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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

SAN DIEGO PUPPY, INC., a  
California corporation; DAVID  
SALINAS and VERONICA  
SALINAS, husband and wife,

Plaintiffs,

v.

SAN DIEGO ANIMAL DEFENSE  
TEAM, business entity of unknown  
form; ANIMAL PROTECTION  
AND RESCUE LEAGUE, a  
California 501(c)(3) corporation;  
COMPANION ANIMAL  
PROTECTION SOCIETY,  
Delaware non-profit corporation;  
BRYAN PEASE, a California  
resident,

Defendants.

Case No.: 13-cv-2783-BTM-DHB

**ORDER GRANTING MOTION  
TO DISMISS**

19 Defendants have filed motions to dismiss Plaintiffs' First Amended  
20 Complaint ("FAC"). Plaintiffs also filed what the Court considers as a motion

1 for leave to amend the First Amended Complaint and a proposed Second  
2 Amended Complaint (“SAC”). For the reasons discussed below, each  
3 Defendant’s motion to dismiss is **GRANTED** and Plaintiffs’ motion for leave  
4 to amend the First Amended Complaint is **DENIED**.

5  
6 **I. BACKGROUND**

7 On November 25, 2013, Plaintiffs filed their original complaint. On  
8 September 11, 2014, this Court gave Plaintiffs leave to file an amended  
9 complaint only as to Count VI, which alleged a violation of 42 U.S.C. § 1985.  
10 Order at 14-18. On September 23, 2014, Plaintiffs filed a two-page First  
11 Amended Complaint as to Count VI, alleging that Defendants had accused  
12 Plaintiff David Salinas of being “a criminal, a sleazy character engaged in  
13 acts of animal cruelty, and an animal abuser.” FAC at 2. On October 14,  
14 2014, Defendants Bryan Pease (“Pease”), the Animal Protection and Rescue  
15 League (“APRL”), and the Companion Animal Protection Society (“CAPS”)  
16 each filed a motion to dismiss Plaintiffs’ First Amended Complaint.

17 On November 6, 2014, Plaintiffs filed what the Court considers as a  
18 motion for leave to amend their First Amended Complaint, and a proposed  
19 Second Amended Complaint. In addition to the allegations already set forth  
20 in their original complaint and their First Amended Complaint, Plaintiffs allege

1 in their Second Amended Complaint that Defendants formed a secret  
2 Facebook group to plan activities against Plaintiffs. SAC at 9.

## 3 4 **II. STANDARD**

5 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6)  
6 should be granted only where a plaintiff's complaint lacks a "cognizable legal  
7 theory" or sufficient facts to support a cognizable legal theory. Balistreri v.  
8 Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). When reviewing a  
9 motion to dismiss, the allegations of material fact in plaintiff's complaint are  
10 taken as true and construed in the light most favorable to the plaintiff. See  
11 Parks Sch. of Bus., Inc., v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).  
12 Although detailed factual allegations are not required, factual allegations  
13 "must be enough to raise a right to relief above the speculative level." Bell  
14 Atlantic v. Twombly, 550 U.S. 544, 555 (2007). "A plaintiff's obligation to  
15 prove the 'grounds' of his 'entitle[ment] to relief' requires more than labels  
16 and conclusions, and a formulaic recitation of the elements of a cause of  
17 action will not do." Id. "[W]here the well-pleaded facts do not permit the court  
18 to infer more than the mere possibility of misconduct, the complaint has  
19 alleged – but it has not show[n] that the pleader is entitled to relief." Ashcroft  
20 v. Iqbal, 565 U.S. 662, 679 (2009) (internal quotation marks omitted). Only

1 a complaint that states a plausible claim for relief will survive a motion to  
2 dismiss. Id.

### 4 **III. DISCUSSION**

5 Defendants move to dismiss Plaintiffs' First Amended Complaint for  
6 failure to state a claim. Having taken into consideration Plaintiffs' First  
7 Amended Complaint and proposed Second Amended Complaint, the Court  
8 agrees that dismissal is warranted.

9 To state a cause of action under 42 U.S.C. § 1985(3), the plaintiff must  
10 allege four elements: (1) a conspiracy; (2) for the purpose of depriving, either  
11 directly or indirectly, any person or class of persons of the equal protection  
12 of the laws, or of equal privileges and immunities under the laws; and (3) an  
13 act in furtherance of the conspiracy; (4) whereby a person is either injured in  
14 his person or property or deprived of any right or privilege of a citizen of the  
15 United States. United Bhd. of Carpenters & Joiners of Am. v. Scott, 463 U.S.  
16 825, 828-829 (1983). In order to satisfy the second element, the conspiracy  
17 must also be motivated by "some racial, or perhaps otherwise class-based,  
18 invidiously discriminatory animus behind the conspirators' action." Id. at 829  
19 (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)).

20 Plaintiffs allege that Defendants conspired to force the closure of

1 Plaintiffs' business, which sells pure-bred puppies, by supporting the  
2 passage of an Ordinance (San Diego Health & Safety Municipal Code §  
3 42.0706) that prohibits the sale of puppies not obtained from an approved  
4 source (e.g., a California non-profit rescue or shelter). SAC at 2-3. Other  
5 than a vague reference to a "playbook" captioned "A Guide to Using Local  
6 Ordinances to Combat Puppy Mills," and a "secret group" on Facebook that  
7 was created to organize protests at pet stores, Plaintiffs do not provide  
8 sufficient facts to describe how exactly Defendants carried out their  
9 conspiracy to try to shut down Plaintiffs' business. SAC at 3, 9. More  
10 importantly, Plaintiffs fail to describe how they were deprived of a federally  
11 protected right. See Griffin, 403 U.S. at 102 (conspiracy must aim at a  
12 deprivation of the equal enjoyment of rights secured by the law to all).

13 Plaintiffs allege that Defendants' conspiracy was "racially motivated"  
14 towards Mexican-Americans and refer to a photo of people wearing masks  
15 in the likeness of Plaintiff David Salinas with signs that state "Sleazy Salinas"  
16 and "I Sell Animal Cruelty." SAC at 7. Plaintiffs fail to show how the  
17 unidentified people in the photo are related to any of the Defendants.  
18 Regardless, the Court is not convinced that referring to Plaintiff David Salinas  
19 as "sleazy" demonstrates an invidious racial animus against Mexican-  
20 Americans. Plaintiffs also allege that Defendants' conspiracy was motivated

1 to gain a “market advantage for non-profits [that] sell puppies.” SAC at 3.  
2 But 42 U.S.C. § 1985(3) does not concern conspiracies motivated by  
3 “economic or commercial animus.” United Bhd. of Carpenters & Joiners of  
4 Am., 463 U.S. at 837-38.

5 For the reasons discussed above, the Court finds that Plaintiffs fail to  
6 state a claim in their First Amended Complaint and their proposed Second  
7 Amended Complaint.

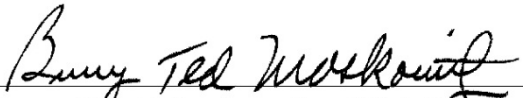
#### 8 9 **IV. CONCLUSION**

10 Defendants’ motions to dismiss the First Amended Complaint are  
11 **GRANTED**. Plaintiffs’ First Amended Complaint is **DISMISSED** for failure to  
12 state a claim. Plaintiffs’ motion for leave to amend the First Amended  
13 Complaint is **DENIED** as their proposed Second Amended Complaint is  
14 futile. Plaintiffs have essentially had three attempts to plead the same claim  
15 and there is no indication that Plaintiffs have other facts to allege to cure the  
16 deficiencies discussed above. Therefore, the Court denies Plaintiffs leave  
17 to amend their complaint for a fourth time. See Carvalho v. Equifax Info.  
18 Servs., LLC, 629 F.3d 876, 892-893 (9th Cir. 2010) (district court may  
19 exercise its discretion to deny leave to amend due to “repeated failure to cure  
20 deficiencies by amendments previously allowed” (citing Foman v. Davis, 371

1 U.S. 178, 182 (1962))). The Court shall enter a final judgment of dismissal  
2 as to all Defendants.<sup>1</sup>

3 **IT IS SO ORDERED.**

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5 Dated: June 12, 2015

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7 Barry Ted Moskowitz, Chief Judge  
8 United States District Court  
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18 <sup>1</sup> It is unclear to the Court as to whether or not Plaintiffs intended to include San  
19 Diego Humane Society ("SDHS") as a Defendant. Plaintiffs include SDHS in the caption  
20 of the First Amended Complaint and name them in the proposed Second Amended  
Complaint. But Plaintiffs voluntarily dismissed SDHS on January 17, 2014. Doc. No. 27.  
In any case, the final judgment of dismissal will apply to SDHS as well.