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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-5669 ODW (VBKx)	Date	January 9, 2007
Title	*Robert M. Nelson, et al. v. Nat'l Aeronautics and Space Admin., et al.*		

Present:	The Honorable Otis D. Wright II, United States District Judge	
Raymond Neal	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING Defendant California Institute of Technology's Rule 12(b)(6) Motion to Dismiss

I. INTRODUCTION

Pending before the Court is Defendant California Institute of Technology's ("Caltech") Motion to Dismiss ("Motion"), filed on November 21, 2007. The hearing on Defendant Caltech's Motion is currently set for January 11, 2008. **The Court, however, finds the above-referenced matter appropriate for submission without oral argument and, thus, vacates the hearing date.** *See* Fed. R. Civ. P. 78; Local Rule 7-15. After consideration of the materials submitted by the parties and the case file, Defendant Caltech's Motion is GRANTED for the reasons indicated below.

II. DISCUSSION

A. Legal Standard: Motion to Dismiss (12(b)(6))

A motion to dismiss tests the legal sufficiency of the claim stated in the plaintiffs' Complaint. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1975); *see also* Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion is granted where there is either a lack of cognizable legal theory or the plaintiff fails to allege sufficient facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atl. Corp. v. Twombly*, 127 S. Ct.

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1955, 1979 (2007). However, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996).

B. Analysis

In the instant case, Plaintiffs filed a First Amended Complaint ("FAC") on October 22, 2007 seeking injunctive and declaratory relief. The FAC alleged five substantive claims against Defendant Caltech: (1) Violation of the Fourth Amendment; (2) Violation of Informational Privacy Rights; (3) Violation of Fifth Amendment Rights; (4) Violation of the Administrative Procedure Act; and (5) Violation of Rights Protected by the California Constitution. Plaintiffs concede in their Opposition to Caltech's Motion that Caltech is not a proper defendant under the Administrative Procedures Act claim. Plaintiffs also do not contest the dismissal of the California Constitution claims as to all parties. Therefore, in examining Caltech's Motion, the Court will focus on the federal constitutional claims (claims one, two, and three) as alleged in the FAC.

Defendant Caltech is a non-profit educational institution located in Pasadena, California. In support of its Motion, Caltech's primary argument addresses the issue of whether it can be held liable for constitutional violations when it is not a traditional "state actor."

"Individuals bringing actions against private parties for infringement of their constitutional rights . . . must show that the private parties' infringement somehow constitutes state action." *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996). There should be "careful adherence" to the state action requirement in order to maintain "an area of individual freedom by limiting the reach of federal law and federal judicial power." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982).

When addressing whether a private party's activity constitutes state action, we "start with the presumption that private conduct does not constitute governmental action." *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 838 (9th Cir. 1999). "In order for private conduct to constitute governmental action, 'something more' must be present." *Id*. at 835 (citing *Lugar*, 457 U.S. at 939). "Courts have used four different

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factors or tests to identify what constitutes 'something more': (1) public function, (2) joint action, (3) governmental compulsion or coercion, and (4) governmental nexus." *Id*. at 835-36. "Typically, the nexus consists of some *willful* participation in a joint activity by the private entity and the government." *Id.* at 843 (emphasis added). "The mere fact that the government compel[s] a result does not suggest that the government's action is 'fairly attributable' to the private defendant." *Id.* at 838. "Indeed, without some other nexus between the private entity and the government, we would expect that the private defendant is *not* responsible for the government's compulsion." *Id*.

Here, Plaintiffs' FAC contains only a few allegations of substantive involvement by Caltech. In paragraph 52 of the FAC, Plaintiffs allege that NASA's Interim Directive states that "derogatory or unfavorable information" yielded from the badge issuance process "will be forwarded to a Human Relations officer for JPL who will determine 'employment suitability.'" *See* FAC ¶ 52. In addition, Plaintiffs allege that "JPL employees were informed by Caltech senior management that no employee would be admitted to JPL facilities without a new [identification] badge after October 27, 2007." *See* FAC ¶ 54. Further, Plaintiffs allege that "Caltech plays an integral part in implementing and enforcing the background investigation at issue" in the case. *See* FAC ¶ 56.

As the Court noted in its October 3, 2007 Order Denying Plaintiffs' Motion for Preliminary Injunction, the issue of Caltech's alleged internal policy to determine "employment suitability" is not ripe for review. Therefore, in analyzing Caltech's Motion, the Court will only focus on the requirement that Plaintiffs fill out and sign the Standard Form "SF-85." Further, when considering only the allegations in the FAC that *are* ripe for review, Plaintiffs have not alleged that Caltech has done anything "more" than simply comply with the government's mandate requiring the implementation of the new background check. And, as the Ninth Circuit has noted, government compulsion, without more, is not sufficient to deem a truly private entity a government actor. *See Sutton*, 192 F.3d at 843.

Plaintiffs, in their Opposition to Caltech's Motion, cite to Ninth Circuit cases *Mathis v. Pac. Gas and Elec. Co.*, 891 F.2d 1429 (9th Cir. 1989) and *Carlin Commc'n v. Mountain State Tel. Co.*, 827 F.2d 1291 (9th Cir. 1987) to support their argument that

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Caltech should remain in the case. However, Plaintiffs' arguments are misplaced. The Ninth Circuit in *Sutton v. Providence St. Joseph Med. Ctr.* distinguished the *Mathis* and *Carlin* decisions in a detailed analysis. *See Sutton*, 192 F.3d at 842-43. The Court finds that the *Sutton* case is analogous to the case at bar. The Court also finds that because Caltech is simply following a government mandate in administering the disbursement and collection of the SF-85, Caltech cannot be deemed a state actor. Accordingly, Caltech cannot be held liable for the constitutional rights allegations set forth in Plaintiffs' FAC.

III. CONCLUSION

This Court finds that Plaintiffs have not established a sufficient nexus to attribute liability to Caltech as a governmental actor. Therefore, Plaintiffs' constitutional rights allegations against Caltech must fail. Plaintiffs also concede that Caltech is not a proper defendant as to the claim under the Administrative Procedures Act. And, Plaintiffs do not contest the dismissal of the California Constitution claims as to all parties. Accordingly, Defendant Caltech's Motion to Dismiss is GRANTED and, because any amendment to the FAC by Plaintiffs would be futile, all claims against Caltech are hereby dismissed with prejudice.

The hearing on this motion, presently scheduled for Friday, January 11, 2008 at 2:00 p.m., is hereby VACATED.

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