UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

VINEETA DEVI,

Plaintiff,

v.

SACRAMENTO BHARTIYA SABHA, et al.,

Defendants.

No. 2:24-cv-00689-DJC-CKD PS

ORDER

Plaintiff Vineeta Devi paid the filing fee and filed this civil action without counsel. This matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21).

Presently before the Court is defendant City of Sacramento's ("City") motion to dismiss plaintiff's complaint (ECF No. 4), and defendant Sacramento Bhartiya Sabha Church Corporation's[1] ("Church") motion to dismiss plaintiff's complaint (ECF No. 8). The Court took the matter under submission without oral argument pursuant to Local Rule 230(g). (ECF No. 16.) For the reasons set forth below, the complaint fails to state a claim against the moving defendants. The defendants' motions to dismiss (ECF Nos. 4, 8) are GRANTED, and the claims against them

[1] The Church defendant was erroneously sued as "Sacramento Bhartiya Saha (dba) Shree Laxmi Narayan Mandir." (ECF No. 8 at 1.)

in the complaint dismissed with leave to amend.

I. Procedural Background

Plaintiff filed her complaint on March 5, 2024. (ECF No. 1.) On March 25, 2024, the City defendant moved to dismiss (ECF No. 4), and on April 3, 2024, the Church defendant moved to dismiss (ECF No. 8). Both motions are fully briefed.[2] (*See* ECF Nos. 11, 12, 13, 14.)

II. Allegations in the Complaint

Plaintiff brings this action against the City and Church defendants, alleging that her First Amendment rights to free speech and religion were violated. (ECF No. 1 at 6.) She states that the Board of Trustees and the President of the Church defendant prohibited her from entering the Church and "exercising her rights to freely practice her religious beliefs and to her rights to free speech" under the First Amendment. (*Id.*) She alleges that she was removed from the Church because the Church defendant did not approve of plaintiff's opinions and questions and was attempting to stop her from stating these opinions. (*Id.*)

Plaintiff alleges that the Church defendant had her removed by the City of Sacramento Police Department. (*Id.*) The City defendant served her with a trespass notice and removed her from the Church. Plaintiff alleges that she, along with other Church members, was not allowed to participate in Church activities unless she paid a fee. Plaintiff also alleges that the Church defendant is a nonprofit organization. (*Id.*) Plaintiff states that she was threatened with arrest if she voiced her opinion. Plaintiff further states that the Church defendant Board and President "slandered" her by accusing her of "going against the [Church defendant] and their religious beliefs." (*Id.*) Plaintiff alleges she was removed from the Church when she opposed the accusations, and that she was not allowed to practice her religion.

III. Legal Standards

A. Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6)

Dismissal under Rule 12(b)(6) may be warranted for "the lack of a cognizable legal theory

[2] Plaintiff's oppositions to both motions were filed over fourteen days after defendants filed their motions to dismiss. *See* ECF Nos. 11, 12; E.D. Cal. Local Rule 230(c). However, the Court has reviewed and will consider plaintiff's oppositions.

or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). In evaluating whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989).

"[R]ecitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a valid claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint must do more than allege mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To state a valid claim for relief, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. A claim that is plausible on its face has sufficient factual content to allow a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. This plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

The court must construe a pro se pleading liberally to determine whether it states a claim and, before dismissal, tell a plaintiff of deficiencies in her complaint and give plaintiff an opportunity to cure them if it appears at all possible that the plaintiff can correct the defect. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); *accord Balistreri*, 901 F.2d at 699 (stating that "pro se pleadings are liberally construed, particularly where civil rights claims are involved"); *see also Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (stating that courts continue to construe pro se filings liberally even when evaluating them under the standard in *Iqbal*). But courts need not accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

B. Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) tests the subject matter jurisdiction of the court. *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039-40 (9th Cir. 2003). "A jurisdictional challenge under Rule 12(b)(1) may be made either on the face

of the pleadings or by presenting extrinsic evidence." *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Thus, a jurisdictional challenge can be either facial or factual. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

In a facial attack, the moving party asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When evaluating a facial attack, the court must accept the factual allegations in the plaintiff's complaint as true. *Whisnant v. United States*, 400 F.3d 1177, 1179 (9th Cir. 2005).

A federal district court generally has jurisdiction over a civil action when: (1) a federal question is presented in an action "arising under the Constitution, laws, or treaties of the United States" or (2) there is complete diversity of citizenship and the amount in controversy exceeds $75,000. 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that may be redressed in court. *Harrison v. Kernan*, 971 F.3d 1069, 1073 (9th Cir. 2020).

IV. Discussion

A. First Amendment Claims

Plaintiff alleges causes of action against defendants for violation of her First Amendment rights to free speech and free exercise of religion. 42 U.S.C. § 1983 provides a cause of action for the violation of a plaintiff's constitutional rights by persons acting under color of state law.[3] *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). While plaintiff does not specifically state that her claims are bring brought under § 1983, the court liberally construes plaintiff's claims against defendants as constitutional claims brought under § 1983. *See Stone v. Conrad Preby's*, 2013 WL 139939, at

[3] On plaintiff's civil cover sheet attached to her complaint, she states that she is filing under "Title VII of the Civil Rights Act of 1964, and amended, 42 U.S.C. Section 2000e, et seq." (ECF No. 1-1 at 1.) "The primary purpose of Title VII is to make persons whole for injuries suffered on account of unlawful employment discrimination." *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1495 (9th Cir. 1995) (citation omitted). However, plaintiff does not state any facts supporting a claim under this statute or indicate that she is alleging employment discrimination. Accordingly, the Court will not address this issue.

*2 (S.D. Cal. Jan. 10, 2013); *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992) ("Plaintiff has no cause of action directly under the United States Constitution. We have previously held that a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983.") To state a claim under § 1983, a plaintiff is required to show that (1) each defendant acted under color of state law, and (2) each defendant deprived her of rights secured by the Constitution or laws of the United States. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997). There is no respondeat superior liability under § 1983, and therefore, each defendant is only liable for his or her own misconduct. *Iqbal*, 556 U.S. at 677.

The First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech." U.S. Const. amend. I. The Fourteenth Amendment makes the First Amendment applicable against the States: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend XIV, § 1. "The text and original meaning of those Amendments, as well as this Court's longstanding precedents, establish that the Free Speech Clause prohibits only governmental abridgment of speech. The Free Speech Clause does not prohibit private abridgment of speech." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019) (emphasis omitted). Further, the Free Exercise Clause of the First Amendment prevents the government from restricting an individual's religious beliefs. *See Employment Division, Dept. of Human Resources of Oregon, et al. v. Smith*, 494 U.S. 872, 877 (1990). To state a claim for a violation of the First Amendment, plaintiff must allege facts sufficient to show that defendants acted under the color of state law.

B. Defendant City of Sacramento's Motion to Dismiss (ECF No. 4)

The City defendant moves to dismiss plaintiff's complaint on the ground that plaintiff's constitutional claims against the City defendant are effectively *Monell* claims under 42 U.S.C. § 1983 and plaintiff has not identified a City policy or custom causing her injury. (ECF No. 4-1 at 3.) Plaintiff opposed the motion, arguing that local officials must still comply with the United States Constitution, including the First Amendment, and that it is not the City defendant's place

to remove her from her place of worship. (ECF No. 11 at 2-3.) Plaintiff is also requesting that the City defendant terminate the notice of trespass and allow her to return to her place of worship. (*Id.* at 4.)

Under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), "[a] government entity may not be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights." *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). A policy is "a deliberate choice to follow a course of action . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992) (citation omitted). A custom is a "widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law." *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1147 (E.D. Cal. 2009) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). After establishing one of the methods of liability, "a plaintiff must also show that the circumstance was (1) the cause in fact and (2) the proximate cause of the constitutional deprivation." *Id.*

Here, plaintiff has not provided facts sufficient to show that her First Amendment rights were violated because of a custom or policy of the City defendant. Plaintiff alleges that the City of Sacramento Police Department issued her a notice of trespass and removed her from the Church premises. Even still, she makes no allegations that this removal was done pursuant to a City policy or allege with specificity a pattern of incidents. She also does name any specific police officers that removed her from the Church. Accordingly, plaintiff's complaint against the City defendant fails to state a claim.

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If the court finds that a complaint or claim should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. *See Davis v. Miranda*, 2020 WL 1904784, at *2 (E.D. Cal. Apr. 17, 2020); Fed. R. Civ. P. 15(a) (stating that leave to amend should be freely granted when justice so requires). "A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted). Plaintiff's claims against the City defendant are dismissed, and plaintiff is granted leave to amend her claim against the City defendant to the extent she can allege additional facts supporting her claim.

C. Defendant Sacramento Bhartiya Sabha Church Corporation's Motion to Dismiss (ECF No. 8)

The Church defendant moves to dismiss plaintiff's complaint for failure to state a claim and for lack of subject matter jurisdiction. The Church defendant argues that it is not a state actor, and that plaintiff's claims are clearly state-law claims that she is attempting to portray as federal claims to obtain federal jurisdiction. (ECF No. 8-1 at 3-4, 6.) Plaintiff opposed the motion, arguing that non-profit organizations must comply with federal and state constitutional laws, that the Church defendant barred plaintiff from the Church because she is a witness in a labor lawsuit against the Church and because she was asking questions that the Church defendant's board refused to answer. (ECF No. 12 at 2.) The Church defendant filed a reply, arguing that plaintiff is asking the Court to "infringe upon the independence of this religious institution." (ECF No. 14 at 3.)

Generally, private parties do not act under color of state law. *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) ("When addressing whether a private party acted under color of state law, [the Court] start[s] with the presumption that private conduct does not constitute governmental action."). However, a private entity's action may be "under color of state law" where there is "significant" state involvement in the action. *Franklin v. Fox*, 312 F.3d 423, 444 (9th Cir. 2002) (citation omitted). To determine whether actions committed by private actors that allegedly caused the

deprivation of a right are fairly attributable to the state, the court must determine whether the depriving party is "a person who may fairly be said to be a state actor." *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir. 2011) (citation omitted). Courts have recognized four tests to determine whether a private individual's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test. *Franklin*, 312 F.3d at 445. Satisfaction of any one test is sufficient to find state action, so long as no countervailing factor exists. *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002). "While these factors are helpful in determining the significance of state involvement, there is no specific formula for defining state action." *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-36 (9th Cir. 1999) (citation omitted).

In plaintiff's opposition, she appears to argue that the Church defendant is a state actor under the public function test. (ECF No. 12 at 4 ("[C]ourt decisions that address whether a private person or entity is acting as a state actor typically look at whether that person is performing a function usually reserved to the government . . . ."). Plaintiff states that the Church defendant has "put [itself] in the position to bar the Plaintiff from her place of worship without probable cause, which should have been left up to the state or federal courts, based on good cause, to bar the [plaintiff] from her place of worship." (ECF No. 12 at 4.) Plaintiff argues that the Church defendant has "used a 'private action' to force a law against" plaintiff. (*Id.*) Accordingly, the Court will address whether plaintiff has alleged that the Church defendant is a state actor under the public function test.

Under the public function test, "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." *Lee*, 276 F.3d at 554-55 (citation omitted). "The public function test is satisfied only on a showing that the function at issue is both traditionally and exclusively governmental." *Kirtley v. Rainey*, 326 F.3d 1088, 1093 (9th Cir. 2003) (citation omitted).

Plaintiff has not made the required showing under the public function test. The Church defendant is a private party. *See Rotchford v. Johnson & Johnson*, 2019 WL 2453113, at *2

(W.D. Wash. May 14, 2019); *see also Deleo v. Rudin*, 328 F. Supp. 2d 1106, 1114 (D. Nev. 2004) ("Neither the Church nor its members are state actors for § 1983 purposes."). In order to successfully bring her claim, plaintiff has to show that there is significant state involvement in the private party's actions. Plaintiff has made no allegations that the Church defendant's alleged decision to exclude her from the Church is a "traditionally and exclusively governmental" function. She also has not demonstrated that there was "significant" state involvement in the Church defendant's alleged decision to remove her from the Church. To the extent plaintiff's complaint can been seen to allege that the Church defendant was a state actor because it had plaintiff removed by the City of Sacramento Police Department (*see* ECF No. 1 at 6), "merely complaining to the police does not convert a private party into a state actor." *Collins v. Womancare*, 878 F.2d 1145, 1155 (9th Cir. 1989).

Plaintiff has not alleged facts sufficient to show that the Church defendant is acting under the color of state law.[4] *See Whitsitt v. San Joaquin County Mental Health*, 2023 WL 4627666, at *2 (E.D. Cal. July 19, 2023) (dismissing First Amendment claim under § 1983 against church because it was not a state actor); *Hui Son Lye v. City of Lacey*, 2012 WL 2564902, at *3 (W.D. Wash. June 29, 2012) (dismissing First Amendment claim against church for alleged exclusion from church because plaintiff did not sufficiently allege church was a state actor).

The Church defendant also argues that plaintiff's claims are "clearly state-law claims colored as infringement of her constitutional rights in an attempt to seek jurisdiction in federal court." (ECF No. 8-1 at 6.) A claim may be dismissed for lack of subject matter jurisdiction where the alleged claim clearly is immaterial and made to obtain federal jurisdiction, or where the claim is insubstantial and frivolous. *Safe Air for Everyone*, 373 F.3d at 1039. The court does not

[4] Plaintiff appears to also argue that the Church defendant's alleged status as a 501(c)(3) non-profit organization impacts her ability to bring a claim. (*See* ECF No. 12 at 2; ECF No. 14 at 3.) However, non-profit status alone does not determine whether an entity is a state actor. *See H.S. v. AQUA EMPS Booster Club*, 2014 WL 3362331, at *5 (E.D. Cal. July 9, 2014) (finding non-profit not to be a state actor under § 1983); *Pasadena Republican Club v. W. Just. Ctr.*, 985 F.3d 1161, 1171 (9th Cir. 2021) (same); *see also Stone v. Elohim, Inc.*, 336 F. App'x 841, 843 (10th Cir. 2009) (unpublished) ("Tax exempt status alone, however, does not transform a corporation from a private institution to a state actor.").

agree that plaintiff's claims are "clearly" state law claims disguised as federal claims to obtain federal jurisdiction. Construing plaintiff's complaint liberally and taking the allegations as true, the Church defendant did not allow her to access the Church, which prevented her from practicing her religion. Plaintiff has brought this claim under the First Amendment, and it is her burden to show that the Church defendant is a state actor, which she has not done.

Accordingly, plaintiff's claim against the Church defendant is dismissed with leave to amend to the extent she can allege additional facts that support her claim. *See Ayers v. Fellowship of Christian Athletes*, 2019 WL 1493186, at *6-7 (E.D. Cal. Apr. 4, 2019) (dismissing § 1983 claim against church without prejudice for failure to plead state action); *Cato*, 70 F.3d at 1106.

V. Conclusion

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. Defendant City of Sacramento's motion to dismiss (ECF No. 4) is GRANTED;
    a. Plaintiff's claim against the City defendant is dismissed with leave to amend;
2. Defendant Sacramento Bhartiya Sabha Church Corporation's motion to dismiss (ECF No. 8) is GRANTED; and
    a. Plaintiff's claim against the Church defendant is dismissed with leave to amend.

Dated: January 27, 2025

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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