

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DEMETRIO QUINTERO,  
Plaintiff,

v.

MARIPOSA COUNTY SCHOOL  
DISTRICT, KRISTIE DUNBAR, ELDON  
HENDERSON, JUDY EPPLER, JOE  
CARDOSO, KIMBERLY FORSYTHE-  
ALLISON, SUE CARTER, JAY FOWLER,  
DAVID NARANJO,  
Defendants.

) 1:11-cv-00839 AWI GSA

) **ORDER DISMISSING PLAINTIFF'S**  
) **COMPLAINT WITH LEAVE TO AMEND**

) (Document 2)

**INTRODUCTION**

Plaintiff filed a complaint<sup>1</sup> on May 23, 2011, naming the Mariposa County School District and the following individuals as Defendants: Kristie Dunbar, Eldon Henderson, Judy Eppler, Joe Cardoso, Kimberly Forsythe-Allison, Sue Carter, Jay Fowler and David Naranjo. (Doc. 2.)

---

<sup>1</sup>The document is not entitled "Complaint," however, because pro se pleadings are to be liberally construed, the Court interprets Plaintiff's filing to be a complaint.

1 On May 26, 2011, this Court issued an order granting Plaintiff’s application to proceed  
2 without payment of fees and advised Plaintiff that his complaint would be screened in due  
3 course. (Doc. 4.) For the reasons that follow, Plaintiff’s complaint will be dismissed, with leave  
4 to amend, because it fails to state cognizable claims.

## 5 DISCUSSION

### 6 A. *Screening Standard*

7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid,” the  
8 Court shall dismiss a case at any time if it determines that the action or appeal is frivolous or  
9 malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
10 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). *See also Omar v.*  
11 *Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *Wong v. Bell*, 642 F.2d 359, 361-62  
12 (9th Cir. 1981).

13 A complaint must contain “a short and plain statement of the claim showing that the  
14 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing  
17 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff  
18 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
19 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While factual allegations  
20 are accepted as true, legal conclusion are not. *Id.* at 1949.

21 If the Court determines that the complaint fails to state a claim, leave to amend should be  
22 granted to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v.*  
23 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Dismissal of a pro se complaint for failure to state a  
24 claim is proper only where it is obvious that the Plaintiff cannot prevail on the facts that he has  
25 alleged and that an opportunity to amend would be futile. *Lopez*, at 1128.

1 A claim is frivolous if it lacks an arguable basis either in law or fact. *Neitzke v. Williams*,  
2 490 U.S. 319, 324, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). A frivolous claim is based on an  
3 inarguable legal conclusion or a fanciful factual allegation. *Id.* A federal court may dismiss a  
4 claim as frivolous if it is based on an indisputably meritless legal theory or if the factual  
5 contentions are clearly baseless. *Id.*

6 The Court must accept as true the allegations of the complaint in question, *Hospital Bldg.*  
7 *Co. V. Trustees of Rex Hospital*, 425 U.S. 738, 740 (1976), construe the pro se pleadings liberally  
8 in the light most favorable to the Plaintiff, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000),  
9 and resolve all doubts in the Plaintiff's favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

10 A pleading may not simply allege a wrong has been committed and demand relief. The  
11 underlying requirement is that a pleading give "fair notice" of the claim being asserted and the  
12 "grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v.*  
13 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

14 **B. Rule 8(a)**

15 As Rule 8(a) of the Federal Rules of Civil Procedure states, a complaint must contain "a  
16 short and plain statement of the claim." The rule expresses the principle of notice-pleading,  
17 whereby the pleader need only give the opposing party fair notice of a claim. *Conley v. Gibson*,  
18 355 U.S. 41, 45-46 (1957). Rule 8(a) does not require an elaborate recitation of every fact a  
19 plaintiff may ultimately rely upon at trial, but only a statement sufficient to "give the defendant  
20 fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* at 47.

21 Plaintiff will be given an opportunity to amend his complaint to comply with Rule 8(a).  
22 As noted above, an elaborate recitation of the facts is not required.

23 //

24 //

25 //

26 //

27

28

1           **C.     Discussion**

2           Federal courts are courts of limited jurisdiction and lack inherent or general subject  
3 matter jurisdiction. Federal courts can adjudicate only those cases authorized by the United  
4 States Constitution and Congress. Generally, those cases involve diversity of citizenship or a  
5 federal question, or cases in which the United States is a party. *Kokkonen v. Guardian Life Ins.*  
6 *Co.*, 511 U.S. 375, 114 S.Ct. 1673, 1677 (1994); *Finley v. United States*, 490 U.S. 545, 109 S.Ct.  
7 2003, 2008 (1989). Federal courts are presumptively without jurisdiction over civil actions, and  
8 the burden to establish the contrary rests on the party asserting jurisdiction. *Kokkonen*, 511 U.S.  
9 at 377. Lack of subject matter jurisdiction is never waived and may be raised by the Court sua  
10 sponte. *Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir.  
11 1996). “Nothing is to be more jealously guarded by a court than its jurisdiction. Jurisdiction is  
12 what its power rests upon. Without jurisdiction it is nothing.” *In re Mooney*, 841 F.2d 1003,  
13 1006 (9th Cir. 1988).

14           Here, Plaintiff’s complaint lacks any specific reference to either a diversity of citizenship  
15 amongst the parties (and on the face, it would appear all parties are residents of California) or a  
16 claim arising under a federal question.

17           Plaintiff must clearly identify which federal constitutional and/or statutory rights he  
18 alleges have been violated by the Defendants with specificity. The Court cannot be expected to  
19 guess what claims Plaintiff intended to make against which defendants. As a result, Plaintiff has  
20 failed to establish that this Court has jurisdiction over his action.

21           The Court does note that Plaintiff indicated on the Civil Cover Sheet filed simultaneously  
22 with his complaint that the basis for this Court’s jurisdiction was that the United States  
23 government was the Plaintiff. (Doc. 1, § II [Basis of Jurisdiction].) That is clearly not the case.  
24 He also indicated that the parties were citizens of California (Doc. 1, § III [Citizenship of  
25 Principal Parties]). Thus, it appears this Court does not have diversity jurisdiction. Under  
26 section four entitled “Nature of Suit,” Plaintiff checked the box for “Civil Rights - 440 Other  
27  
28

1 Civil Rights.” (See Doc. 1.) Finally, Plaintiff referenced “Title 42 US Code section 1983” under  
2 section six entitled “Cause of Action.” (See Doc. 1.)

3 In light of the Civil Cover Sheet, and despite the lack of specifics in the complaint, the  
4 Court provides the following legal standards for Plaintiff’s consideration.

5 **1. Title 42 of the United States Code section 1983**

6 The Civil Rights Act provides as follows:

7 Every person who, under color of [state law] . . . subjects, or causes to be  
8 subjected, any citizen of the United States . . . to the deprivation of any rights,  
9 privileges, or immunities secured by the Constitution . . . shall be liable to the  
party injured in an action at law, suit in equity, or other proper proceeding for  
redress.

10 42 U.S.C. § 1983. Thus, to state a claim under Title 42 of the United States Code section 1983,<sup>2</sup>  
11 a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant  
12 deprived him of rights secured by the Constitution or federal law. *Long v. County of Los*  
13 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

14 Moreover, section 1983 requires that there be an actual connection or link between the  
15 actions of defendant and the deprivation allegedly suffered. *See Monell v. Department of Social*  
16 *Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit Court of  
17 Appeals has held that “a person ‘subjects’ another to deprivation of constitutional right, within  
18 the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative  
19 acts or omits to perform an act which he is legally required to do that causes the deprivation of  
20 which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

21 Here, Plaintiff’s complaint refers to several bid proposals he submitted to the Mariposa  
22 County School District (“MCSD”) in an effort to obtain contracts with the school district to  
23 provide officiating for its various sporting events. It appears that despite a number of proposals  
24 submitted since the year 2007, as well as a change in leadership during the time frame in  
25 question, MCSD has elected to award contracts to other firms or parties for those purposes.

---

26  
27 <sup>2</sup>All further statutory references are to Title 42 of the United States Code unless otherwise indicated.

1 Plaintiff does not allege that he entered into a contract with MCSD to provide officiating duties.  
2 (See Doc. 1 at 1-6.)

3 First, Plaintiff has failed to identify which Defendants acted under color of state law. The  
4 caption of Plaintiff's complaint includes MCSD and the names of eight other individuals.  
5 However, in the body of the complaint, only MCSD and Defendants Carter and Naranjo are  
6 identified. There is no indication whatsoever how the remaining Defendants are even implicated.  
7 Plaintiff cannot simply name various individuals as Defendants and not explain how those  
8 individuals acted under color of state law. Therefore, Plaintiff will be given an opportunity to  
9 amend his complaint accordingly.

10 Next, Plaintiff's complaint vaguely references racial discrimination, to wit: "I was left out  
11 for three years in a row . . . as a minority and Native American Indian" and "they wanted to keep  
12 it between the groups who are white." (See Doc. 2 at 7.) Again, his complaint fails to even  
13 identify what actions each Defendant allegedly took to deprive him of his civil rights. These  
14 references do not specifically reference *any* named Defendant.

15 Further, Plaintiff is advised that a local government unit may not be held liable for the  
16 acts of its employees under a respondeat superior theory. *Monell*, 436 U.S. at 691; *Davis v.*  
17 *Mason County*, 927 F.2d 1473, 1480 (9th Cir. 1991), *cert. denied*, 502 U.S. 899 (1991);  
18 *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989). Because liability of a  
19 local governmental unit must rest on its actions, not the actions of its employees, a plaintiff must  
20 go beyond the respondeat superior theory and demonstrate the alleged constitutional violation  
21 was the product of a policy or custom of the local governmental unit. *City of Canton, Ohio v.*  
22 *Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197 (1989); *Pembaur v. City of Cincinnati*, 475 U.S. 469,  
23 478-480, 106 S.Ct. 1292 (1986).

24 A "rule or regulation promulgated, adopted, or ratified by a local governmental entity's  
25 legislative body unquestionably satisfies *Monell's* policy requirements." *Thompson*, 885 F.2d at  
26 1443. Official policy may derive from "a decision properly made by a local governmental  
27

1 entity’s authorized decisionmaker – i.e., an official who possesses final authority to establish  
2 [local government] policy with respect to the [challenged] action.” *Thompson*, 885 F.2d at 1443  
3 (internal quotation marks omitted). “Only if a plaintiff shows that his injury resulted from a  
4 ‘permanent and well-settled’ practice may liability attach for injury resulting from a local  
5 government custom.” *Thompson*, 885 F.2d at 1444. “[O]fficial policy must be the moving force  
6 of the constitutional violation in order to establish the liability of a government body under §  
7 1983.” *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (internal quotation marks omitted); *see*  
8 *Rizzo*, 423 U.S. at 370-377 (general allegation of administrative negligence fails to state a  
9 constitutional claim cognizable under § 1983). Plaintiff must show that the statements alleged  
10 amount to a policy or custom of MCSD that deprived him of a civil right. A plaintiff must also  
11 show that “the defendants acted in a discriminatory manner and that the discrimination was  
12 intentional.” *See Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 740 (9th Cir. 2000).

13 Plaintiff is reminded that a pleading may not simply allege a wrong has been committed  
14 and demand relief. It must give “fair notice” of the claim being asserted and the “grounds upon  
15 which it rests.” *Conley v. Gibson*, 355 U.S. at 47-48; *Yamaguchi v. United States Department of*  
16 *Air Force*, 109 F.3d at 1481. Nevertheless, Plaintiff will be provided an opportunity to amend  
17 his complaint to state a cognizable claim or claims in accordance with the legal standard  
18 provided above.

## 19 **2. Title 42 of the United States Code section 1981**

20 If Plaintiff intended to present a claim for discrimination in a non-employment contract,  
21 he may do so. *Lindsey v. SLT Los Angeles, LLC*, 447 F.3d 1138, 1144 (9th Cir. 2006.) Plaintiff  
22 should address the following elements required for such a claim: (1) that he is a member of a  
23 racial minority; (2) that Defendant or Defendants intended to discriminate against him on the  
24 basis of race; and (3) that the discrimination concerned one or more of the activities enumerated  
25 in the statute (i.e., the right to make and enforce contracts).

1 If Plaintiff can assert such a claim - because as previously noted by the Court the  
2 complaint does not allege any contract was made - he should amend his complaint accordingly.

3 **3. Title 42 of the United States Code section 2000e-2(a)**

4 To the degree Plaintiff intended to present a claim for racial discrimination by an  
5 employer, Plaintiff is advised that such a claim may be brought pursuant to Title 42 of the United  
6 States Code section 2000e-2(a).

7 Although it does *not* appear from his complaint that Plaintiff was employed by MCSD,  
8 the Court provides the following information out of an abundance of caution.

9 In order to state a claim for racial discrimination in an employment situation pursuant to  
10 this statute, Plaintiff must show that (1) he belongs to a protected class, (2) he was qualified for  
11 the position, (3) he was subjected to an adverse employment action, and (4) similarly situated  
12 individuals were treated more favorably. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506,  
13 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993); *Aragon v. Republic Silver State Disposal, Inc.*, 292  
14 F.3d 654, 658 (9th Cir. 2002). As previously indicated, Plaintiff will be provided an opportunity  
15 to amend his complaint, if he can properly do so.

16 **D. Issues of Standing**

17 Next, the Court notes that at times Plaintiff's complaint asserts personal violations, yet at  
18 other times, it appears Plaintiff may be seeking relief for other individuals who have purportedly  
19 been wronged by MCSD. (Doc. 1 at 4-5 [references to other entities or individuals who were  
20 either not paid by the contracted officiating agency or who were also unsuccessful bidders].)

21 Standing requires that a plaintiff "show that [he] suffered an injury in fact, there was a  
22 causal connection between the injury and the conduct complained of, and the injury is likely to be  
23 redressed by a favorable decision." *Davis v. Yageo Corp.*, 481 F.3d 661, 673 (9th Cir. 2007)  
24 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992)).



1 In other words, Plaintiff cannot represent the legal interests of others as he has no  
2 standing to do so.<sup>3</sup>

3 **E. Miscellaneous**

4 **Self Representation**

5 Finally, the Court encourages Plaintiff to consider seeking the assistance of an attorney to  
6 represent his interests in this matter. Given the number of parties involved and the potential  
7 number of claims Plaintiff intends to assert, this matter will likely be complicated to litigate for a  
8 party not trained in the law. Nonetheless, Plaintiff is entitled to represent himself and may  
9 continue to do so if he so chooses.

10 Plaintiff is cautioned that “[a]ny individual representing himself or herself without an  
11 attorney is bound by the Federal Rules of Civil . . . Procedure, these [Local] Rules, and all other  
12 applicable law. All obligations placed on ‘counsel’ by these Rules apply to individuals appearing  
13 *in propria persona*. Failure to comply therewith may be grounds for dismissal, judgment by  
14 default, or any other sanction appropriate under these rules.” Local Rule 183.

15 **CONCLUSION**

16 For the reasons given above, Plaintiff’s complaint is DISMISSED WITH LEAVE TO  
17 AMEND. **Plaintiff’s first amended complaint is due within thirty (30) days of the date of**  
18 **service of this order. If Plaintiff fails to file a first amended complaint, the Court will**  
19 **recommend that this action be dismissed for failure to follow a court order.**

20 Plaintiff is cautioned that an amended complaint supercedes the original complaint, and  
21 must be “complete in itself without reference to the prior or superceded pleading.” *See Forsyth*  
22 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th  
23 Cir. 1987); Local Rule 220. Plaintiff is warned that “[a]ll causes of action alleged in an original

---

24  
25 <sup>3</sup> Although a non-attorney may appear in propria persona in his or her own behalf, that privilege is personal  
26 to him. *McShane v. United States*, 366 F.2d 286, 288 (9th Cir. 1966). "A litigant appearing in propria persona has  
27 no authority to represent anyone other than himself." *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962).  
Non-attorney litigants may not represent others. *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997);  
*Church of the New Testament v. U.S.*, 783 F.2d 771, 774 (9th Cir. 1986).

1 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567,  
2 citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981); accord *Forsyth*, 114  
3 F.3d at 1474.

4  
5 IT IS SO ORDERED.

6 **Dated: June 6, 2011**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28