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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SALMA MERRITT, et al.,
Plaintiffs,
v.
CITY OF SUNNYVALE, et al.,
Defendants.

Case No. [5:15-cv-02775-EJD](#)

**ORDER GRANTING DEFENDANTS’
MOTIONS TO DISMISS; DENYING AS
MOOT DEFENDANTS’ MOTION TO
REQUIRE PLAINTIFFS TO FURNISH
SECURITY FOR COSTS**

Re: Dkt. Nos. 17, 20, 26

Plaintiffs David Merritt and Salma Merritt (collectively, “Plaintiffs”) allege in this action that certain policies promulgated by the city of Sunnyvale and implemented by their homeowners’ association are discriminatory and violated their civil rights. Presently before the court are three matters, including two motions to dismiss Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and a motion to require Plaintiffs to furnish security for costs pursuant to Civil Local Rule 65.1-1. Dkt. Nos. 17, 20, 26.

Federal jurisdiction arises pursuant to 28 U.S.C. § 1331.¹ The motions to dismiss are

¹ Although the “short and plain statement” jurisdictional statement required by Federal Rule of Civil Procedure 8 is missing from Plaintiffs’ Complaint, it is nonetheless evident that jurisdiction arises under § 1331 because of the causes of action asserted under federal statutes. See Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988) (holding that “a district court’s federal-question jurisdiction . . . extends over ‘only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law’”).

Notably, jurisdiction cannot be based on 28 U.S.C. § 1332 because Plaintiffs’ allegations reveal the parties are not completely diverse. Kuntz v. Lamar Corp., 385 F.3d 1177, 1181 (9th Cir. 2004) (holding for diversity jurisdiction to arise, “there must be complete diversity of citizenship between the parties opposed in interest”).

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COSTS**

1 unopposed,² and for the reasons explained below will be granted. The motion to furnish security
2 will be denied as moot.

3 **I. BACKGROUND**

4 **A. The Parties**

5 Plaintiffs David Merritt and Salma Merritt are residents of a townhome complex known as
6 the Classis at Fair Oaks (the “Classics”). Compl., Dkt. No. 1, at ¶¶ 1, 2, 17. They purchased and
7 moved into their home in March, 2006. *Id.* at ¶ 27. The Classics was developed by Mozart
8 Development Company, Inc. (“Mozart”) between 2002 and 2005. *Id.* at ¶ 17. The founder and
9 head of Mozart is David Krasowski. *Id.* The Classics is governed by the Classics at Fair Oaks
10 Homeowners’ Association (the “HOA”), on which Chetak Gandhi, Wayne Brown, and Ying-Chi
11 Ying (whose real name is Ying-Chi Lee) serve as board members.³ *Id.* at ¶¶ 4-6.

12 The Classics is located within the city of Sunnyvale. Hanson Hom was the Director of
13 Community Planning for the city, and John Howe and Rosemarie Zulueta were assistant planners.
14 *Id.* at ¶¶ 8, 10, 11. Trudi Ryan was a city planning officer. *Id.* at ¶ 9.⁴

15 Plaintiffs allege that Salma Merritt “has been designated and repeatedly held to be a person
16 with disabilities” who “on a daily basis requires assistance in some form or another” from David
17 Merritt. *Id.* at ¶¶ 15, 16.

20 ² Plaintiffs’ motions to extend the time to file oppositions to the motions to dismiss (Dkt.
21 Nos. 45, 48) are DENIED.

22 The court previously granted Plaintiffs a significant extension of time - from November,
23 2015, to February 2016 - within which to file oppositions to the motions. Dkt. No. 30. This
24 period was more than sufficient for Plaintiffs to respond, and though they may argue otherwise,
25 Plaintiffs have not demonstrated compelling good cause for yet another extension of time.

26 ³ When not referenced separately, the HOA, Gandhi, Brown, and Ying are referred to as the
27 “Classics Defendants.”

28 ⁴ The city of Sunnyvale, Hom, Howe, Zulueta and Ryan will be referred to collectively as
the “Sunnyvale Defendants.”

B. Precursor Events to Parking Regulation at the Classics

1 The allegations in Plaintiffs’ Complaint are several and span many years. To begin,
2 Plaintiffs allege that from January, 2000 through May, 2005, Mozart negotiated with the city of
3 Sunnyvale “to limit the number of parking spaces that would be required for off-street parking
4 within the Classics complex, so as to maximize the number of homes they could build.” *Id.* at ¶
5 18. Specifically, Plaintiffs allege that Krasowski “was briefed by his CC&Rs⁵ agent(s),” who
6 were told by Sunnyvale staff” in 2004 and 2005, that “there was a recurring parking problem” at
7 the Classics because some homeowners were “not using their garage spaces for parking and others
8 making disability accommodations in their garages which prevented car(s) from parking in [the]
9 garage.” *Id.* at ¶ 20. Krasowski was also informed by Sunnyvale staff, however, that the city “did
10 not have legal authority to enforce any policy that would authorize Sunnyvale police or employees
11 to inspect and search homes” to determine whether and how a garage was being used due to
12 “privacy and property rights.” *Id.* at ¶ 21.

13
14 Apparently to get around privacy and property rights, Plaintiffs allege that Sunnyvale
15 asked Mozart’s agents whether they would authorize the HOA “to prohibit disability
16 accommodations” through the CC&Rs. *Id.* Krasowski authorized the prohibition in or about
17 April 2004, and the following regulation was included in the CC&Rs published in April, 2005:
18 “no garage space may be converted into any use that would prevent its use for parking the number
19 of vehicles the garage was originally designed to contain. The Board may adopt Rules regulating
20 parking in the Common Area and within the parking spaces described in Section 2.8, including
21 regulations that prohibit occupants from parking in all or part of the parking spaces” *Id.* at ¶¶
22 23, 24. Sunnyvale staff also approved the CC&Rs in April, 2005. *Id.* at ¶ 26.

C. David Merritt’s Petition for Parking Rezoning

23 From June to July, 2006, David Merritt, who it seems was Secretary of the HOA and Chair
24

25
26 _____
27 ⁵ “CC&Rs” is a common acronym for the covenants, conditions and restrictions that apply to
28 property governed by a homeowners’ association.

1 of the Parking and Driving Committee at that time, circulated a petition among homeowners at the
2 Classics in support of requesting that the city of Sunnyvale rezone a block of East Arques from
3 commercial to residential so that parking would be permitted on the street. Id. at ¶¶ 30, 31.
4 Thirty-one homeowners signed the petition, and David Merritt presented it at a meeting of the
5 Sunnyvale City Council in July, 2006. Id. at ¶ 31. Plaintiffs allege that at the meeting, Howe and
6 other members of the City Council informed them “there was nothing that could be done unless
7 homeowners presented evidence that all garage spaces were being used for cars” Id. at ¶ 32.
8 David Merritt assured the city that “all but 2 out of the 54 unit garages were being used for
9 parking household vehicles” Id. at ¶ 33.

10 Plaintiffs allege that in response to the petition, Howe and other council members ordered
11 Hom, Ryan, and Zulueta to “produce an official policy” authorizing a homeowners’ association to
12 inspect and search the inside of homes. Id. at ¶ 34. A policy was thereafter drafted that included
13 the following language: “The association or property manager could conduct periodic garage
14 inspections (with advance notice) to assure garages are being used for parking.” Id. at ¶ 36. After
15 additional discussion, the City Council approved the policy, and it was finally published in
16 February, 2008. Id. at ¶¶ 46, 47.

17 **D. The Classics Parking Policies**

18 A new parking policy for the Classics became effective on July 17, 2008. Id. at ¶ 53. The
19 policy required the HOA to appoint a parking commissioner who would, through volunteers,
20 monitor parked cars in the common area and issue notices to homeowners parked for more than
21 three days. Id. at ¶ 54. Subsequent violations could result in a \$100 fine. Id. The new policy
22 excluded “those parking spaces that were situated on owner’s property,” including Plaintiffs’
23 outside parking space, and also sought to have homeowners pledge to use their garage spaces to
24 park rather than parking in the common area. Id. at ¶¶ 54, 56.

25 Plaintiffs allege that because the HOA spoke with homeowners face-to-face, a parking
26 commissioner was never appointed and violation notices were never issued. Id. at ¶ 55. They also

1 allege the new policy “did not interfere with any owner who had to make accommodations within
2 or outside their home for a disabled person.” Id. at ¶ 58.

3 David Merritt was elected President of the HOA in August, 2006, and started a newsletter
4 to report community activities at the Classics. Id. at ¶ 38. In 2009, David Merritt called for new
5 HOA elections and stepped down as President. Id. at ¶ 60.

6 After the election, David Merritt believed the new HOA officeholders “were not interested
7 in proactively doing things to maintain and improve the community,” so he began to publish
8 newsletter articles that “reported their inactivity and criticized their reluctance to be proactive.”
9 Id. at ¶ 61. From 2009 through 2010, Ying, Brown and Gandhi criticized David Merritt for
10 publishing the newsletter and attempted to coerce him to stop. Id. at ¶ 65.

11 Because David Merritt did not stop publishing the newsletter, Plaintiffs allege that Ying,
12 Brown and Gandhi decided to produce a new parking policy which “would not acknowledge
13 [Plaintiffs’] any right to make disability accommodations within their garage and force them to
14 park two vehicles in [their] garage as punishment for his criticisms of them.” Id. at ¶ 68.
15 Plaintiffs state they had previously arranged disability accommodations for Salma Merritt, such
16 that she would either park outside their home or park only her car in their two-car garage. Id. at ¶
17 89.

18 Eventually, on March 25, 2010, Ying, Brown and Gandhi decided to change the parking
19 policy to allow for in-home inspections and fines of \$100 for homeowners’ vehicles parked
20 outside their garages. Id. at ¶ 70. Plaintiffs allege that Gandhi and Brown spoke with Sunnyvale
21 staff in advance of implementing the new policy, and were told that searches by the HOA were
22 permissible under the 2008 city policy drafted in response to David Merritt’s rezoning petition.
23 Id. at ¶¶ 72-74.

24 On or about August, 2010, Ying, Brown and Gandhi promulgated yet another parking
25 policy for the Classics, which “mandated that all vehicles found not parked in garages would be
26 towed at [the] owners’ expense” unless the owners “waived their right to privacy” by permitting

1 an inspection of their homes. *Id.* at ¶ 94. Plaintiffs objected to this policy and, after several
2 discussions, were “forced to divulge” that Salma Merritt was disabled because Plaintiffs were told
3 their parking permit would otherwise be denied. *Id.* at ¶ 111. Ying and Brown then searched
4 Plaintiffs’ garage on September 4, 2010. *Id.* at ¶ 127. Despite the search, Plaintiffs and their
5 guests continued to use the common area parking spaces “and maintained their disability
6 accommodations pursuant to their disability needs without further interference.” *Id.* at ¶ 129.

7 Plaintiffs allege that, in November, 2010, Ying, Brown and Gandhi made a “superficial
8 change” to the parking policy and called for the entire permitting process to be redone in a
9 continued effort to cancel Plaintiffs’ parking permit. *Id.* at ¶¶ 130, 131. Then, on January 25,
10 2011, the HOA held a board meeting during which Ying, Brown and Gandhi pressured David
11 Merritt to divulge Salma Merritt’s medical information by threatening to tow Plaintiffs’ vehicles.
12 *Id.* at ¶ 140. At the same meeting, the HOA also approved parking permits for other homeowners,
13 none of whom claimed a disability, but Ying, Brown and Gandhi stated they would never
14 recognize Salma Merritt’s disability and would vote to reject parking accommodations for
15 Plaintiffs. *Id.*

16 **E. The State Court Action**

17 On March 2, 2011, Plaintiffs filed a complaint in Santa Clara County Superior Court
18 against the Classics Defendants for conspiracy, invasion of privacy, and disability discrimination
19 under the Americans with Disabilities Act (“ADA”), the California Disabled Persons Act, and
20 Unruh Civil Rights Act, California Civil Code § 51 (the “State Court Action”). Classics Defs.’
21 Req. for Judicial Notice (“RJN”), Dkt. No. 18, at Ex. 1.⁶ There, Plaintiffs alleged that Gandhi,
22 Brown and Ying conspired to change the HOA’s parking policy at the Classics to “take away”
23 Plaintiffs’ right to park their second vehicle in a space outside of Plaintiffs’ garage. *Id.*

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26 ⁶ The Classics Defendants’ Request for Judicial Notice is GRANTED in its entirety. Fed. R. Evid.
27 201(b); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006)
28 (holding the court “may take judicial notice of court filings and other matters of public record”).

1 cognizable legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v.
2 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

3 When deciding whether to grant a motion to dismiss, the court must generally accept as
4 true all “well-pleaded factual allegations.” Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009). The court
5 must also construe the alleged facts in the light most favorable to the plaintiff. Love v. United
6 States, 915 F.2d 1242, 1245 (9th Cir. 1988). However, “courts are not bound to accept as true a
7 legal conclusion couched as a factual allegation.” Iqbal, 556 U.S. at 678.

8 Also, the court generally does not consider any material beyond the pleadings for a Rule
9 12(b)(6) analysis. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19
10 (9th Cir. 1990). Exceptions to this rule include material submitted as part of the complaint or
11 relied upon in the complaint, and material subject to judicial notice. See Lee v. City of Los
12 Angeles, 250 F.3d 668, 688-69 (9th Cir. 2001).

13 **B. Pro Se Pleadings**

14 Where, as here, the pleading at issue is filed by a plaintiff proceeding pro se, it must be
15 construed liberally. Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). In doing so, the court
16 “need not give a plaintiff the benefit of every conceivable doubt” but “is required only to draw
17 every reasonable or warranted factual inference in the plaintiff’s favor.” McKinney v. De Bord,
18 507 F.2d 501, 504 (9th Cir. 1974). The court “should use common sense in interpreting the
19 frequently diffuse pleadings of pro se complainants.” Id. A pro se complaint should not be
20 dismissed unless the court finds it “beyond doubt that the plaintiff can prove no set of facts in
21 support of his claim which would entitle him to relief.” Haines v. Kerner, 404 U.S. 519, 521
22 (1972).

23 **III. DISCUSSION**

24 **A. The Classics Defendants’ Motion to Dismiss**

25 The Classics Defendants argue that, in light of the State Court Action, all claims asserted
26 against them in the Complaint must be dismissed because they are barred by the res judicata

1 doctrine. On the record presented, the court agrees that Plaintiffs are now precluded from bringing
2 the claims in federal court.

3 Res judicata precludes parties and their privies from relitigating issues that were or could
4 have been raised in a prior action. Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398
5 (1981). Although the doctrine is generally considered an affirmative defense, it can be properly
6 raised by a motion to dismiss when “the defense raises no disputed issues of fact.” Scott v.
7 Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984).

8 “[A] federal court must give to a state-court judgment the same preclusive effect as would
9 be given that judgment under the law of the State in which the judgment was rendered.” Migra v.
10 Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). Consequently, “[w]hether a prior
11 state court judgment precludes relitigation of an identical claim in federal court depends on the
12 preclusion rules of the state.” Gupta v. Thai Airways Int’l, LTD., 487 F.3d 759, 765 (9th Cir.
13 2007).

14 In California, “[r]es judicata applies if (1) the decision in the prior proceeding is final and
15 on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding;
16 and (3) the parties in the present proceeding or parties in privity with them were parties to the prior
17 proceeding.” Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles, 126 Cal. App. 4th 1180,
18 1202 (2004). It is also true in California that “[r]es judicata bars the litigation not only of issues
19 that were actually litigated but also issues that could have been litigated.” Id.

20 **i. The Summary Judgment Order is Final and On the Merits**

21 Applying the first element of res judicata, it is evident the summary judgment order
22 entered in the State Court Action was one “on the merits” with regard to the causes of action
23 asserted in the underlying complaint. See Lucas v. Cnty. of Los Angeles, 47 Cal. App. 4th 277,
24 286-87 (1996) (holding that a summary judgment order is on the merits for res judicata purposes
25 unless granted on a procedural or technical basis); see also Columbus Line, Inc. v. Gray Line
26 Sight-Seeing Cos. Associated, Inc., 120 Cal. App. 3d 622, 629 (1981) (“The summary judgment

1 on the complaint is a judgment on the merits”).

2 Similarly, the finality of the summary judgment order cannot be disputed. “[I]n California
3 the rule is that the finality required to invoke the preclusive bar of res judicata is not achieved until
4 an appeal from the trial court judgment has been exhausted or the time to appeal has expired.”

5 Franklin & Franklin v. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th 1168, 1174 (2000).

6 Here, the order was filed in superior court on February 13, 2013, and judgment was entered on
7 April 9, 2013.⁷ Plaintiffs attempted to appeal from the summary judgment order, but the
8 California Court of Appeal denied their “request to file new litigation related to the appeal of the
9 order granting respondents’ motion for summary judgment.” Classics Defs.’ RJN, at Ex. 4. The
10 California Supreme Court subsequently denied review of the Court of Appeal’s decision, and there
11 is no indication Plaintiffs pursued the matter further. Id. at Ex. 5. Plaintiffs have therefore
12 exhausted any rights to appeal from the summary judgment order.

13 Because the summary judgment order filed in the State Court Action is both final and on
14 the merits, the court finds the first element of the res judicata doctrine is satisfied.

15 **ii. The Present Proceeding is on the Same Cause as the State Court Action**

16 Under California law, “[t]wo proceedings are on the same cause of action if they are based
17 on the same ‘primary right.’” Fed’n of Hillside & Canyon Ass’ns, 126 Cal. App. 4th at 1202.

18 This theory:

19 provides that a ‘cause of action’ is comprised of a ‘primary right’ of
20 the plaintiff, a corresponding ‘primary duty’ of the defendant, and a
21 wrongful act by the defendant constituting a breach of that duty.
22 The most salient characteristic of a primary right is that it is
23 indivisible: the violation of a single primary right gives rise to but a
24 single cause of action. A pleading that states the violation of one
25 primary right in two causes of action contravenes the rule against

24 ⁷ On its own motion, the court takes judicial notice of the docket in Santa Clara Superior Court
25 Case Number 1-11-CV195455, available online at <http://cmportal.sccscourt.org/Portal>, because its
26 contents “can be accurately and readily determined from sources whose accuracy cannot
27 reasonably be questioned.” Fed. R. Evid. 201(b), (c); Harris v. Cnty. of Orange, 682 F.3d 1126,
28 1132 (9th Cir. 2012) (“We may take judicial notice of undisputed matters of public record . . .
including documents on file in federal or state courts.”).

1 'splitting' a cause of action.

2 As far as its content is concerned, the primary right is simply the
3 plaintiff's right to be free from the particular injury suffered.

4 Crowley v. Katleman, 8 Cal. 4th 666, 681 (1994) (internal citations omitted).

5 In addition, the primary right theory is distinguishable from the legal theory on which
6 liability for an injury is premised, as well as from the form of recovery sought. Id. at 681-82.
7 "Even where there are multiple legal theories upon which recovery might be predicated, one
8 injury gives rise to only one claim for relief." Id. (quoting Slater v. Blackwood, 15 Cal. 3d 791,
9 795 (1975)). Also, "[t]he violation of one primary right constitutes a single cause of action,
10 though it may entitle the injured party to many forms of relief, and the relief is not to be
11 confounded with the cause of action, one not being determinative of the other." Id. at 682
(quoting Wulfjen v. Dolton, 24 Cal. 2d 891, 895-96 (1944)).

12 Here, a comparison of the complaints filed in this action and the State Court Action reveals
13 that the "primary rights" Plaintiffs sought to vindicate in both cases are the same; in each,
14 Plaintiffs raise the rights to be free from invasions of property and privacy, disability
15 discrimination, and retaliation for speech. Though Plaintiffs invoke § 1983 in this case as the
16 legal basis for some cause of action, this distinction makes no difference. Migra, 465 U.S. at 81
17 (holding that "issues actually litigated in a state-court proceeding are entitled to the same
18 preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the State where
19 the judgment was rendered"). Accordingly, the court finds this action is "on the same cause" as
20 the State Court Action such that the second element of the res judicata doctrine is satisfied.

21 **iii. The Parties in this Action are the Same as those in the State Court Action**

22 For the final element, the court must determine whether this action involves parties from
23 the State Court Action who were "directly interested in the subject matter, and had a right to
24 make defense, or to control the proceeding, and to appeal from the judgment." DKN Holdings
25 LLC v. Faerber, 61 Cal. 4th 813, 825-26 (2015) (quoting Bernhard v. Bank of America Nat'l Trust
26 & Sav. Ass'n, 19 Cal. 2d 807, 811 (1942)). It does. This case involves the same two plaintiffs as

1 the State Court Action, as well as each of the four Classics Defendants.

2 **iv. Conclusion**

3 Because the State Court Action involved the same primary rights, the same parties, and
4 resulted in a final judgment on the merits, the claims asserted against the Classics Defendants in
5 this case are barred by the doctrine of res judicata. Accordingly, the Classics Defendants' motion
6 to dismiss will be granted, and the claims against them will be dismissed without leave to amend
7 because allowing for amendment under these circumstances would be futile. Hartmann v. Cal.
8 Dep't of Corr. & Rehab., 707 F.3d 1114, 1129-30 (9th Cir. 2013) ("A district court may deny
9 leave to amend when amendment would be futile."); Davis v. Cnty. of Maui, 454 Fed. Appx. 582,
10 583 (9th Cir. 2011) (finding amendment futile when claims are barred by res judicata).

11 **B. The Sunnyvale Defendants' Motion to Dismiss**

12 In their own motion to dismiss, the Sunnyvale Defendants argue that Plaintiffs' causes of
13 action against them are untimely under the applicable statute of limitations. They are correct.

14 A statute of limitations defense may be raised by a motion to dismiss "[i]f the running of
15 the statute is apparent on the face of the complaint." Jablon v. Dean Witter & Co., 614 F.2d 677,
16 682 (9th Cir. 1980). Such a motion "can be granted only if the assertions of the complaint, read
17 with the required liberality, would not permit the plaintiff to prove that the statute was tolled." Id.

18 The statute of limitations for a § 1983 claim "is the personal injury statute of limitations of
19 the state in which the cause of action arose." Alameda Books, Inc. v. City of Los Angeles, 631
20 F.3d 1031, 1041 (9th Cir. 2011). In California, the statute of limitations for personal injury claims
21 is two years. Cal. Civ. Proc. Code § 335.1. The limitations period for a federal civil rights claim
22 begins to run from the date the claim accrues. See Knox v. Davis, 260 F.3d 1009, 1013 (9th Cir.
23 2001). "[U]nder federal law, a claim accrues when the plaintiff knows or has reason to know of
24 the injury which is the basis of the action." Lukovsky v. City & Cnty. of San Francisco, 535 F.3d
25 1044, 1048 (9th Cir. 2008).

26 Here, the factual allegations underlying Plaintiffs' federal claims against the Sunnyvale

1 Defendants all relate to events that occurred between 2008 and 2012. For example, for the first
2 and second causes of action asserted under § 1983, Plaintiffs allege the Sunnyvale Defendants
3 retaliated against them and violated their privacy in 2008 by “developing, enforcing and
4 maintaining a set of policies” as punishment for their rezoning petition. Compl., at ¶¶ 196, 208.
5 They further allege that these policies were established from at least 2005 to 2009, and
6 implemented and then enforced from 2009 to 2012. *Id.* at ¶¶ 202, 212. Similarly, for the fourth
7 cause of action asserting disability discrimination under §§ 1983 and 3604, Plaintiffs allege the
8 Sunnyvale Defendants enacted a purportedly discriminatory policy from July, 2006 to 2008. *Id.* at
9 ¶ 236.

10 Furthermore, it is notable that before the State Court Action was resolved, Plaintiffs
11 attempted to add claims against three of the Sunnyvale Defendants that were nearly identical to
12 those asserted in this case. On December 26, 2012, Plaintiffs filed in state court a “Motion for
13 Leave to File First Amended and Supplemental Complaint to Correct Mistakes, Relate Back and
14 Make Supplemental Pleading Thereto,” in which Plaintiffs stated they had “just become aware for
15 the first time, that Defendants Ghandhi [sic], Brown and Lee had been in communication with
16 City of Sunnyvale staff from 2010 to 2012 regarding their making of the Classics parking policy
17 which authorizes them to search home of owners without search warrants.” Sunnyvale Defs.’
18 RJN, Dkt. No. 27, at Ex. 3.⁸ Plaintiffs submitted with the motion a “Verified First Amended
19 Complaint” containing the same basic facts they allege here: that the Sunnyvale Defendants
20 developed a policy in 2008 that permitted the HOA to search homes. *Id.* at Ex. 4.

21 Considering the current allegations as well as the documents from the State Court Action,
22 the court concludes that Plaintiffs’ federal claims accrued no later than December 26, 2012, since
23 by then Plaintiffs must have known of their purported injuries. Consequently, any action based on
24 those injuries should have been commenced within the next two years, or no later than December
25

26 ⁸ Like that of the Classics Defendants, the Sunnyvale Defendants’ Request for Judicial Notice is
27 also GRANTED. Fed. R. Evid. 201(b); Reyn’s Pasta Bella, 442 F.3d at 746 n.6.

1 26, 2014. See Cal. Civ. Proc. Code § 335.1. Since Plaintiffs did not file the Complaint in this
2 case until nearly six months later - on June 19, 2015 - their federal claims against the Sunnyvale
3 Defendants are time-barred unless an exception to the statute of limitations applies.

4 But one does not. Although Plaintiffs’ repeatedly suggest in the Complaint that the
5 Sunnyvale Defendants developed, enacted and enforced the policies until 2015 (see, e.g., Compl.,
6 at ¶¶ 151, 152), this allegation does not support application of the continuing violations doctrine.

7 “The continuing violation theory applies to § 1983 actions.” Knox, 260 F.3d at 1013. “To
8 invoke the continuing violations doctrine, [a plaintiff] must show ‘a series of related acts, one or
9 more of which falls within the limitations period, or the maintenance of a discriminatory system
10 both before and during [that] period.’” Gutowsky v. Cnty. of Placer, 108 F.3d 256, 259 (9th Cir.
11 1997). If the “heart of plaintiffs’ complaint” does not stem from a policy “but rather from the
12 individualized decisions that resulted from implementation of a policy,” the individualized
13 decisions are “best characterized as discrete acts, rather than as a pattern or practice of
14 discrimination.” Cherosky v. Henderson, 330 F.3d 1243, 1247 (9th Cir. 2003). Moreover, the
15 “mere continuing impact from past violations is not actionable.” Knox, 260 F.3d at 1013 (internal
16 quotations omitted).

17 As already explained, Plaintiffs have not alleged a series of related acts, some of which fall
18 within the limitations period; all of the discrete acts attributed to the Sunnyvale Defendants in the
19 Complaint occurred prior to 2012. In addition, though they mention an ongoing policy or practice,
20 the “heart” of Plaintiffs’ allegations do not stem from the Sunnyvale Defendants’ alleged policy,
21 but from the individualized decisions that were purportedly made based on that policy. Plaintiffs
22 may believe they are still experiencing an impact from these decisions, but such impact does not
23 transform stale claims into actionable ones. For these reasons, the court finds the continuing
24 violations doctrine does not assist Plaintiffs in rendering their claims timely.

25 Nor does a liberal reading of the allegations reveal a basis for equitable tolling.
26 California’s law on equitable tolling is applied to Plaintiffs’ civil rights claims. Canatella v. Van

1 De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007). Three conditions must therefore be met to toll the
2 statute of limitations: “(1) defendant must have had timely notice of the claim; (2) defendant must
3 not be prejudiced by being required to defend the otherwise barred claim; and (3) plaintiff’s
4 conduct must have been reasonable and in good faith.” Bacon v. City of Los Angeles, 843 F.2d
5 372, 374 (9th Cir. 1998). Stated another way, the element requiring reasonable and good faith
6 conduct requires that the plaintiff “‘had at all times proceeded in a diligent manner.’” Wood v.
7 Elling Corp., 20 Cal. 3d 353, 361 (1977) (quoting Bollinger v. Nat’l Fire Ins. Co., 25 Cal. 2d 399,
8 406 (1944)).

9 Here, both the Complaint and the documents submitted from the State Court Action make
10 plain that Plaintiffs did not diligently pursue claims against the Sunnyvale Defendants. After the
11 state court denied the motion to amend their Complaint on February 1, 2013, Plaintiffs attempted
12 to appeal from that decision. Classics Defs.’ RJN, at Ex. 4. But given their designation as
13 vexatious litigants, the California Court of Appeal dismissed the action on August 2, 2013,
14 because Plaintiffs did obtain requisite advance permission to initiate the appeal. Id. This case was
15 not filed until approximately two years after the Court of Appeal’s decision, which conduct cannot
16 be described as diligent pursuit. On these facts, the court finds that Plaintiffs’ conduct was not
17 reasonable and in good faith, and for that reason they would not be entitled to equitable tolling.

18 Because it is apparent from the face of the Complaint that Plaintiffs’ federal claims against
19 the Sunnyvale Defendants are barred by the statute of limitations without exception, the motion to
20 dismiss will be granted. The dismissal of the federal claims will be without leave to amend
21 because, as with those asserted against the Classics Defendants, the court finds that amendment
22 would be futile. Hartmann, 707 F.3d at 1129-30 (9th Cir. 2013); see Deutsch v. Turner Corp., 324
23 F.3d 692, 718 (9th Cir. 2003).

24 **C. Claims Against Mozart**

25 Mozart has not appeared in this action, and Plaintiffs did not file a certificate
26 demonstrating that Mozart was served with process. In any event, the federal claims against

1 Mozart would also be barred by the statute of limitations for the same reasons explained above,
2 since Plaintiffs sought to amend their state court complaint to also add claims against Mozart.
3 Sunnyvale Defs.’ RJN, at Exs. 3, 4. As such, Plaintiffs were aware of the claims no later than
4 December 26, 2012. The court will therefore sua sponte dismiss the federal claims asserted
5 against Mozart without leave to amend. See Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th
6 Cir. 1987) (“A trial court may dismiss a claim sua sponte under Fed. R. Civ. P. 12(b)(6) Such
7 a dismissal may be made without notice where the claimant cannot possibly win relief.”).

8 **D. Remaining State Law Claims**

9 What remains are Plaintiffs’ third and fifth claims to the extent they are asserted against
10 the Sunnyvale Defendants and Mozart. These claims are based solely in state law.

11 The jurisdiction of federal courts is limited, and is only properly exercised over those cases
12 raising federal questions or involving parties with diverse citizenship. Exxon Mobil Corp. v.
13 Allapattah Servs., Inc., 545 U.S. 546, 552 (2005). “[O]nce a court has original jurisdiction over
14 some claims in the action, it may exercise supplemental jurisdiction over additional claims that are
15 part of the same case or controversy.” Id. However, a district court may properly decline to
16 exercise supplemental jurisdiction over state-law claims if such claims “substantially
17 predominate[] over the claim or claims over which the district court has original jurisdiction” or if
18 the court “has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c).

19 Since the court has determined that all federal claims will be dismissed without leave to
20 amend, the court declines to exercise supplemental jurisdiction over the remaining state law claims
21 against the Sunnyvale Defendants and Mozart. These claims will be dismissed without prejudice.
22 See 28 U.S.C. § 1367(c)(3); see also Acri v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th Cir.
23 1997) (en banc).

24 **IV. ORDER**

25 Based on the foregoing:

- 26 1. The Classics Defendants’ Motion to Dismiss (Dkt. No. 17) is GRANTED. All

1 claims asserted against the Classics Defendants are DISMISSED WITHOUT LEAVE TO
2 AMEND.

3 2. The Sunnyvale Defendants' Motion to Dismiss (Dkt. No. 26) is GRANTED, such
4 that the first, second and fourth claims asserted in the Complaint are DISMISSED WITHOUT
5 LEAVE TO AMEND. All other claims asserted against the Sunnyvale Defendants are
6 DISMISSED WITHOUT PREJUDICE.

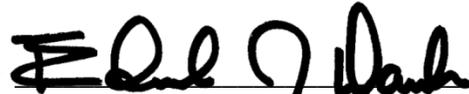
7 3. The first, second and fourth claims, as asserted against Mozart, are DISMISSED
8 WITHOUT LEAVE TO AMEND. All other claims asserted against Mozart are DISMISSED
9 WITHOUT PREJUDICE.

10 4. The Motion to Require Plaintiffs to Furnish Security (Dkt. No. 20) is DENIED AS
11 MOOT.

12 Since this decision represents a complete resolution of this action, judgment will be
13 entered in favor of Defendants and the Clerk shall close this file.

14
15 **IT IS SO ORDERED.**

16 Dated: September 16, 2016

17 
18 EDWARD J. DAVILA
United States District Judge

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