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

DEMETRIO QUINTERO,	)	1:11-cv-00839 AWI GSA
Plaintiff,	)	<b>ORDER DISMISSING PLAINTIFF'S</b>
v.	)	<b>FIRST AMENDED COMPLAINT WITH</b>
MARIPOSA COUNTY SCHOOL	)	<b>LEAVE TO AMEND</b>
DISTRICT, et al.,	)	(Document 6)
Defendants.	)	

**INTRODUCTION**

Plaintiff filed a complaint 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.) The Court construed Plaintiff to assert claims arising under Title 42 of the United States Code sections 1981, 1983 and 2000e-2(a). On June 6, 2011, this Court issued an order dismissing Plaintiff's complaint, and granting him leave to amend. (Doc. 5)

1 On July 1, 2011, Plaintiff filed a First Amended Complaint (“FAC”).<sup>1</sup> In addition to the  
2 Defendants named in the original complaint,<sup>2</sup> Plaintiff has added Mariposa High School<sup>3</sup> and  
3 Vicki Bustos as named Defendants. The FAC asserts claims arising under Title 42 of the United  
4 States Code section 1981, 1983, 1985 and 1986. It also asserts state law claims arising under the  
5 California Business and Professions, Public Contract, and Education Codes. (Doc. 6.) Generally  
6 speaking, Plaintiff’s complaint alleges racially discriminatory attitudes and conduct by school  
7 officials that have purportedly prevented him from equal access to sports officiating contracts  
8 over a period of time. (See Doc. 6 at 7-13.)

9 **DISCUSSION<sup>4</sup>**

10 ***The FAC is Unsigned***

11 Plaintiff has failed to sign the FAC. Unsigned documents cannot be considered by the  
12 Court. See Fed. R. Civ. P. 11(a); Local Rule 131(b). Because Plaintiff will be given a final  
13 opportunity to amend his complaint as outlined herein, the Court elects not strike the entire  
14 pleading for Plaintiff’s failure to sign the document. However, Plaintiff is instructed that any  
15 amended complaint will not be considered unless it is signed.

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19 <sup>1</sup>This Court notes that in the caption of the FAC, Plaintiff is identified as “James M. Lanier,” rather than  
20 Demetrio A. Quintero. (Doc. 6 at 1.) Nevertheless, despite the fact Plaintiff appears to have employed another pro  
21 se party’s complaint as a template, it is obvious Plaintiff Demetrio A. Quintero is the Plaintiff in this action rather  
22 than James M. Lanier.

23 <sup>2</sup>It appears Sue Carter is no longer a named Defendant in the FAC.

24 <sup>3</sup>Plaintiff added Mariposa High School as a named Defendant in the FAC’s caption, but the entity is never  
25 referenced again in the FAC. The Court’s references to MCS D also pertain to Mariposa High School for purposes of  
26 this Order.

27 <sup>4</sup>While in the “Nature of the Case” portion of the FAC, found at page two, Plaintiff states the “action is also  
28 brought pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.) for exclusion from  
participation in, denial of benefits of, and discrimination under federally assisted programs on the basis of race,”  
Plaintiff failed to present a separate claim pursuant to Title 42 of the United States Code section 2000d, et seq.  
Merely referencing the statute in the preliminary or introductory portion of the FAC is insufficient.

1 ***Jurisdiction***

2 In the FAC, Plaintiff contends jurisdiction arising under Title 28 of the United States  
3 Code sections 1331 and 1343, and also under section 1346 “because the United States of  
4 America is a party.” (Doc. 6 at 3-4.)

5 Jurisdiction is proper pursuant to sections 1331 and 1343 of Title 28 of the United States  
6 Code because Plaintiff has asserted claims arising under the Constitution and laws of the United  
7 States. However, as Plaintiff was expressly and previously advised, the United States is *not* a  
8 party to this action. (See Doc. 5 at 4.) Therefore, jurisdiction does not arise under that provision.

9 ***Plaintiff’s Federal Claims***

10 **1. Section 1981 of Title 42 of the United States Code**

11 Plaintiff’s first claim, against all Defendants, asserts allegations arising under section  
12 1981 of Title 42 of the United States Code. (Doc. 6 at 13-17.)

13 Title 42 of the United States Code section 1981 provides as follows:

14 **Equal rights under the law**

15 **(a) Statement of equal rights**

16 All persons within the jurisdiction of the United States shall have the same  
17 right in every State and Territory to make and enforce contracts, to sue, be parties,  
18 give evidence and to the full and equal benefit of all laws and proceedings for the  
19 security of persons and property as is enjoyed by white citizens, and shall be  
20 subject to like punishment, pains, penalties, taxes, licenses, and exactions of every  
21 kind, and to no other.

18 **(b) “Make and enforce contracts” defined**

19 For purposes of this section the term “make and enforce contracts”  
20 includes the making, performance, modification, and termination of contracts, and  
21 the enjoyment of all benefits, privileges, terms, and conditions of the contractual  
22 relationship.

21 **(c) Protection against impairment**

22 The rights protected by this section are protected against impairment by  
nongovernmental discrimination and impairment under color of State law.

23 **2. Section 1983 of Title 42 of the United States Code**

24 Plaintiff asserts a civil rights claim against all Defendants. (Doc. 6 at 17.) The Civil  
25 Rights Act provides as follows:

26 Every person who, under color of [state law] . . . subjects, or causes to be  
27 subjected, any citizen of the United States . . . to the deprivation of any rights,

1 privileges, or immunities secured by the Constitution . . . shall be liable to the  
2 party injured in an action at law, suit in equity, or other proper proceeding for  
redress.

3 42 U.S.C. § 1983.

4 **3. Section 1985 of Title 42 of the United States Code**

5 Plaintiff's FAC asserts a third claim against Defendants MCSD, Bustos, Naranjo and  
6 Fowler. (Doc. 6 at 17-19.)

7 Title 42 of the United States Code section 1985(3) provides as follows:

8 **Depriving persons of rights or privileges**

9 If two or more persons in any State or Territory conspire . . . for the  
purpose of depriving, either directly or indirectly, any person or class of persons  
10 of the equal protection of the laws, or of equal privileges and immunities under  
the laws . . . in any case of conspiracy set forth in this section, if one or more  
11 persons engaged therein do, or cause to be done, any act in furtherance of the  
object of such conspiracy, whereby another is injured in his person or property, or  
12 deprived of having and exercising any right or privilege of a citizen of the United  
States, the party so injured or deprived may have an action of the recovery of  
13 damages occasioned by such injury or deprivation, against any one or more of the  
conspirators.

14 **4. Section 1986 of Title 42 of the United States Code**

15 The FAC asserts a fourth claim for relief against Defendants MCSD and its board  
16 members. (Doc. 6 at 19-20.)

17 Title 42 of the United States Code section 1986 states, in part:

18 Every person who, having knowledge that any of the wrongs conspired to  
be done, and mentioned in section 1985 of this title, are about to be committed,  
19 and having power to prevent or aid in preventing the commission of the same,  
neglects or refuses so to do, if such wrongful act be committed, shall be liable to  
20 the party injured . . . for all damages caused by such wrongful act, which such  
person by reasonable diligence could have prevented . . .

21  
22 "Section 1986 authorizes a remedy against state actors who have negligently failed to prevent a  
23 conspiracy that would be actionable under [section] 1985." *Cerrato v. San Francisco Cmty.*  
24 *Coll. Dist.*, 26 F.3d 968, 971 n.7 (9th Cir. 1994).

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1 **Eleventh Amendment Immunity Applies**

2 Plaintiff's FAC expressly asserts the MCSD board members "are being sued in their  
3 official capacities, and not as individuals . . ." (Doc. 6 at 6.)

4 The Eleventh Amendment of the United States Constitution provides that "[t]he Judicial  
5 power of the United States shall not be construed to extend to any suit in law or equity,  
6 commenced or prosecuted against one of the United States by Citizens of another State or by  
7 Citizens or Subjects of any Foreign State." The Eleventh Amendment prohibits federal courts  
8 from hearing suits brought against a state by its own citizens or citizens of other states. *Brooks v.*  
9 *Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991). "[A]bsent waiver by  
10 the State or valid congressional override, the Eleventh Amendment bars a damages action against  
11 a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). "Although the exact  
12 limits of the Eleventh Amendment are difficult to determine, it is clear that the Eleventh  
13 Amendment prohibits actions for damages against state agencies when Congress has failed to  
14 express a contrary intent." *Belanger v. Madera Unified School Dist.*, 963 F.2d 248, 250 (9th Cir.  
15 1992). In *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988),  
16 the Ninth Circuit set out a five-factor test to determine whether an agency is a state agency for  
17 Eleventh Amendment purposes and has repeatedly held that, because of the funding relationship  
18 that exists between California schools and the State of California, public school districts and their  
19 subdivisions are, in fact, state agencies for Eleventh Amendment purposes. *See, e.g., id.*;  
20 *Belanger*, 963 F.2d at 254-255; *Jackson v. Hayakawa*, 682 F.2d 1344, 1350-1351 (9th Cir. 1982)  
21 ("trustees are an arm of the state that can claim Eleventh Amendment immunity").

22 Further, the United States Supreme Court has held that Title 42 of the United States Code  
23 section 1983 "was not intended to abrogate a State's Eleventh Amendment immunity." *Kentucky*  
24 *v. Graham*, 473 U.S. at 169, n.17. Although it could in theory abrogate its own Eleventh  
25 Amendment immunity for purposes of such suits, California has not done so. *See Atascadero*  
26 *State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985) (holding California Constitution does not  
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1 waive immunity from federal court jurisdiction); *Dittman v. State of California*, 191 F.3d 1020,  
2 1025-1026 (9th Cir. 1999). The Ninth Circuit has applied Eleventh Amendment immunity in a  
3 similar manner to claims against state agencies pursuant to Title 42 of the United States Code  
4 sections 1981 and 1985. *See Mitchell v. Los Angeles Community College Dist.*, 861 F.2d at 201;  
5 *see also Cerrato v. San Francisco Community College Dist.*, 26 F.3d 968, 975 (9th Cir. 1994)  
6 (Eleventh Amendment immunity bars claimed against state agency pursuant to §§ 1985 & 1986).

7 MCSD is a public school district in California, and thus, it is an arm of the state, and is  
8 shielded from suit in federal court under the Eleventh Amendment, as are its board members.  
9 Therefore, Plaintiff cannot state cognizable claims pursuant to sections 1981, 1983, 1985  
10 and 1986 of Title 42 of the United State Code against the MCSD board members in their official  
11 capacities because such claims are barred by the Eleventh Amendment.

12 Because pro se plaintiffs must “be given an opportunity to amend their complaint unless  
13 it is absolutely clear that the deficiencies in the complaint could not be cured by amendment”  
14 (*Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984)), Plaintiff will be given an  
15 opportunity amend his complaint to name the MCSD board members in their individual  
16 capacities, if he so chooses.

### 17 ***Pendent State Law Claims***

18 Plaintiff’s FAC asserts a fifth claim, which is variously comprised of Plaintiff’s  
19 contentions that Defendants MCSD and its board members violated the California Education  
20 Code section 220, the California Public Contract Code sections 100 through 102, and the  
21 California Business and Professions Code section 17200, *et seq.* (Doc. 6 at 20-22.)

#### 22 **1. California Education Code section 220**

23 Plaintiff contends MCSD is a public school district subject to the statute, and that its  
24 board members have “the duty and obligation to conduct” its business. He contends the board  
25 members breached their duties by “waiving all their rights to obtain a contract, by awarding the  
26 2007 officiating contract to NCOA . . . [and] CCOG . . . , and by failing to investigate and correct  
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1 race discrimination” as alleged by Plaintiff from 2007 through 2010. (Doc. 6 at 20-21.)

2 California Education Code section 220 states as follows:

3 No person shall be subjected to discrimination on the basis of disability,  
4 gender, nationality, race or ethnicity, religion, sexual orientation, or any other  
5 characteristic that is contained in the definition of hate crimes set forth in Section  
6 422.55 of the Penal Code in any program or activity conducted by an educational  
7 institution that receives, or benefits from, state financial assistance or enrolls  
8 pupils who receive state student financial aid.

## 7 **2. California Public Contract Code sections 100-102**

8 Plaintiff asserts that MCSD and its board members have “a duty and obligation to  
9 conduct the business of MCSD according to the [California] Public Contract Code,” and that the  
10 board members breached their duty “by allowing the 2007[ through 2011] RFP to contain  
11 restrictive provisions requiring bidders to waive all rights to obtain a contract, by awarding [those  
12 contracts] to . . . NCOA . . . [and] CCOG and by failing to investigate and correct the race  
13 discrimination acts complained of by Plaintiff . . .” (Doc. 6 at 21.)

14 The California Public Contract Code provides, in relevant part, as follows:

15 The legislature finds and declares that placing all public contract law in  
16 one code will make the law clearer and easier to find. Further, it is the intent of  
17 the Legislature in enacting this code to achieve the following objectives:

- 18 (a) To clarify the law with respect to competitive bidding requirements.
- 19 (b) To ensure full compliance with competitive bidding statutes as a means  
20 of protecting the public from misuse of public funds.
- 21 (c) To provide all qualified bidders with a fair opportunity to enter the  
22 bidding process, thereby stimulating competition in a manner conducive to sound  
23 fiscal practices.
- 24 (d) To eliminate favoritism, fraud, and corruption in the awarding of  
25 public contracts.

26 Cal. Pub. Con. Code, § 100. “California public contract law should be efficient and the product  
27 of the best of modern practice and research.” Cal. Pub. Con. Code, § 101. And,

28 [t]o encourage competition for public contracts and to aid public officials in the  
efficient administration of public contracting, to the maximum extent possible, for  
similar work performed for similar agencies, California's public contract law  
should be uniform.

Cal. Pub. Con. Code, § 102.





1 [B]oth the [United States] Supreme Court and the Ninth Circuit have made  
2 clear that the rationale for Eleventh Amendment immunity applies with particular  
3 force to state law claims. *See Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320,  
4 1326 (9th Cir. 1991) (dismissing state law claims against state defendants on  
5 Eleventh Amendment grounds and stating that “it is difficult to think of a greater  
6 intrusion on state sovereignty than when federal courts instruct state officials on  
7 how to conform their conduct to state law” (quoting *Pennhurst State School &  
8 Hospital v. Halderman*, 465 U.S. 89 (1984)).

9 *O.H. v. Oakland Unified School District*, 2000 WL 33376299 (N.D. Cal. Apr. 17, 2000) at \*4.

10 Thus, for the same reasons discussed above with regard to Plaintiff’s four federal claims,  
11 as drafted the FAC’s fifth claim (comprised of three state law claims) is also barred by the  
12 Eleventh Amendment against MCSD and its board members. Because this Court will provide  
13 Plaintiff with a final opportunity to amend his complaint with regard to the four federal claims,  
14 Plaintiff will also be given a final opportunity to amend his complaint regarding this fifth claim,  
15 should he elect to do so.

16 Further, Plaintiff shall keep in mind that supplemental jurisdiction is a doctrine of  
17 discretion, not of right. *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 172  
18 (1997). The Court may decline to exercise supplemental jurisdiction over a claim if it raises a  
19 novel or complex issue of state law, substantially predominated over the claim or claims over  
20 which the district court has original jurisdiction, the district court has dismissed all claims over  
21 which it had original jurisdiction, or, in exceptional circumstances, there are other compelling  
22 reasons for declining jurisdiction. 28 U.S.C. § 1367(c). It is within the discretion of the district  
23 court, once no federal causes of action remain, to determine whether to dismiss the remaining  
24 claims. 28 U.S.C. § 1367(c)(3); *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966);  
25 *Nishimoto v. Federman-Bachrach & Associates*, 903 F.2d 709, 715 (9th Cir. 1990).

26 Thus, unless Plaintiff’s second amended complaint states cognizable federal causes of  
27 action, it is likely that this court would recommend that the district court decline to exercise  
28 supplemental jurisdiction over any remaining state claims.

1 **CONCLUSION AND ORDER**

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

6 Again, Plaintiff is cautioned that an amended complaint supercedes the original  
7 complaint, and must be “complete in itself without reference to the prior or superceded  
8 pleading.” *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*,  
9 814 F.2d 565, 567 (9th Cir. 1987); Local Rule 220. Plaintiff is warned that “[a]ll causes of  
10 action alleged in an original complaint which are not alleged in an amended complaint are  
11 waived.” *King*, 814 F.2d at 567, citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th  
12 Cir. 1981); *accord Forsyth*, 114 F.3d at 1474.

13  
14 IT IS SO ORDERED.

15 **Dated: October 26, 2011**

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