

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

**Anthony Rogers, et al. v. Mountain Valley Unified School District, et
al.**

Rogers v. Mountain Valley Unified School District · No. 2:24-cv-02587-TLN-CSK · Decided November 7,
2025

OPINION

Anthony Rogers, et al. v. Mountain Valley Unified School District, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 ANTHONY ROGERS, et al., Case No. 2:24-cv-02587-TLN-CSK 12 Plaintiffs,

13 v. ORDER, AND FINDINGS AND

RECOMMENDATIONS

14 MOUNTAIN VALLEY UNIFIED

SCHOOL DISTRICT, et al., (ECF Nos. 19, 24) 15 Defendants. 16 17 Pending before the Court is Defendant Soter Technologies LLC's motion to 18 dismiss the Second Amended Complaint ("SAC") for failure to state a claim pursuant to 19 Federal Rule of Civil Procedure 12(b)(6).1 (ECF No. 19.) Plaintiffs filed an opposition and 20 Defendant filed its reply. (ECF Nos. 30, 34.) A hearing was held on September 23, 21 2025,2 at which Plaintiffs Anthony Rogers, Roberto Romero, and Devin Nunez appeared 22 pro se, and attorney Mitchell Turbenson appeared for Defendant Soter Technologies. 23 For the reasons that follow, the Court orders minor Plaintiffs S.N. and T.R., and claims 24 brought on their behalf, are DISMISSED WITHOUT PREJUDICE, and further 25 recommends GRANTING Soter Technologies' motion to dismiss. 26 1 This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. 27 Civ. P. 72, and Local Rule 302(c)(21). 2 The Court granted Plaintiffs' unopposed request to appear remotely at the hearing, 28 and the hearing was held by Zoom. (ECF Nos. 31-33.)

1 I. BACKGROUND

2 A. Factual Allegations3 3 The SAC alleges beginning in the summer of 2023, Defendant Mountain Valley 4 Unified School District ("MVUSD") piloted Defendant Soter Technologies' FlySense 5 vape-detector alerts district-wide. SAC at 2. On or about March 25, 2024, S.N. and T.R., 6 eighth grade students, were interrogated without parental notification by Defendant 7 Principal Claude Belongia after a "VAPE DETECTED" alert. SAC ¶ 12. Defendant 8 Belongia "dismissed" their request for a "perfume test" and "ordered immediate 9 suspension." Id. ¶ 13.

The next day, Defendant Belongia threatened punitive discipline 10 by stripping S.N. of “all sports and her Student Body President position.” Id. ¶ 14. The 11 SAC alleges Defendant Superintendent Anne-Marie Swanstrom justified the summary 12 suspension based on the FlySense alert. Id. ¶ 15. 13 The SAC further alleges on February 12, 2025, Defendants Michael Edward Miller 14 and Swanstrom detained Plaintiff Nanez and six other boys after a FlySense alert, 15 “forcing them to ‘empty your pockets or else’ without finding contraband.” SAC ¶ 18. The 16 SAC alleges Defendants Miller and Swanstrom deprived Plaintiff Nanez of “privacy 17 without contraband or due process.” Id. ¶ 23. The SAC alleges Defendants Belongia and 18 Swanstrom interrogated, intimidated, and suspended Plaintiffs without offering any 19 intervention, education, or process safeguards.” Id. ¶ 22. The SAC alleges the MVUSD 20 “Board of Trustees failed to collect or remedy discipline disparities affecting Native and 21 Latina students,” including S.N., T.R., and Nanez, consistent with “disaggregation 22 requirement.” Id. ¶ 24. 23 B. Procedural Posture 24 Plaintiffs filed their Complaint on September 25, 2024. On June 12, 2025, 25 26 3 These facts primarily derive from the SAC (ECF No. 29 at 1-12), which are construed in the light most favorable to Plaintiff as the non-moving party. *Faulkner v. ADT Sec. 27 Servs.*, 706 F.3d 1017, 1019 (9th Cir. 2013). However, the Court does not assume the truth of any conclusory factual allegations or legal conclusions. *Paulsen v. CNF Inc.*, 559 28 F.3d 1061, 1071 (9th Cir. 2009). 1 Plaintiffs filed a First Amended Complaint (“FAC”). FAC (ECF No. 7); see Fed. R. Civ. P. 2 15(a)(1). On July 1, 2025, Plaintiffs filed a motion for leave to file a SAC. (ECF No. 14.) 3 Plaintiffs also filed multiple versions of the SAC, including unsigned versions. (ECF Nos. 4 12, 15, 16, 17.) The Court granted Plaintiffs’ motion to file a SAC, ordered Plaintiffs to file 5 a signed copy of the SAC filed at ECF No. 17, and struck the unsigned filings. 7/11/2025 6 Order. The operative complaint is the signed SAC filed at ECF No. 29 at 1-12.

7 II. LEGAL STANDARDS

8 A. Pro Se Pleadings, Construction and Amendment 9 Pro se pleadings are to be liberally construed and afforded the benefit of any 10 doubt. *Chambers v. Herrera*, 78 F.4th 1100, 1104 (9th Cir. 2023). Upon dismissal of any 11 claims, the court must tell a pro se plaintiff of a pleading’s deficiencies and provide an 12 opportunity to cure such defects. *Garity v. APWU Nat’l Lab. Org.*, 828 F.3d 848, 854 (9th

13 Cir. 2016). However, if amendment would be futile, leave to amend does not need to be 14 provided. *Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1243 (9th Cir. 2023). 15 To determine the propriety of a dismissal motion, the court may not consider facts 16 raised outside the complaint (such as in an opposition brief), but it may consider such 17 facts when deciding whether to grant leave to amend. *Broam v. Bogan*, 320 F.3d 1023, 18 1026 n.2 (9th Cir. 2003). 19 B. Failure to State a Claim under Rule 12(b)(6) 20 A claim may be dismissed because of the plaintiff’s “failure to state a claim upon 21 which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim if 22 it either lacks a cognizable legal theory or sufficient facts to support a cognizable legal 23 theory. *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th Cir. 2015).

When considering 24 whether a claim has been stated, the court must accept the well-pleaded factual 25 allegations as true and construe the complaint in the light most favorable to the non- 26 moving party. *Id.* However, the court is not required to accept as true conclusory factual 27 allegations contradicted by documents referenced in the complaint, or legal conclusions 28 merely because they are cast in the form of factual allegations. *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009).

2 III. DISCUSSION

3 The SAC alleges six causes of action: (1) “retaliation for protected speech” in 4 violation of the First and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 (SAC 5 ¶¶ 25-27); (2) “unlawful searches & denial of due process” in violation of the Fourth and 6 Fourteenth Amendments pursuant to 42 U.S.C. § 1983 (SAC ¶¶ 29-30); (3) “equal 7 protection violation” pursuant to 42 U.S.C. § 1983 (SAC ¶¶ 31-33); (4) “municipal liability 8 (Monell)” claim pursuant to 42 U.S.C. § 1983 (SAC ¶¶ 34-36); (5) “private-entity joint 9 action” claim pursuant to 42 U.S.C. § 1983 (SAC ¶¶ 37-39); and (6) “negligent hiring, 10 retention & statutory mis-assignment” pursuant to 5 California Code of Regulations 11 § 80054.5 and California Education Code §§ 44830-31 (SAC ¶¶ 40-50). The SAC names 12 the following defendants: MVUSD Board of Education, MVUSD, MVUSD Superintendent 13 Swanstrom, Principal Belongia, Michael Edward Miller, and Soter Technologies. 14 Plaintiffs seek compensatory damages in the amount of \$2 million for each minor 15 plaintiff; compensatory damages for Plaintiffs Rogers and Romero; punitive damages; 16 declaratory and injunctive relief; and other forms of relief. SAC at 9-10. 17 Defendant Soter Technologies moves to dismiss the SAC for failure to state a 18 claim. Before turning to the motion to dismiss, the Court first addresses minor Plaintiffs 19 S.N. and T.R. and Plaintiffs’ various unauthorized attachments to the SAC. 20 A. Dismissal of Minor Plaintiffs S.N. and T.R. 21 Pro se Plaintiffs Anthony Rogers and Roberto Romero filed a motion to appoint 22 themselves as guardian ad litem for minor children S.N. and T.R.4 (ECF No. 9.) As the 23 Court previously explained to Plaintiffs in its written order and at the September 23, 2025 24 hearing, parents cannot bring a lawsuit on behalf of minors without retaining a lawyer. 25 7/11/2025 Order at 3-4 (ECF No. 24) (citing *Johns v. Cty. of San Diego*, 114 F.3d 874, 26 876-77 (9th Cir. 1997); *Grizzell v. San Elijo Elementary School*, 110 F.4th 1177, 1181 27 4 As of July 7, 2025, Devin Nanez was no longer a minor and Plaintiffs subsequently 28 withdrew their request as to Devin Nanez. (ECF No. 18.) 1 (9th Cir. 2024); *Gabriel Charles Reed v. Eugene School District 4j*, 2025 WL 1779779, at 2 *1 (9th Cir. June 27, 2025)). The Court denied Plaintiffs Rogers and Romero’s request, 3 but provided them with 30 days to retain counsel for S.N. and T.R. 7/11/2025 Order at 3- 4 4. On August 12, 2025, the Court granted Plaintiffs Rogers and Romero an additional 30 5 days to obtain counsel for minors S.N. and T.R. (ECF No. 37.) Plaintiffs did not, 6 however, obtain counsel for the minors, which they confirmed at the September 23, 2025 7 hearing. In addition, as of November 5, 2025, no counsel has been retained for minors 8 S.N. and T.R. See Docket. Therefore, Plaintiffs S.N. and T.R., and claims brought on 9 their behalf, are dismissed without

prejudice.⁵ See *Johns*, 114 F.3d at 876-77; *Grizzell*, 10 110 F.4th at 1181; *Reed*, 2025 WL 1779779, at *1. 11 B. Plaintiffs' Various Attachments 12 In granting Plaintiffs leave to file a SAC, the Court clearly instructed Plaintiffs to 13 re-file a signed copy of the SAC filed at ECF No. 17. 7/11/2025 Order. The Court did not 14 grant Plaintiffs leave to further amend the SAC or to file attachments to the SAC. See *id.* 15 In addition to filing a signed copy of the SAC filed at ECF No. 17 (see ECF No. 29 at 1- 16 12), Plaintiffs attached various documents to the SAC without leave of court (see ECF 17 No. 29 at 13-50). This was improper. As the Court informed the parties at the hearing, 18 the Court is not considering Plaintiffs' attachments filed at ECF No. 29 at 13-50, which 19 were filed without leave and are not timely.⁶ 20 C. Motion to Dismiss 21 Defendant Soter Technologies moves to dismiss the SAC for failure to state a 22 claim against it because the SAC fails to allege that Soter Technologies acted under 23 color of state law, personally participated in any alleged constitutional violation, or 24 5 The Court notes that subsequent to the filing of Defendant Soter Technologies' motion 25 to dismiss, motions to dismiss have been filed by the remaining defendants: MVUSD, 26 MVUSD Board of Education, Belongia, Miller, and Swanstrom. (ECF Nos. 41, 42.) Briefing has not been completed on these motions. See Docket. 27 6 The Court notes that even if it did consider the unauthorized attachments, such consideration would not change its recommendation to grant Soter Technologies' motion 28 to dismiss without leave to amend. 1 caused the alleged injuries. Def. Soter Mot. at 1. The only claim in the SAC with any 2 charging allegations as to Soter Technologies is the fifth claim, a Section 1983 claim 3 titled "private-entity joint action." See SAC ¶ 39.7 The SAC alleges: "Soter Technologies, 4 Inc. entered into an agreement with MVUSD to install, monitor, and support FlySense 5 systems. By providing real-time alerts, training staff, and integrating its protocols into 6 MVUSD's disciplinary process, Soter knowingly facilitated unconstitutional searches 7 under color of state law." SAC ¶ 39. 8 To state a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a 9 federal constitutional or statutory right; and (2) that the violation was committed by a 10 person acting under the color of state law. See *Lindke v. Freed*, 601 U.S. 187, 194 11 (2024); *West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 12 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the 13 facts establish the defendant's personal involvement in the constitutional deprivation or a 14 causal connection between the defendant's wrongful conduct and the alleged 15 constitutional deprivation. See *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); 16 *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978). There can be no liability under 17 42 U.S.C. § 1983 unless there is some affirmative link or connection between a 18 defendant's actions and the claimed deprivation. See *Rizzo v. Goode*, 423 U.S. 362, 371 19 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980). 20 Generally, private parties do not act under color of state law. *Price v. Hawaii*, 939 21 F.2d 702, 707-08 (9th Cir. 1991); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 22 826, 835 (9th Cir. 1999). A private party's action may be "under color of state law" where 23 there is "significant"

state involvement in the action. *Franklin v. Fox*, 312 F.3d 423, 444-24 (9th Cir. 2002) (citation omitted). The Ninth Circuit recognizes four tests to determine whether a private party is a state actor to satisfy Section 1983's acting under color of 26-7. The sixth claim for negligent hiring is the only non-Section 1983 claim, and this claim 27 is not brought against Soter Technologies. See SAC ¶¶ 46-50. Plaintiffs further confirmed that the sixth claim is not brought against Soter Technologies in their 28 supplemental filing. Pls. Clarification Notice (ECF No. 35). 1 state law requirement: "(1) public function; (2) joint action; (3) governmental compulsion 2 or coercion; and (4) governmental nexus." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020). 4 In the SAC and Plaintiffs' opposition, Plaintiffs assert only the joint action test. See 5 SAC ¶ 37; Pls. Opp'n at 4. Accordingly, the Court's analysis is limited to the joint action 6 test where Plaintiffs do not assert the other state actor theories. Under the joint action 7 test, courts consider whether state officials and private parties have acted in concert, 8 leading to a deprivation of plaintiff's constitutional rights. *Franklin v. Fox*, 312 F.3d 423, 9 445 (9th Cir. 2002). 10 To establish the joint action test, there must be a "sufficiently close nexus" 11 between MVUSD and Soter Technologies such that Soter's actions "may be fairly 12 treated as that of the State itself" or where MVUSD has "so far insinuated into a position 13 of interdependence with the [private party] that it was a joint participant in the enterprise." 14 *Rawson*, 975 F.3d at 748 (quoting *Jensen v. Lane Cnty.*, 222 F.3d 570, 575-78 (9th Cir. 15 2000)). The joint action test is "intentionally demanding and requires a high degree of 16 cooperation between private parties and state officials to rise to the level of state action." 17 *O'Handley v. Weber*, 62 F.4th 1145, 1159-60 (9th Cir. 2023), cert. denied, 144 S. Ct. 18 2715 (July 2, 2024). 19 Here, the SAC makes conclusory allegations that Soter Technologies "knowingly 20 facilitated unconstitutional searches under color of state law." SAC ¶ 39. The specific 21 conduct by Soter Technologies that Plaintiffs challenge is that Soter Technologies 22 "provid[ed] real-time alerts, train[ed] staff, and integrat[ed] its protocols into MVUSD's 23 disciplinary process." SAC ¶ 39. This is insufficient to establish the demanding joint 24 action test. See *O'Handley*, 62 F.4th at 1160; *Rawson*, 975 F.3d at 747-48. The Court 25 concludes that Soter Technologies was not a state actor, and recommends dismissing 26 the Section 1983 claims against it. Because Plaintiffs only raise Section 1983 claims 27 against Soter Technologies and the state actor requirement is dispositive, the Court 28 declines to address the parties' other arguments. 1 A pro se litigant is entitled to notice of the deficiencies in the complaint and an 2 opportunity to amend unless the complaint's deficiencies could not be cured by 3 amendment. See *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (2000) (en banc); *Cahill v. 4 Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996). Here, Plaintiffs offer no proposed 5 allegations that would sufficiently allege that Soter Technologies is a state actor. See 6 Pls. Opp'n. Plaintiffs have also already amended their complaint twice. The Court 7 concludes that amendment would be futile as to Plaintiffs' claims against Soter 8 Technologies, and therefore, leave to amend should not be provided as to Soter 9 Technologies.⁸ See *Lathus*, 56 F.4th at 1243.

10 IV. CONCLUSION

11 In conclusion, IT IS HEREBY ORDERED that: 12 1. Minor Plaintiffs S.N. and T.R., and
claims brought on their behalf, are 13 DISMISSED WITHOUT PREJUDICE. 14 Further, based
upon the findings above, it is RECOMMENDED: 15 1. Defendant Soter Technologies' motion to
dismiss the SAC (ECF No. 19) be 16 GRANTED; and 17 2. Defendant Soter Technologies be
DISMISSED with prejudice. 18 These findings and recommendations are submitted to the United
States District 19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
Within 20 14 days after being served with these findings and recommendations, any party may file
21 written objections with the Court and serve a copy on all parties. This document should 22 be
captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 23 reply to
the objections shall be served on all parties and filed with the Court within 14 24 days after
service of the objections. Failure to file objections within the specified time 25 may waive the
right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 26 / / / 27 8 Other
defendants besides Soter Technologies remain in the action, and have filed 28 motions to dismiss
that have not been fully briefed. 1 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57
(9th Cir. 1991). 2 3 | Dated: November 6, 2025 C iG S\$ □□

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19 20 21 22 23 24 25 26 27 28