



1 **Factual Background**

2 Plaintiff Randal Dock and Defendant Melinda Young (“Melinda”) are the parents of  
3 Jasminh Young-Dock (“Jasminh”). (Compl. (Doc. #1) at 2.) Plaintiff and Melinda “have  
4 been in a hotly contested child custody case.” (Id. at 3 (emphasis omitted).) Plaintiff  
5 alleges that Melinda and Melinda’s current husband, Defendant Terrence Young, made  
6 false allegations that Plaintiff sexually abused Jasminh. (Id. at 1; Pl.’s Mot. to  
7 Amend/Clarify Claim (Doc. #10) [“Pl.’s Mot. to Amend”] at 2.)

8 Plaintiff attaches to his Complaint various exhibits, including Las Vegas  
9 Metropolitan Police Department (“LVMPD”) reports and the transcript of Child Protective  
10 Services caseworker Lisa Ford’s (“Ford”) interview of Melinda. Those documents indicate  
11 that Melinda contacted LVMPD on September 11, 2006 to report that Plaintiff sexually  
12 abused Jasminh between September 6 and September 9, 2006. (Compl., Ex. 1) On  
13 September 13, 2006, Ford interviewed Jasminh, who was three years old at the time, and  
14 Jasminh disclosed to Ford that Plaintiff had touched her in a manner that indicated sexual  
15 abuse. (Id.) In a separate interview on September 13, 2006, Melinda reported to Ford that  
16 Jasminh previously disclosed similar inappropriate contact to Melinda. (Id., Ex. 7.) In that  
17 interview, Ford told Melinda, “[w]ith the information that [Jasminh has] given me, we’re  
18 going [to] do a psyche plan . . . where [Plaintiff is] not going to have any contact [with  
19 Jasminh] until I say otherwise.” (Id. at 17-18.) Based on Defendants’ allegations of sexual  
20 abuse, Defendants obtained a temporary restraining order against Plaintiff, which prohibited  
21 Plaintiff from contacting Jasminh or Melinda. (Compl., Ex. 2.)

22 Plaintiff claims that Defendants’ allegations of sexual abuse resulted in the “false  
23 arrest,” “wrongful incarceration,” and “wrongful prosecution” of Plaintiff. (Compl. at 1.)  
24 Plaintiff further alleges that Defendants’ accusations wrongfully severed Plaintiff’s parental  
25 rights and that Plaintiff endured “emotional [and] mental anguish, [and] psychological  
26 distress.” (Id.) On January 10, 2008, Plaintiff was found not guilty of the underlying

1 criminal charge. (Id., Ex. 5.) On April 7, 2009, the Clark County District Court ordered  
2 that Plaintiff and Melinda shall maintain joint custody of Jasminh. (Id., Ex. 10.)

3 Plaintiff's Complaint alleges damages under the Fourteenth Amendment and  
4 42 U.S.C. § 1983. (Compl. at 1-2.) In his Complaint, Plaintiff alleges that Defendants  
5 falsely reported that Plaintiff sexually abused Jasminh, causing Plaintiff damages. (Id.)  
6 Defendants filed a motion to dismiss Plaintiff's Complaint because Plaintiff did not allege  
7 that Defendants acted under the color of law, and therefore Plaintiff failed to state a viable  
8 claim. (Def. Mot. to Dismiss Pl.'s Compl. at 2.) Plaintiff responded by filing his Motion to  
9 Amend.

10 In his Motion to Amend, Plaintiff seeks damages under 42 U.S.C. § 1983, 42 U.S.C.  
11 § 1985(2) and (3), and the Fourteenth Amendment to the United States Constitution. (Pl.'s  
12 Mot. to Amend at 1.) Plaintiff claims that Defendants violated § 1983, § 1985, and the  
13 Fourteenth Amendment by conspiring with a state caseworker to deprive Plaintiff of  
14 familial association with his daughter. (Id. at 4, 6.) Specifically, Plaintiff states, "Melinda  
15 in concert with CPS caseworker Ms. Ford advocated suspension to presiding custody judge,  
16 who was adjudicating original motion to terminate child support issue." (Id. at 4.) Plaintiff  
17 states that Defendants "were able [to] get the intervention of Clark County Dep't of Family  
18 Services . . . Child Protective Services . . . caseworker(s) to conspire, in concert with them,  
19 and testify before the court . . . to adjudicate favorabl[y] on their behalf." (Id. at 6.)

20 Plaintiff also states, "Melinda and Ms. Ford . . . engaged in conspiracy . . . where  
21 they acted in concert and instituted a safety assessment plan . . . two days after allegations  
22 began" and that "[a]t this early of a point no credible set of facts were established or  
23 investigated to justify implementation of a safety plan." (Id.) Plaintiff further contends that  
24 "[i]nstead of being without bias, Ms. Ford sided with Melinda" and "they sheparded the  
25 unfounded allegation(s) thr[ough] Juvenile court, TPO court, and criminal court . . . ." (Id.)  
26 Plaintiff states further that Ford "admitted that she never substantiate[d] the allegations

1 against” Plaintiff, and that “[s]he was cited on two occasions [on 10/20/2006 and  
2 10/18/2007] by the court violating [Plaintiff’s] civil and constitutional rights.” (Id.) (second  
3 brackets in original). In response to Plaintiff’s Motion to Amend, Defendants argue that  
4 Plaintiff still fails to state a claim upon which relief may be granted because Plaintiff fails to  
5 allege that Defendants acted under the color of law.

### 6 Discussion

7 Federal Rule of Civil Procedure 8(a)(2) requires a pleading to contain “a short and  
8 plain statement of the claim showing that the pleader is entitled to relief.” Such a statement  
9 is necessary to “give the defendant fair notice of what the . . . claim is and the grounds upon  
10 which it rests.” William O. Gilley Enters., Inc. v. Atl. Richfield Co., 588 F.3d 659, 667 (9th  
11 Cir. 2009) (per curiam) (quotation omitted). Dismissal of a claim under Rule 12(b)(6) for  
12 failure to state a claim is appropriate when the complaint fails to satisfy Rule 8(a). Bell Atl.  
13 Corp. v. Twombly, 550 U.S. 544, 555 (2007).

14 To survive a Rule 12(b)(6) motion, the plaintiff must do more than merely assert  
15 legal conclusions; rather, the complaint must contain sufficient factual allegations to  
16 provide plausible grounds for entitlement to relief. Id. at 555-56 (mere recitation of the  
17 legal elements of a cause of action is insufficient to survive a Rule 12(b)(6) motion). In  
18 deciding a Rule 12(b)(6) motion, the court generally looks to the complaint and documents  
19 attached thereto. Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542,  
20 1555 n.19 (9th Cir. 1990). Additionally, while “[a] document filed pro se is to be liberally  
21 construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent  
22 standards than formal pleadings drafted by lawyers,” “pro se litigants must follow the same  
23 rules of procedure that govern other litigants.” Erickson v. Pardus, 551 U.S. 89, 94 (2007)  
24 (internal quotations omitted); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

25 In Twombly, the plaintiffs alleged that defendant telecommunication service  
26 providers conspired to restrain trade, thereby inflating charges for telephone and internet

1 services. 550 U.S. at 549-50. The plaintiffs alleged that the defendants “entered into a  
2 contract, combination or conspiracy to prevent competitive entry in their  
3 respective . . . markets and . . . agreed not to compete with one another.” Id. at 551 (internal  
4 quotations omitted). The plaintiffs based their allegation on the defendants’ “parallel  
5 course of conduct . . . to prevent competition.” Id. The Court held that the plaintiffs’  
6 allegation of an unlawful “contract, combination or conspiracy” was a legal conclusion, and  
7 therefore, was not sufficient to survive a Rule 12(b)(6) motion. Id. at 564 & n.9.

8       Next, the Court addressed the plaintiffs’ allegation of parallel behavior. Id. at 567.  
9 “Acknowledging that parallel conduct was consistent with an unlawful agreement, the  
10 Court nevertheless concluded that it did not plausibly suggest an illicit accord because it  
11 was not only compatible with, but indeed was more likely explained by, lawful,  
12 unchoreographed free-market behavior.” Ashcroft v. Iqbal, --- U.S. ----, 129 S. Ct. 1937,  
13 1950 (2009) (citing Twombly, 550 U.S. at 567).

#### 14       **I. 42 U.S.C. § 1983**

15       Plaintiff raises a claim under § 1983, alleging that Defendants violated his  
16 constitutional right to “familial association with [his] daughter.” (Compl. at 4.) Plaintiff’s  
17 Complaint alleges Defendants falsely reported that Plaintiff sexually abused Jasminh, and  
18 that those false allegations in turn deprived Plaintiff of familial association with Jasminh.  
19 (Compl. at 4, 5, 10.) Defendants filed a motion to dismiss, arguing that Plaintiff’s claims  
20 fail because Plaintiff does not allege that Defendants acted under the color of law. (Def.  
21 Mot. to Dismiss Pl.’s Compl. at 2.) Plaintiff responded by filing his Motion to Amend.  
22 There, Plaintiff alleges that Defendants acted under the color of law because Defendants  
23 conspired with a Clark County caseworker to deny Plaintiff contact with Jasminh. (Pl.’s  
24 Mot. to Amend at 6.)

25       Title 42 U.S.C. § 1983 creates a private civil remedy for a plaintiff who has suffered  
26 from a violation of its constitutional rights at the hands of a person acting under the “color

1 of law.” “To state a claim under § 1983, a plaintiff must allege two essential elements: (1)  
2 that a right secured by the Constitution or laws of the United States was violated, and (2)  
3 that the alleged violation was committed by a person acting under the color of State law.”  
4 Long v. Cnty. of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

5 Defendants acted “under color of law” if they acted in the performance of official  
6 duties under any state, county, or municipal law. McDade v. West, 223 F.3d 1135, 1139-40  
7 (9th Cir. 2000). Courts generally apply one of the following four tests to determine whether  
8 the alleged violation of a private actor is attributable to the government: “(1) public  
9 function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental  
10 nexus.” Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003) (quotation omitted).

11 Because Plaintiff only alleges facts relevant to the joint action test, the Court needs  
12 to review only that test. “Under the joint action test, courts examine whether state officials  
13 and private parties have acted in concert in effecting a particular deprivation of  
14 constitutional rights.” Franklin v. Fox, 312 F.3d 423, 445 (9th Cir. 2002) (quotation  
15 omitted). “The test focuses on whether the state has ‘so far insinuated itself into a position  
16 of interdependence with [the private actor] that it must be recognized as a joint participant  
17 in the challenged activity.’” Id. (alteration in original) (quoting Gorenc v. Salt River  
18 Project Agric. Improvement & Power Dist., 869 F.2d 503, 507 (9th Cir. 1989)). “A  
19 plaintiff may demonstrate joint action by proving the existence of a conspiracy or by  
20 showing that the private party was a willful participant in joint action with the State or its  
21 agents.” Id. at 445 (quotation omitted). However, courts require a “substantial degree of  
22 cooperation” before imposing liability on private parties for joint action with government  
23 actors. Id.; see also Collins v. Womancare, 878 F.2d 1145, 1155 (9th Cir. 1989) (“merely  
24 complaining to the police does not convert a private party into a state actor”). Additionally,  
25 to establish liability for conspiracy between a government actor and a private actor, Plaintiff  
26 must show “an agreement or meeting of the minds to violate constitutional rights.” Crowe

1 v. Cnty. of San Diego, 608 F.3d 406, 440 (9th Cir. 2010) (quotation omitted).

2 Here, Plaintiff's Complaint is inadequate because it fails to allege that Defendants  
3 acted under the color of law altogether. Plaintiff's Motion to Amend also fails. In his  
4 Motion to Amend, Plaintiff has couched as a factual allegation the legal conclusion that  
5 Ford conspired with Defendants to deny Plaintiff custody of Jasminh. (Pl.'s Mot. to Amend  
6 at 6.) Other than this conclusory allegation, Plaintiff's only factual allegation is that Ford  
7 instituted "a safety assessment plan . . . two days after allegations [that Plaintiff sexually  
8 abused Jasminh] began" that denied Plaintiff contact with Jasminh, and that "[a]t this point  
9 no credible set of facts were established or investigated to justify implementation of a safety  
10 plan." (Id.) In other words, Plaintiff argues that Defendants falsely alleged that Plaintiff  
11 sexually abused Jasminh, Ford denied Plaintiff contact with Jasminh shortly thereafter, and  
12 the only explanation for Ford's conduct is that Defendants and Ford conspired to wrongly  
13 deny Plaintiff contact with Jasminh.

14 As was the case in Twombly, while the conduct of Ford is consistent with an  
15 unlawful agreement, the conduct does not plausibly suggest such an agreement because the  
16 same set of facts is more likely explained as Ford's reasonable reaction to Jasminh's  
17 disclosure that Plaintiff touched her in an inappropriate manner. Therefore, Plaintiff fails to  
18 state a valid claim under § 1983 in both his Complaint and his Motion to Amend.

19 **II. 42 U.S.C. § 1985(2)**

20 Title 42 U.S.C. § 1985 creates a private civil remedy for specific instances of  
21 conspiracy. In his motion to amend, Plaintiff seeks to assert a claim under § 1985(2),  
22 contending that Defendants "knowingly entered into a conspiracy on unfounded TPO  
23 allegations that undermined the original issue." (Pl.'s Mot. to Amend at 6.) Plaintiff states  
24 further that "Melinda and Ms. Ford . . . engaged in conspiracy pursuant to § 1985(2)(3) . . .  
25 ." (Id.) Section 1985(2) has two clauses. Kush v. Rutledge, 460 U.S. 719, 725 (1983).

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1 Plaintiff does not specify whether he alleges violations of the first or second clause of §  
2 1985(2). Regardless, Plaintiff’s claim fails under both clauses.

3 **A. First Clause of 42 U.S.C. § 1985(2)**

4 Plaintiff does not state a valid claim under the first clause of § 1985(2) because  
5 Plaintiff does not state that Defendants attempted to influence a federal court proceeding.  
6 The first clause of § 1985(2) provides relief “[i]f two or more persons . . . conspire  
7 to . . . influence the verdict, presentment, or indictment of any grand or petit juror in any  
8 [court of the United States] . . . .” Plaintiff contends that “. . . Melinda was caught coaching  
9 our daughter to alter the outcome of a court ordered psychological exam . . . .” and that “. . .  
10 Defendant and her current spouse have not been entirely candid with the Court and have  
11 admittedly misled the Court on prior occasions in order to achieve desired results.”  
12 (Compl. at 1; Pl.’s Mot. to Amend at 2.) While this sets forth an attempt by Defendants to  
13 influence a state court verdict, there is no violation of the first clause of § 1985(2) because  
14 that clause only applies to conduct that influences federal court proceedings. Portman v.  
15 Cnty. of Santa Clara, 995 F.2d 898, 909 (9th Cir. 1993).

16 **B. Second Clause of 42 U.S.C. § 1985(2)**

17 Plaintiff does not state a valid claim under the second clause of § 1985(2) because  
18 Plaintiff does not state that Defendants’ acts were motivated by class-based animus. The  
19 second clause of § 1985(2) provides relief “. . . if two or more persons conspire for the  
20 purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of  
21 justice in any State or Territory, with intent to deny to any citizen the equal protection of the  
22 laws . . . .” This clause protects against private conspiracies aimed at obstructing justice in  
23 state courts based on discriminatory animus. See Portman, 995 F.2d at 909. To survive a  
24 motion to dismiss, the plaintiff must plead facts sufficient to allege (1) obstruction of justice  
25 (2) motivated by class-based animus. Id.

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1 Here, Plaintiff asserts that Defendants “deprived [him] of his familial association  
2 with his daughter.” (Pl.’s Mot. to Amend at 2, 6.) He also vaguely asserts that allegations  
3 of child abuse and child neglect in child custody cases have a discriminatory effect on  
4 fathers. (Id. at 1-2 (stating “[t]his case in chief originates from child custody cases where  
5 the implementation of abuse/neglect allegations and temporary protective order (TPO)  
6 motions are highly effective in 1] achieving custody 2] maintaining custody and 3]  
7 overturning custody . . . . The accused (predominately fathers) have to endure multiple  
8 court cases and tens of thousands of dollars in costs . . .”).)

9 Plaintiff, however, fails to allege that Defendants were motivated by any class-based  
10 animus. Plaintiff’s pleadings indicate that Defendants’ motivation was to maintain sole  
11 custody of their child and to make sure that the court did not terminate child support.  
12 (Compl. at 5. (“Melinda’s ulterior motives to end the familial relationship between father  
13 and child [through] imprisonment and severed parental rights were exposed . . .”); (Pl.’s  
14 Mot. to Amend at 2, 3) (stating Plaintiff “filed a motion to terminate child support and that  
15 is where this issue arises”).) Because Plaintiff has not alleged that Defendants’ conduct  
16 “denied him access to state courts because he was a member of a protected class,” Plaintiff  
17 “has no cause of action for denial of access to state court.” Portman, 995 F.2d at 909  
18 (emphasis omitted).

### 19 **III. 42 U.S.C. § 1985(3)**

20 Plaintiff also seeks relief under 42 U.S.C. § 1985(3). (Pl.’s Mot. to Amend at 6.)  
21 However, Plaintiff does not bring a valid claim under § 1985(3) because Plaintiff does not  
22 assert that Defendants’ acts were motivated by class-based animus. As applicable here,  
23 § 1985(3) provides relief “[i]f two or more persons in any State or Territory conspire . . . for  
24 the purpose of depriving, either directly or indirectly, any person or class of persons of the  
25 equal protection of the laws, or of equal privileges and immunities under the laws . . . .”

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1           “To bring a cause of action successfully under § 1985(3), a plaintiff must allege and  
2 prove four elements: ‘(1) a conspiracy; (2) for the purpose of depriving, either directly or  
3 indirectly, any person or class of persons of the equal protection of the laws, or of equal  
4 privileges and immunities under the laws; and (3) an act in furtherance of this conspiracy;  
5 (4) whereby a person is either injured in his person or property or deprived of any right or  
6 privilege of a citizen of the United States.’” Sever v. Alaska Pulp Corp., 978 F.2d 1529,  
7 1536 (9th Cir. 1992) (quoting United Bhd. of Carpenters & Joiners of Am., Local 610 v.  
8 Scott, 463 U.S. 825, 828-29 (1983)); see also Thornton v. City of St. Helens, 425 F.3d  
9 1158, 1168 (9th Cir. 2005). To comply with the second element, the complaint must allege  
10 that the deprivation was motivated by “some racial, or perhaps other class-based,  
11 invidiously discriminatory animus.” Orin v. Barclay, 272 F.3d 1207, 1217 (9th Cir. 2001)  
12 (quotation and emphasis omitted). Section 1985(3) extends “beyond race only when the  
13 class in question can show that there has been a governmental determination that its  
14 members require and warrant special federal assistance in protecting their civil rights.”  
15 Sever, 978 F.2d at 1536 (quotation omitted). As discussed previously, Plaintiff fails to  
16 assert any class-based motivation behind Defendants’ acts. Therefore, the Court should will  
17 Plaintiff’s Motion to Amend.

#### 18           **IV. Fourteenth Amendment**

19           As is required in suits brought under § 1983, cases arising under the Fourteenth  
20 Amendment must be fairly attributable to the government. Kirtley, 326 F.3d at 1092 (citing  
21 Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982)); see also Single Moms, Inc. v. Montana  
22 Power Co., 331 F.3d 743, 747 (9th Cir. 2003) (listing, in a Fourteenth Amendment case, the  
23 same tests used in a § 1983 case to determine whether actions of a private actor are  
24 attributable to the government). Therefore, just as Plaintiff fails to state a claim upon which  
25 relief may be granted under § 1983 because Plaintiff does not sufficiently allege that

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1 Defendants' actions are fairly attributable to the government, Plaintiff fails to state a claim  
2 under the Fourteenth Amendment for the same reason.

3 **V. Leave to Amend**

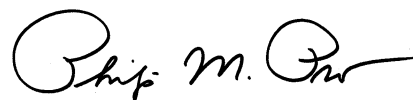
4 It is a "longstanding rule that [l]eave to amend should be granted if it appears at all  
5 possible that the plaintiff can correct the defect." Lopez v. Smith, 203 F.3d 1122, 1130 (9th  
6 Cir. 2000) (en banc) (quotation omitted). "The law is clear that before a district court may  
7 dismiss a pro se complaint for failure to state a claim, the court must provide the pro se  
8 litigant with notice of the deficiencies of his or her complaint and an opportunity to amend  
9 the complaint prior to dismissal." McGuckin v. Smith, 974 F.2d 1050, 1055 (9th Cir.  
10 1992), overruled on other grounds by WMX Tech., Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
11 Cir. 1997). Therefore, while it is unclear to the Court that Plaintiff will be able to state a  
12 viable claim under § 1983, § 1985, or the Fourteenth Amendment, the Court will grant  
13 Plaintiff leave to amend if he can do so.

14 **IT IS THEREFORE ORDERED** that Plaintiff Randal Dock's Motion to  
15 Amend/Clarify Claim Upon Which Relief Can Be Granted (Doc. #10) is **DENIED**.

16 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss Plaintiff's  
17 Compliant (Doc. #7) is **GRANTED** and that Plaintiff's Complaint is hereby **DISMISSED**  
18 without prejudice.

19 **IT IS FURTHER ORDERED** that Plaintiff shall have to and including **November**  
20 **22, 2010**, within which to file an Amended Compliant consistent with this Court's Order.

21  
22 DATED: October 22, 2010.

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PHILIP M. PRO  
25 United States District Judge  
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