

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRANT MEYER AND MARILYN MEYER,

No. C 08-04372 MEJ

Plaintiffs,

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
PACIFIC GAS & ELECTRIC  
COMPANY'S MOTION TO DISMISS  
COMPLAINT FOR FAILURE TO STATE  
A CLAIM**

vs.

CITY OF CLEARLAKE, ALLAN McLAIN,  
LEE LAMBERT, JANINE LOWE, SCOTT  
SPIVEY, CURT GIAMBRUNO, CHUCK  
LEONARD, JUDY THEIN, ROY SIMONS,  
TODD MILLER, CARL MILLER, JOSEPH  
RODD, SARGENT RHODES, PACIFIC GAS &  
ELECTRIC COMPANY, AND ALL  
AMERICAN TOWING,

**ORDER SCHEDULING CMC**

Defendants.

**I. INTRODUCTION**

Before the Court is Defendant Pacific Gas & Electric Company's ("PG&E") Motion to Dismiss Counts One and Two for Failure to State a Claim (Dkt. #4). Plaintiffs Grant Meyer and Marilyn Meyer have filed an Opposition (Dkt. #11), to which PG&E filed a Reply (Dkt. #18). Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby **VACATES** the hearing currently set for March 26, 2009. After consideration of the parties' papers, relevant legal authority, and good cause appearing, the Court hereby **GRANTS** PG&E's Motion as to Count One and **DENIES** PG&E's Motion as to Count Two for the reasons set forth below. Further, the Court **GRANTS** Plaintiffs leave to amend Count One.

1 **II. PROCEDURAL BACKGROUND**

2 On September 17, 2008, Plaintiffs filed a Complaint for Damages and Injunctive Relief for  
3 Violation of Civil Rights and for Relief Under C.C.P. § 1094.5. (Dkt. #1.) On December 3, 2008,  
4 PG&E filed the present Motion to Dismiss pursuant to Federal Rule of Civil Procedure ("Rule")  
5 12(b)(6). (Dkt. # 4.)

6 **III. DISCUSSION**

7 **A. Legal Standard**

8 A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v.*  
9 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). A Rule 12(b)(6) dismissal is appropriate where there is  
10 either no cognizable legal theory, or where there are not sufficient facts alleged to support a  
11 cognizable legal theory. *See Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990).  
12 When considering a Rule 12(b)(6) motion to dismiss, all material allegations in the complaint must  
13 be taken as true and construed in the light most favorable to the plaintiff. *See In re Silicon Graphics,*  
14 *Inc. Sec. Litig.*, 183 F.3d 970, 983 (9th Cir. 1999). If the court dismisses the complaint, it should  
15 decide whether to grant leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).  
16 The court "should grant leave to amend even if no request to amend the pleading was made, unless it  
17 determines that the pleading could not possibly be cured by the allegation of other facts." *Id.*

18 **B. Factual Allegations**

19 The following factual allegations are taken from Plaintiffs' Complaint. Plaintiffs are a  
20 married couple who own two parcels of land in Clearlake, California; one is their residence and the  
21 other is a place of "established personal uses." (Compl. ¶¶ 2, 18.) The defendants consist of various  
22 municipal employees and officials (sued in both individual and official capacities), as well as two  
23 private business entities, PG&E and All American Towing. (Compl. ¶¶ 3-17.)

24 Plaintiffs allege that since 2004, all of the defendants have conspired to harass, intimidate,  
25 and coerce Plaintiffs to surrender their right to possession and use of their property, in part by means  
26 of various civil and criminal actions tagging their property as a public nuisance and issuing an  
27 abatement order. (Compl. ¶ 19.) Specifically with respect to PG&E, Plaintiffs allege that PG&E

1 conspired with "the defendants" and acted under color of state law and as an agent of the City when  
2 PG&E shut off power to Plaintiffs' residence without prior notice on or about June 11, 2007 and  
3 June 11, 2008. (Compl. ¶¶ 23, 36.)

4 Plaintiffs allege that, as a result of the defendants' actions, there is a clear and immediate  
5 threat of illegal seizure of their property. (Compl. ¶ 35.) Plaintiffs further allege they have suffered  
6 general and special damages including "emotional distress, humiliation, embarrassment, stress,  
7 anxiety, and physical upset to their central nervous system, and personal injury." (Compl. ¶ 40.)  
8 Based on these allegations, Plaintiffs assert the following claims: (1) violation of 42 U.S.C. § 1983  
9 ("Count One"); (2) violation of Article 1 of the California Constitution ("Count Two"); and (3) relief  
10 under California Code of Civil Procedure section 1094.5 ("Count Three"). Defendant PG&E is only  
11 implicated in Counts One and Two of the Complaint.

12 **C. Analysis**

13 In its Motion, PG&E seeks dismissal of Counts One and Two and requests that the Court  
14 dismiss it from the entire action. PG&E argues that the Court should dismiss it from Count One,  
15 which seeks relief for alleged violations of 42 U.S.C. § 1983, because Plaintiffs have not met the  
16 pleading standard required of civil rights conspiracy claims. With respect to Count Two, which  
17 seeks relief for alleged violations of Article 1 of the California Constitution, PG&E argues that the  
18 Court should dismiss it because Count Two incorporates and realleges every preceding paragraph of  
19 the Complaint without regard to reason or relevance, and so does not provide a "short and plain  
20 statement of the claim" as required by Federal Rule of Civil Procedure 8(a)(2). Finally, PG&E  
21 argues that since it is not implicated in Count Three, the Court should dismiss it from the entire  
22 action if the Court grants its motions for dismissal as to Counts One and Two.

23 In their Opposition, Plaintiffs argue that the pleadings are adequate under Rule 8(a), in that  
24 the Complaint gives fair and adequate notice of the nature and claims against PG&E. Plaintiffs thus  
25 urge the Court to deny PG&E's Motion.

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1           **1.       Count One**

2           In its Motion, PG&E seeks dismissal of Count One because Plaintiffs have not pled their §  
3 1983 conspiracy claim with sufficient specificity. It argues that the Ninth Circuit recognizes an  
4 exception to the general Rule 8 pleading standard, requiring that claimants who make conspiracy  
5 allegations in § 1983 claims must meet a heightened pleading standard. PG&E argues that the  
6 Complaint fails to state a claim against PG&E under this heightened pleading standard.  
7 Alternatively, PG&E argues that the Complaint fails to state a claim against PG&E under the Rule 8  
8 pleading standard because it does not give them adequate notice of the claim and its underlying  
9 basis. In their Opposition, Plaintiffs argue that the liberal Rule 8 pleading standard applies to their  
10 claim, and that they have properly plead their claims under this standard. Considering the parties'  
11 arguments and relevant legal authority, the Court agrees with PG&E.

12           Rule 8(a), which states that a plaintiff's pleadings must contain "a short and plain statement  
13 of the claim showing that the pleader is entitled to relief," provides the general standard for judging  
14 whether a cognizable claim exists. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).  
15 Under the Rule 8(a) standard, plaintiffs must give defendants fair notice of the claim and allege  
16 enough facts to raise a plausible right to relief. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
17 555 & n.3 (2007). This standard is a liberal one that does not require plaintiffs to set forth all the  
18 factual details of their claim; rather, all that the standard requires is that the facts create more than a  
19 mere suspicion of a legally cognizable right of action. *Id.* at 555-56. The factual allegations need  
20 not make the right to relief probable, but must be suggestive enough to make the claim plausible. *Id.*  
21 at 556.

22           However, courts within the Ninth Circuit have held that plaintiffs must satisfy a heightened  
23 pleading standard with respect to conspiracy allegations in civil rights claims. *See Harris v.*  
24 *Roderick*, 126 F.3d 1189, 1195 (9th Cir. 1997); *Jones v. Tozzi*, No. 05-01480, 2006 WL 2472752 at  
25 \*13 n.6 (E.D. Cal. Aug. 24, 2006). Specifically, in order to survive a motion to dismiss, conspiracy  
26 claims must include nonconclusory factual allegations containing direct or circumstantial evidence  
27 of unlawful intent. *Harris*, 126 F.3d at 1195; *see also Deadmon v. Grannis*, No. 06-1382, 2008 WL  
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1 595883 at \*13 (S.D. Cal. Feb. 29, 2008); *Thorns v. Ryan*, No. 07-00218, 2009 WL 230035 at \*17, 18  
2 (S.D. Cal. January 23, 2009). Plaintiffs alleging a conspiracy to violate their constitutional rights  
3 can meet the Ninth Circuit pleading burden by alleging “which defendants conspired, how they  
4 conspired and how the conspiracy led to a deprivation of [the plaintiffs'] constitutional rights.”  
5 *Harris v. Roderick*, 126 F.3d at 1196 (9th Cir. 1997). Reviewing the case law, the Court agrees with  
6 the reasoning set forth in these decisions regarding the heightened pleading standard.<sup>1</sup>

7 Here, Plaintiffs' Complaint alleges:

8 23. Further, on June 11, 2007, PG&E acting under color of law wrongfully and  
9 illegally conspired with defendants to deprive plaintiffs of their constitutionally  
10 protected rights by shutting off all power to the service to 3971 Pine Avenue without  
11 any notice, opportunity to be heard, or other due process. In doing said acts, PG&E  
12 was acting as an agent and fully cooperating with the defendants in their attempts to  
13 deprive plaintiffs of their constitutional rights, by unlawfully and illegally without  
14 any appropriate due process ejecting plaintiffs from their property and their right to  
15 use their property.

16 36. On or about June 11, 2008, PG&E shut off power to plaintiffs property at 3971  
17 Pine Street without any prior notice and while acting under color of law in  
18 conjunction with and at the behest of the City.

19 (Compl. ¶¶ 23, 36.). Aside from these paragraphs, there are no other specific allegations regarding  
20 PG&E. Notably, although Plaintiffs have alleged that PG&E conspired with all of the defendants,  
21 the Complaint contains absolutely no allegations about which of the defendants PG&E conspired  
22 with or how they conspired. Having failed to allege such facts, the Court finds that Plaintiffs have  
23 not sufficiently pled a conspiracy. Accordingly, the Court GRANTS Defendant PG&E's Motion to  
24 Dismiss as to Count One. Further, because it is possible that Plaintiffs can cure these deficiencies,  
25 the Court GRANTS Plaintiffs leave to amend the Complaint.

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27 <sup>1</sup>While there are also Ninth Circuit cases which ostensibly apply the Rule 8(a) pleading standard  
28 to conspiracy claims, such claims must still include enough specific facts to support the reasonable  
inference of conspiracy in order to provide defendants with fair notice of the claim. *See, e.g., Jones v. Kern High School District*, No. 07-1628, 2008 WL 3850802 at \*21 (E.D. Cal. Aug. 14, 2008) (invoking *Harris*' list of specific facts which may satisfy this pleading burden, including "which defendants conspired, how they conspired and how the conspiracy led to a deprivation of . . . constitutional rights").

