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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES M. LANIER,
Plaintiff,
v.
FRESNO UNIFIED SCHOOL DISTRICT;
DOES 1 through 18,
Defendants.

) 1: 11-cv-01522 - LJO - BAM
)
) **FINDINGS AND RECOMMENDATIONS**
) **REGARDING PLAINTIFF’S**
) **COMPLAINT**
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I. INTRODUCTION

On September 9, 2011, plaintiff James M. Lanier (“Plaintiff”) filed a complaint in this Court against the Fresno Unified School District (“FUSD” or “Defendant”). Plaintiff alleges he was discriminated against on the basis of race when Defendant refused to award him a sports officiating contract in violation of Title VI of the 1964 Civil Rights Act, specifically, 42 U.S.C. § 2000d. (Doc. 1.) Plaintiff additionally alleges Defendant’s discriminatory practices violate California Education Code § 220 *et seq.* (Doc. 1.)¹

¹ At the outset of Plaintiff’s Complaint, Plaintiff states that “[t]his suit is instituted to secure protection and redress deprivation of rights secured by 42 U.S.C. §§ 1981, 1983, 1985 and 1986.” (Pl.’s Compl., ¶ 1, Doc. 1.) Plaintiff, however, does not state these grounds for relief as one of her causes of action. Rather, these statutes are

1 **II. DISCUSSION**

2 **A. Screening Standard**

3 Pursuant to Title 28 of the United States Code Section 1915(e)(2), the Court has reviewed
4 the complaint for sufficiency to state a claim. The court must dismiss a complaint or portion
5 thereof if it determines that the action is legally “frivolous or malicious,” fails to state a claim
6 upon which relief may be granted, or seeks monetary relief from a defendant who is immune
7 from such relief. 28 U.S.C. § 1915(e)(2). In reviewing a complaint under this standard, the
8 Court must accept as true the allegations of the complaint in question (*Hospital Bldg. Co. v.*
9 *Trustees of Rex Hospital*, 425 U.S. 738, 740 (1976)), construe the pro se pleadings liberally in
10 the light most favorable to the Plaintiff (*Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)),
11 and resolve all doubts in the Plaintiff’s favor (*Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969)).

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

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

24 _____
25 merely mentioned, but are not referenced again throughout the remainder of Plaintiff’s Complaint. Similarly, without
26 pleading the following claims for relief, Plaintiff makes a passing reference to potential violations of Cal. Bus. &
27 Prof. Code §17200, intentional interference with prospective economic advantage and for negligence. However,
because pro se complaints are to be construed liberally, the court will address the viability of these claims as though
they were properly pled.

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

6 **B. Jurisdiction**

7 In the complaint, Plaintiff contends jurisdiction arises under Title 28 of the United States
8 Code sections 1331 and 1343, and also under section 1346 “because the United States of
9 America is a party.” (Pl.’s Compl., ¶¶ 2-3, Doc. 1.)

10 Jurisdiction is proper pursuant to sections 1331 and 1343 of Title 28 of the United States
11 Code because Plaintiff has asserted claims arising under the Constitution and laws of the United
12 States. However, the United States is not a party to this action. Therefore, jurisdiction does not
13 arise under section 1346.

14 **C. Plaintiff’s Federal Claim Under Title VI**

15 Under Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d provides that:

16 No person in the United States shall, on the ground of race, color, or national
17 origin, be excluded from participation in, be denied the benefits of, or be subject
18 to discrimination under any program or activity receiving Federal financial
19 assistance.

20 Accordingly, “[t]he two elements for establishing a cause of action pursuant to Title VI are (1)
21 that the entity involved is engaging in racial or national origin discrimination and (2) the entity
22 involved is receiving federal financial assistance.” *Jackson v. Conway*, 746 F.Supp. 896, 903
23 (E.D. Missouri 1979). Notably, Congress has abrogated States’ sovereign immunity for
24 “violations [of Title VI] that occur in whole or in part after October 12, 1986.” 42 U.S.C. §
25 2000d7(b) (Supp. 1987).

26 Plaintiff alleges Defendant is a recipient of federal funds. (Pl.’s Compl., ¶¶ 13, 14, Doc.
27 1.) (“[Defendant] is a recipient of federal funds for its athletic programs for which it uses sports
28 officiating service contracts . . . [Defendant] received the aforesaid federal funds from the United

1 universities are “dependent instrumentalities of the state”); *Mitchell v. Los Angeles Community*
2 *College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (noting that, because of the funding relationship
3 that exists between California schools and the State of California, public school districts and their
4 subdivisions are state agencies for Eleventh Amendment purposes); *Slivkoff v. California State*
5 *Univ. And Colleges*, 69 Cal. App. 3d 394, 400 (1977).

6 **1. Plaintiff’s Title 42 Claims**

7 Plaintiff’s Complaint makes a passing reference to potential violations of 42 U.S.C. §§
8 1981, 1983, 1985 and 1986.² The United States Supreme Court has held that Title 42 of the
9 United States Code section 1983 “was not intended to abrogate a State’s Eleventh Amendment
10 immunity.” *Kentucky v. Graham*, 473 U.S. at 169, n.17. Although it could in theory abrogate its
11 own Eleventh Amendment immunity for purposes of such suits, California has not done so. *See*
12 *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985) (holding California Constitution
13 does not waive immunity from federal court jurisdiction); *Dittman v. State of California*, 191
14 F.3d 1020, 1025-1026 (9th Cir. 1999). Under Ninth Circuit and California law, a school district
15 is “a state entity that possesses eleventh amendment immunity from . . . section 1981, 1983 and
16 1985 claims in damages and for injunctive relief.” *Mitchell v. Los Angeles Community College*
17 *Dist.*, 861 F.2d 198, 201 (9th Cir. 1988); *see also Cerrato v. San Francisco Community College*
18 *Dist.*, 26 F.3d 968, 975 (9th Cir. 1994) (Eleventh Amendment immunity bars claimed against
19 state agency pursuant to §§ 1985 & 1986).

20 FUSD is a public school district in California, thus, it is an arm of the state, and is
21 shielded from suit in federal court under the Eleventh Amendment, as are its board members.³
22 Therefore, this Court recommends that Plaintiff’s claims pursuant to sections 1981, 1983, 1985
23 and 1986 of Title 42 of the United State Code be dismissed as barred by the Eleventh

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25 ² Plaintiff’s Complaint, however, fails to plead these claims or allege facts which would support such
26 claims.

27 ³ Although CUSD’s board members are not individually named, the Complaint does reference “CUSD board
28 members” and other persons not named as defendants.

1 Amendment.

2 **2. Plaintiff's State Law Claims**

3 Plaintiff alleges Defendant's discriminatory practices violate California Education Code §
4 220 *et seq.* Plaintiff additionally makes a passing reference to potential claims for negligence,
5 intentional interference with prospective economic advantage and for violations of Cal. Bus. &
6 Prof. Code §17200.⁴

7 Discussed above, *supra*, Section II.D., FUSD is an arm of the state and is therefore
8 shielded from suit in federal court pursuant to the Eleventh Amendment. Therefore, it is
9 recommended Plaintiff's state law claims be dismissed without leave to amend as amendment
10 would be futile

11 **RECOMMENDATIONS**

12 For the reasons set forth above, the Court RECOMMENDS that the following causes of
13 action be DISMISSED WITHOUT LEAVE TO AMEND against Defendant FUSD:

14 1. Plaintiff's allegations against Defendant FUSD pertaining to sections 1981, 1983,
15 1985 and 1986 of Title 42 of the United States Code; and

16 2. Plaintiff's state law claims against Defendant FUSD arising under the California
17 Education Code, Cal. Bus. & Prof. Code §17200, as well as Plaintiff's claims for negligence and
18 intentional interference with prospective economic advantage.

19 The Court FURTHER RECOMMENDS that Plaintiff's remaining claim against FUSD
20 arising under section 2000d of Title 28 of the United States Code may proceed as this claim is
21 sufficiently pled for purposes of pro se screening. These findings and recommendations are
22 submitted to District Judge Lawrence J. O'Neill pursuant to the provisions of Title 28 of the
23 United States Code section 636(b)(1). Plaintiff may file written objections with the Court no later
24 than thirty (30) days from the date of these findings. The document should be captioned

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26 ⁴ Plaintiff's Complaint, however, fails to plead these claims or allege facts which would support such
27 claims.

1 “Objections to Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that
2 failure to file objections within the specified time may waive the right to appeal the District
3 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In the event Plaintiff does not
4 object, his case will proceed only as to the federal claim identified above.

5 IT IS SO ORDERED.

6 **Dated: January 3, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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