant Maurer's residence that
11 Plaintiff and other neighbors found offensive. It is
12 Plaintiff's theory that Defendant Maurer somehow convinced the
13 CHPD Defendants to take retaliatory action. Plaintiff alleges
14 that the false statements then induced the Neighbor Defendants
15 to conduct a campaign of harassment against him.

16 The remainder of the FAC primarily alleges that Plaintiff
17 was harassed by the CHPD and Neighbor Defendants in a series of
18 minor incidents in which the neighbors allegedly entered
19 property owned by Starkey and harassed Plaintiff. Plaintiff was
20 ultimately arrested by CHPD for assault, battery, and vandalism
21 after an incident in his driveway. Plaintiff was acquitted of
22 assault and battery in state court but convicted of vandalism.
23 While Plaintiff was in CHPD custody after his arrest, he alleges
24 that Defendant Barron made two statements to him:

- 25 1) I only answer to two things: the Seventh
26 Day Adventist Church and my two daughters.
27 2) I am glad to be part of the group that
28 took part in your arrest to remove people
like you from this community.

FAC ¶ 89.

1 Plaintiff alleges that federal jurisdiction exists at this
2 stage of the proceedings pursuant to 28 U.S.C. §§ 1331 and 1343.

3
4 II. OPINION

5 A. Legal Standard

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

23 Upon granting a motion to dismiss for failure to state a
24 claim, the court has discretion to allow leave to amend the
25 complaint pursuant to Federal Rule of Civil Procedure 15(a).
26 "Dismissal with prejudice and without leave to amend is not
27 appropriate unless it is clear . . . that the complaint could
28 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,

1 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

2 B. Discussion

3 The CHPD Defendants argue that they are entitled to
4 dismissal because the FAC fails to state a federal claim against
5 them. They contend that if any claim is stated, it is a state
6 law tort claim. The CHPD Defendants argue that without a valid
7 federal claim, the complaint against them must be dismissed.
8 Plaintiff responds that the FAC alleges violations of the
9 following federal rights:

10 1. The right to procedural due process arising from the
11 Fifth and Fourteenth Amendments to the U.S. Constitution, i.e.,
12 wrongful arrest, malicious prosecution, inverse condemnation,
13 and uncompensated taking of property;

14 2. The right to substantive due process arising from the
15 Fifth and Fourteenth Amendments to the U.S. Constitution, i.e.,
16 defamation and quiet enjoyment of property;

17 3. The prohibition against unreasonable searches and
18 seizures arising from the Fourth Amendment to the U.S.
19 Constitution, i.e., wrongful arrest and seizing personal
20 property;

21 4. The rights to freedom of religion and to petition the
22 government guaranteed by the First Amendment to the U.S.
23 Constitution; and

24 5. The right to equal protection arising from the
25 Fourteenth Amendment to the U.S. Constitution.

26
27 1. Plaintiff's Arrest

28 The CHPD Defendants argue that Plaintiff's arrest was

1 lawful and cannot, as a matter of law, provide the basis for a
2 federal civil rights claim. The CHPD Defendants rely on Exhibit
3 C to the FAC, which is a copy of Plaintiff's state court
4 conviction resulting from his arrest. A number of Plaintiff's
5 allegations rely on his allegedly wrongful arrest, and if the
6 CHPD Defendants are correct, those claims MUST fail. Plaintiff
7 responds that his conviction is immaterial because he was
8 acquitted of assault and battery, even if he was convicted of
9 vandalism.

10 In order to state a claim based on a wrongful arrest,
11 § 1983 plaintiffs must allege that 1) the defendants acted under
12 color of state law, and 2) "the defendants' conduct deprived
13 them of their Fourth Amendment right to be free from arrest
14 unsupported by warrant or probable cause." Orozco v. Cnty. of
15 Yolo, 814 F. Supp. 885, 891 (E.D. Cal. 1993). "Probable cause
16 exists when the facts and circumstances within the arresting
17 officer's knowledge are sufficient to warrant a prudent person
18 to believe that a suspect has committed, is committing, or is
19 about to commit a crime." Mackinney v. Nielsen, 69 F.3d 1002,
20 1005 (9th Cir. 1995) (quotations omitted). A § 1983 plaintiff
21 may not bring a claim that challenges or calls into question a
22 state law conviction unless he shows that the arrest was
23 declared invalid or called into question under state law or
24 federal habeas proceedings. Guerrero v. Gates, 442 F.3d 697,
25 703 (9th Cir. 2003); Heck v. Humphrey, 512 U.S. 477, 486-87
26 (1994).

27 In this case, it is undisputed that Plaintiff was convicted
28 of vandalism. Plaintiff has not alleged that the conviction was

1 overturned or otherwise called into question through appropriate
2 proceedings. Thus, a finding that Plaintiff's arrest lacked
3 probable cause would necessarily call into question his state
4 court conviction for vandalism. Such a finding would undermine
5 Plaintiff's vandalism conviction by indicating that the
6 arresting officer did not have sufficient basis to believe that
7 Plaintiff committed a crime. Accordingly, this claim is barred
8 by the doctrine announced in Heck v. Humphrey.

9 Plaintiff cites state law authority for the proposition
10 that a § 1983 wrongful arrest claim may proceed when acquittal
11 on at least one charge is obtained. That case, Sierra Club
12 Foundation v. Graham, 72 Cal.App.4th 1135 (1999), is
13 inapplicable to the present matter. Sierra Club involved a
14 common law claim for malicious prosecution between civil
15 litigants, not a § 1983 or even state law wrongful arrest claim.
16 Id. at 1141. The CHPD Defendants have shown that the claims
17 based on Plaintiff's arrest fail as a matter of law.

18 2. Equal Protection

19 Plaintiff alleges that he was treated poorly by the CHPD
20 Defendants because he is not a member of the Seventh Day
21 Adventists religious group. Plaintiff's claim is predicated
22 entirely on the single comment made by Defendant Barron after
23 Plaintiff's arrest. The CHPD Defendants point out that
24 Defendant Barron's comment occurred after the arrest and there
25 is no factual allegation that any of the CHPD Defendants knew
26 that Plaintiff was not a Seventh Day Adventist.

27 "[T]he [First Amendment to the] Constitution guarantees
28 that government may not coerce anyone to support or participate

1 in religion or its exercise, or otherwise act in a way which
2 'establishes a [state] religion or religious faith, or tends to
3 do so.'" Lee v. Weisman, 505 U.S. 577, 587 (1992) (quoting
4 Lynch v. Donnelly, 465 U.S. 668, 669 (1984)). Similarly, the
5 "Equal Protection Clause of the Fourteenth Amendment commands
6 that no State shall 'deny to any person within its jurisdiction
7 the equal protection of the laws,' which is essentially a
8 direction that all persons similarly situated should be treated
9 alike." City of Cleburne, Tex. v. Cleburne Living Ctr., 473
10 U.S. 432, 439 (1985). Thus, under both the First Amendment and
11 the Equal Protection clause, the CHPD Defendants are prohibited
12 from harassing Plaintiff because he is not a Seventh Day
13 Adventist.

14 In this case, the FAC is devoid of facts to support
15 Plaintiff's religion based claims. Defendant Barron's off-hand
16 comment cannot sustain the allegation that Plaintiff was
17 targeted because of his religion. According to the FAC,
18 Defendant Barron merely identified his personal religious
19 beliefs. He did not indicate that any official action was taken
20 by him or any of the CHPD Defendants on the basis of religion.
21 Indeed, such a claim contradicts the central theory of
22 Plaintiff's case - that he was targeted because he organized a
23 neighborhood petition and presented it to Nicolas Maurer.
24 Accordingly, Plaintiff has failed to state a claim that his
25 First or Fourteenth Amendment rights were violated because of
26 his religion.

1 3. Substantive Due Process

2 Plaintiff next argues that he has alleged a violation of
3 his substantive due process rights arising out of the Fourteenth
4 Amendment. Plaintiff bases this claim on the allegation that
5 the CHPD Defendants deprived Plaintiff of the quiet enjoyment of
6 his residence. The CHPD Defendants argue that this claim should
7 be dismissed because the facts pled by Plaintiff do not support
8 a constitutional claim.

9 “Federal courts have ‘always been reluctant to expand the
10 concept of substantive due process because guideposts for
11 responsible decisionmaking in this uncharted area are scarce and
12 open ended.’” Brittain v. Hansen, 451 F.3d 982, 990 (9th Cir.
13 2006) (quoting Albright v. Oliver, 510 U.S. 266, 271-72 (1994)).
14 “[T]he Fourteenth Amendment is not a ‘font of tort law to be
15 superimposed upon whatever systems may already be administered
16 by the States’” Cnty. of Sacramento v. Lewis, 523 U.S.
17 833, 848 (1998) (quoting Paul v. Davis, 424 U.S. 693, 701
18 (1976)).

19 In the Court’s order dismissing Plaintiff Starkey’s
20 substantive due process claim (Doc. #37 at 7-8), the Court
21 declined to find that substantive due process protects a right
22 to quiet enjoyment of property. Plaintiff relies on the same
23 arguments that the Court previously rejected in Plaintiff
24 Starkey’s case. There is no reason to reconsider the Court’s
25 prior holding that substantive due process does not extend to a
26 right of quiet enjoyment and that there is no reason for such an
27 expansion. This claim is therefore dismissed.

1 4. Takings Clause

2 Plaintiff also contends that he suffered an uncompensated
3 taking of property when his neighbors instigated a campaign of
4 harassment against him. The CHPD Defendants respond that
5 Plaintiff does not plead sufficient facts to maintain his claim.

6 In order to state a claim under the Fifth Amendment, a
7 plaintiff must allege that private property was taken for a
8 public use without just compensation. U.S. Const. Amend. V;
9 Allen v. Wood, 970 F. Supp. 824, 831 (E.D. Wash. 1997).

10 The Court agrees with the CHPD Defendants. The FAC
11 contains few facts to support a violation of the takings clause.
12 Importantly, Plaintiff argues in his opposition that the taking
13 resulted from the conduct of his neighbors, not the CHPD
14 Defendants. A key element of an unlawful taking is the taking
15 of private property for a public use, i.e., some sort of state
16 action. Thus, Plaintiff's neighbors' alleged campaign of
17 harassment cannot constitute a taking. Accordingly this claim
18 is dismissed.

19 5. Right to Petition Government

20 Plaintiff argues that he was singled out for mistreatment
21 by the CHPD Defendants because he urged the CHPD to conduct an
22 internal affairs investigation of the neighborhood meetings
23 being held at Nicolas Maurer's house. Plaintiff cites
24 paragraphs 113-116 of the FAC to support his claim. The CHPD
25 Defendants seek dismissal of this claim on the grounds that the
26 FAC never explicitly states that Plaintiff requested an internal
27 affairs investigation, and it is impossible to determine from
28 the FAC what such an investigation was to address. The CHPD

1 Defendants also argue that there is no allegation that Plaintiff
2 suffered injury because of his request for an investigation.

3 The Court first finds that even if the exact details of
4 Plaintiff's request for an investigation are unclear, he has
5 successfully alleged that he made a protected request.

6 Plaintiff references his complaint to CHPD several times, and
7 indicates explicitly that he was concerned about neighborhood
8 meetings occurring at Nicolas Maurer's house. From these
9 allegations, the Court is able to draw a reasonable inference
10 that Plaintiff sought to complain about and receive redress for
11 the CHPD Officers' alleged participation in those meetings.

12 Plaintiff's claim is deficient, however, because there is
13 no allegation that the CHPD Defendants targeted him or
14 retaliated against him because he asked for an internal affairs
15 investigation. It is clear from the complaint that the meetings
16 preceded Plaintiff's complaints to CHPD, so they were not
17 retaliatory. As discussed above, Plaintiff's later arrest
18 cannot be considered retaliatory without violating Heck v.
19 Humphrey. As a result, this claim is also dismissed.

20 6. Defamation

21 Finally, Plaintiff contends that the CHPD Defendants are
22 liable for the alleged statements made about him in neighborhood
23 meetings held at Nicolas Maurer's house. Plaintiff contends
24 that the defamatory statements rise to the level of a
25 constitutional claim because he alleges that the defamation
26 resulted in "an ensuing criminal case and other loss of quiet
27 enjoyment." FAC ¶ 44. The CHPD Defendants contend that
28 defamation does not give rise to a constitutional claim because

1 it is a state law tort cause of action.

2 An injury to reputation is not protected by the due process
3 clause of the Fourteenth Amendment unless the reputational
4 injury is accompanied by a cognizable injury to a property or
5 liberty interest. Cooper v. Dupnik, 924 F.2d 1520, 1532 (9th
6 Cir. 1991) (citing Paul v. Davis, 424 U.S. 693, 703 (1976)).
7 The requirement that a reputational injury be coupled with some
8 other injury is known as the "stigma-plus" test. Id. This rule
9 stems from the general idea that § 1983 jurisprudence is not "a
10 font of tort law to be superimposed upon whatever systems may
11 already be administered by the States." Paul v. Davis, 424 U.S.
12 693, 701 (1976).

13 Plaintiff's FAC lacks the "plus" component of the "stigma-
14 plus" test. He relies on loss of quiet enjoyment and his arrest
15 as the constitutionally cognizable injuries under the "plus"
16 component of the test. Those claims, however, do not rise to
17 the level of § 1983 violations for the reasons previously
18 discussed. Plaintiff also mentions that the alleged campaign of
19 harassment conducted by his neighbors resulted from the CHPD
20 Defendants' defamatory statements. Mere harassment by private
21 actors is also not a constitutional injury. Id. at 711 (holding
22 that state action causing change to a person's rights or status
23 under state law is required to state a constitutional claim).
24 Accordingly, Plaintiff's reputational claim falls under state
25 defamation law and it cannot sustain his § 1983 cause of action.

26 7. Monell Liability

27 Plaintiff argues that the City of Citrus Heights and CHPD
28 are liable for the constitutional violations of the individual

1 officers under the theory announced in Monell v. Department of
2 Social Services of New York, 436 U.S. 658 (1978).

3 Respondeat superior liability does not apply to actions
4 against local government entities under § 1983. See Monell, 436
5 U.S. at 691. Therefore, to prevail in a civil action against a
6 local government entity, a plaintiff must establish "(1) that he
7 possessed a constitutional right of which he was deprived;
8 (2) that the municipality had a policy; (3) that this policy
9 'amounts to deliberate indifference' to the plaintiff's
10 constitutional right; and (4) that the policy is the 'moving
11 force behind the constitutional violation.'" Oviatt By &
12 Through Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992)
13 (quoting City of Canton v. Harris, 489 U.S. 378, 389-91 (1989)).

14 The first element of Monell liability is that the plaintiff
15 suffered a constitutional violation. For the reasons already
16 discussed, Plaintiff has not alleged that his constitutional
17 rights were violated. Accordingly, this claim is also
18 dismissed.

19 C. Conclusion

20 Plaintiff argues that the FAC properly states a claim
21 pursuant to 42 U.S.C. § 1983 under several theories. Each of
22 the theories presented by Plaintiff, however, is not sustained
23 by the factual allegations in the FAC. Accordingly, Plaintiff's
24 § 1983 claim and the derivative Monell claim are dismissed in
25 their entirety.

26 The basis of the CHPD Defendants' current motion is that
27 Plaintiff's claims against them are actually state law tort
28 claims, which implicitly survive the present motion to dismiss.

1 In light of the Court's dismissal of Plaintiff's sole federal
2 claim against the CHPD Defendants, the Court no longer has
3 federal question jurisdiction over the CHPD Defendants pursuant
4 to 28 U.S.C. § 1331. It is therefore within the Court's
5 discretion to exercise jurisdiction over any remaining state law
6 claims against the CHPD Defendants because there is no
7 jurisdictional basis independent of 28 U.S.C. § 1367. Mendoza
8 v. Zirkle Fruit Co., 301 F.3d 1163, 1174 (9th Cir. 2002). The
9 Court hereby declines to exercise supplemental jurisdiction over
10 the CHPD Defendants, any remaining state law claims against them
11 are dismissed without prejudice, and the CHPD Defendants are
12 dismissed from this lawsuit.

13 The last remaining issue is whether or not leave to amend
14 Plaintiff's allegations for a second time should be granted. In
15 this case, Plaintiff originally submitted a 98 page complaint
16 accompanied by over 50 pages of exhibits (Doc. #1). The FAC
17 with its exhibits is over 100 pages long. After ruling on
18 several motions to dismiss in this case, the Court has a clear
19 picture of the nature and extent of Plaintiff's allegations.
20 The dispute giving rise to this case is best characterized as a
21 petty neighborhood dispute that escalated into something
22 somewhat more serious. Any connection to a constitutional
23 violation arising from the CHPD Defendants' conduct is absent.
24 Therefore, the Court finds that leave to amend is not warranted
25 because Plaintiff cannot state a federal claim based on the
26 circumstances giving rise to this lawsuit. Additionally, since
27 the Court declines jurisdiction over any remaining state law
28 claims, leave to amend the state law claims is denied because

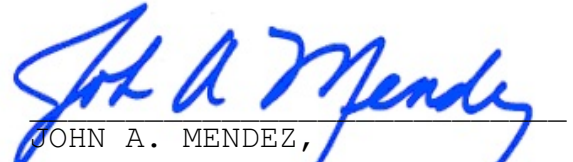
1 any amendment would be futile for lack of jurisdiction.

2 III. ORDER

3 Plaintiff's § 1983 claim against the CHPD Defendants is
4 dismissed with prejudice. Any remaining state law claim against
5 the CHPD Defendants is dismissed without prejudice. Leave to
6 amend the First Amended Complaint with respect to the CHPD
7 Defendants is denied.

8 IT IS SO ORDERED.

9 Dated: January 3, 2013



10 JOHN A. MENDEZ,
11 UNITED STATES DISTRICT JUDGE

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