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7
8 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 JOHN ANTHONY CASTRO,
10 Plaintiff,

Case Number:
2:23-cv-01387-RFB-BNW

11 vs.

12 SECRETARY OF STATE FRANCISCO V.
AGUILAR; NEVADA REPUBLICAN
PARTY, DONALD JOHN TRUMP.

**MOTION TO DISMISS PURSUANT TO
FRCP 12(B)(6) AND FOR LIMITED
JOINDER TO DEFENDANT DONALD
JOHN TRUMP'S RENEWED MOTION
TO DISMISS FIRST AMENDED
COMPLAINT**

13 Defendants.
14

15 Defendant Nevada Republican Party (“NV GOP”), by and through the law firm of
16 Marquis Aurbach, hereby submits its Motion to Dismiss Pursuant to Fed R. Civ. P.
17 (“FRCP”) 12(b)(6) and its Limited Joinder to Defendant Donald John Trump’s (“President
18 Trump”) Renewed Motion to Dismiss First Amended Complaint (the “Motion”).

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION & SUMMARY**

21 The NV GOP seeks to dismiss the First Amended Complaint (the “Complaint” or
22 ECF No. 21) for failure to state a claim under FRCP 12(b)(6). There is a grand total of two
23 conclusory paragraphs in the Complaint directed to the NV GOP. *See* ECF No. 21 at pg. 11.
24 Even giving Plaintiff John Anthony Castro (“Mr. Castro” or “Plaintiff”) the deference
25 afforded to him under a 12(b)(6) analysis, and even applying the most generous notice
26 pleading standard, the Complaint still fails to state a viable claim against the NV GOP.
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1 Simply put, conclusory legal allegations cannot sustain a cause of action; factual allegations
2 are needed as well, something the Complaint is devoid of with respect to the NV GOP.

3 As an additional, independent legal basis for dismissal, the NV GOP further seeks to
4 move this Court for a limited joinder to President Trumps' Renewed Motion to Dismiss the
5 First Amended Complaint (ECF Nos. 24 and 30). In particular, the NV GOP seeks a limited
6 joinder with respect to the Motion's arguments about the futility and mootness of Plaintiff's
7 action given President Trump's participation in the NV GOP-run caucus (and not the state-
8 run primary).

9 **II. LEGAL STANDARD**

10 A court may dismiss a plaintiff's complaint for failing to state a claim upon which
11 relief can be granted. Fed. R. Civ. P. 12(b)(6). Review under Rule 12(b)(6) is essentially a
12 ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th
13 Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear the plaintiff
14 cannot prove any set of facts in support of the claim that would entitle him or her to relief.
15 *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). While the standard under Rule
16 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than
17 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
18 formulaic recitation of the elements of a cause of action is insufficient. *Id.* A complaint
19 should be dismissed as a matter of law in the absence of a cognizable legal theory showing a
20 basis for relief. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

21 **III. RELEVANT BACKGROUND**

22 Seeing that the NV GOP's involvement in this case is seemingly limited to (and a
23 result of) its operation of the Nevada Republican Caucus (which is set to be held on
24 February 8, 2024¹ and is completely distinct from the state-run primary to be held two days
25

26 _____
27 ¹ *See Nevada Republican Party, PRESS RELEASE: Nevada Republicans Will Conduct First in the West*
28 *Caucus on February 8, 2024, With Voter ID, Paper Ballots, And Results Released the Same Night,*
<https://nevadagop.org/press-release-nevada-republicans-will-conduct-first-in-the-west-caucus-on-february-8-2024-with-voter-id-paper-ballots-and-results-released-the-same-night/> (last accessed October

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1 earlier on February 6, 2024²), the NV GOP wishes to provide the Court with certain relevant
2 background about the caucus and its relation to the state-run primary (the latter of which is
3 formally referred to as the “Presidential Preference Primary” or “PPP” Election).

4 NRS 298.600 *et seq.* sets forth assorted statutory provisions governing the
5 administration of the PPP Election/state-run primary. *None* of these statutory provisions
6 explicitly mandate in any way whatsoever any of the following:

7 (1) The PPP Election is binding on major political parties such as the NV GOP (it is
8 in fact non-binding);

9 (2) Major political parties cannot choose to bind their delegates through alternative
10 means such as a caucus (they can in fact choose to bind their delegates through such
11 alternative means); and

12 (3) A major political party’s candidate for the general election needs to have
13 participated in the PPP Election to be eligible to appear on the general election ballot (a
14 major political party’s candidate can in fact appear on the general election ballot without
15 having previously participated in the PPP Election).

16 As a result of the foregoing, the Nevada Attorney General’s Office, representing the
17 State of Nevada and the Nevada Secretary of State in separate litigation against the NV GOP
18 regarding the PPP election, has taken the following positions in said case:

19 (1) “[T]he non-binding PPP election process does not in any way impact the NV
20 GOP’s ability to select its presidential nominees.” *See Exhibit A* hereto, at pg. 2.

21 (2) “The results of any PPP election are not binding on a major political party.” *See*
22 *id.* at pg. 4.

23
24
25 1, 2023); *see O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (“It is not
uncommon for courts to take judicial notice of factual information found on the world wide web.”).

26 ² *See 2024 Election Information*, NEVADA SECRETARY OF STATE,
27 <https://www.nvsos.gov/sos/elections/election-information/2024-election-information> (last accessed
28 Dec. 26, 2023).

1 (3) “The major political party’s state central and national committees are free to
2 afford whatever weight they choose to the results of the PPP election. Throughout the entire
3 PPP election process, no major political party is required to do anything or be bound by any
4 results.” *See id.*

5 As already noted above, and consistent with the foregoing, the NV GOP has made
6 abundantly clear that it will be affording the PPP Election *zero* weight/relevance with
7 respect to how the party binds its delegates to the national nominating convention. *See supra*
8 *n. 1*. Instead, the NV GOP will using a caucus to bind its delegates. *See id.*

9 **IV. LEGAL ARGUMENT**

10 **A. THE FIRST AMENDED COMPLAINT SHOULD BE DISMISSED**
11 **UNDER FRCP 12(B)(6)**

12 The Complaint references the NV GOP a mere three times in total:

13 (1) Defendant Nevada Republican Party is a political party organized under the
14 laws of the state of Nevada with a mailing address of 840 S. Rancho, Suite, 4-800, Las
15 Vegas, NV 89106. *See* ECF No. 21 at pgs. 8-9, ¶ 5.

16 (2) The Nevada Republican Party contractually committed to a state-run primary
17 election. In a conspiratorial effort criminally punishable under 18 U.S.C. § 241, the Nevada
18 Republican party scheduled an unlawful caucus to circumvent the will of Republican voters
19 in the state of Nevada and depriving Plaintiff and his supporters of their constitutionally
20 protected rights in violation of 42 U.S.C. § 1983. *See* ECF No. 21 at pg. 11, ¶ 16.

21 (3) Plaintiff John Anthony Castro asks this Court to issue an injunction
22 preventing the Nevada Republican Party from holdings its unlawful caucus that is
23 specifically designed to undermine the will of the voters and to neutralize the Nevada
24 Republican Presidential Primary. *See id* at ¶ 18.

25 These three paragraphs represent **the entirety** of the allegations – legal, factual or otherwise
26 – directed to the NV GOP in the Complaint. There is not even any further mention
27 whatsoever in the Complaint of the caucus that Plaintiff deems “unlawful” and subject to a
28 purported conspiracy.

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1 This complete dearth of factual actual allegations means that, as applied to the NV
 2 GOP, the Complaint merely alleges the type of barebones “labels and conclusions” that the
 3 United States Supreme Court has routinely deemed insufficient to survive a FRCP 12(b)(6)
 4 motion. *See, e.g., Twombly*, 550 U.S. at 555. Indeed, Plaintiff asks for an injunction against
 5 the NV GOP, seemingly on the basis that the caucus is unlawful under 18 U.S.C. § 241
 6 and/or 42 U.S.C. § 1983, but fails to provide any factual allegations that would suggest the
 7 NV GOP has actually violated these aforementioned statutory provisions. In essence,
 8 Plaintiff is alleging that he entitled to an injunction against the NV GOP “simply because,”
 9 while refusing to articulate the “how” or “why” with respect to this requested relief.
 10 Regarding 18 U.S.C. § 241, Plaintiff fails to even articulate *what* right or privilege under the
 11 Constitution is being abrogated, as well as *how* said right/privilege is purportedly being
 12 abrogated. And regarding 42 U.S.C. § 1983, Plaintiff fails to articular under the color of
 13 *which* “statute, ordinance, regulation, custom or usage” that the NV GOP is purportedly
 14 acting under – a glaring omission that is relevant since the caucus at issue is a private, party-
 15 run process and *not* the type of government-run process subject to a 1983 action.

16 Overall, Plaintiff has failed to sufficiently plead a cognizable legal cause of action
 17 against the NV GOP. As it is not this Court’s job to “connect the dots” for Plaintiff and
 18 supply/infer what is simply not alleged in the Complaint, dismissal under FRCP 12(b)(6) is
 19 entirely appropriate.

20 **B. THE NV GOP SEEKS A LIMITED JOINDER TO SECTION III(B)(4)**
 21 **OF PRESIDENT TRUMP’S RENEWED MOTION TO DISMISS**

22 Should this Court somehow overlook the glaring dearth of allegations against the NV
 23 GOP and not dismiss under FRCP 12(b)(6) (which it should not do), the NV GOP is further
 24 entitled to dismissal under the mootness doctrine – as President Trump and Mr. Castro are
 25 not even competing against each other in the state of Nevada (as the former is participating
 26 in the NV GOP-run caucus, and the latter is participating in the state-run primary), meaning
 27 the NV GOP has no reason to be a participant in this case at all given such mootness. With
 28 respect to this mootness argument, and as a matter of judicial economy, the NV GOP seeks a

1 limited joinder to Section III(B)(4) of President Trump’s renewed motion to dismiss (ECF
2 No. 24 at pgs. 14-15), which addresses this issue of mootness.

3 **V. CONCLUSION**

4 For all of the reasons detailed herein, the NV GOP respectfully request that the
5 instant motion and limited joinder be granted in its entirety, and the NV GOP be dismissed
6 from this case.

7 Dated this 26th day of December, 2023.

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9 By /s/ Brian R. Hardy

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6) AND FOR LIMITED JOINDER TO DEFENDANT DONALD JOHN TRUMP'S RENEWED MOTION TO DISMISS FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 26th day of December, 2023.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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