

1 the Court determines that the complaint fails to state a claim, it must be dismissed. *Id.* Leave to
2 amend may be granted to the extent that the deficiencies of the complaint can be cured by
3 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

4 A complaint must contain “a short and plain statement of the claim showing that the
5 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
6 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
8 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set
9 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
10 *Ashcroft v. Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
11 are accepted as true, legal conclusion are not. *Id.* at 678.

12 In determining whether a complaint states an actionable claim, the Court must accept the
13 allegations in the complaint as true, *Hospital Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
14 (1976), construe pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
15 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor. *Jenkins*
16 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of pro se plaintiffs “must be held to less
17 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342
18 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after
19 *Iqbal*).

20 **III. PLAINTIFF’S ALLEGATIONS**

21 The Complaint explains that Plaintiff is an African-American male who owns and
22 operates a company called the “SportsTime Officials Association” (“SportsTime”). SportsTime
23 provides officiating services for school sports activities. In July 2013, Plaintiff sought to obtain
24 subcontracting work for SportsTime from the San Joaquin Valley Officials Association
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1 (“SJVOA”), a nonprofit organization which had contracted with Fresno County to provide
2 officiating services for its school sports programs. Plaintiff suggested to Defendants that they did
3 not have a history of retaining African-American members and that retaining him would help to
4 alleviate that lack of diversity. Plaintiff alleges that he was the most qualified candidate for the
5 work for which he applied.
6

7 In August 2013, Plaintiff was informed that his proposal had been rejected by SJVOA’s
8 Board of Directors. Plaintiff alleges that he was the victim of disparate treatment because of his
9 race and points to SJVOA’s historical lack of African-American membership and subcontractors
10 as evidence. He also suggests that a “glass ceiling” exists within SJVOA with respect to African-
11 American contractors with SJVOA, although he does not specify particular practices to support
12 this conclusion.
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14 **IV. DISCUSSION**

15 **a. 42 U.S.C. § 1981**

16 Section 1981 is intended to “forbid all racial discrimination in the making of private as
17 well as public contracts.” *Martinez v. Oakland Scavenger Co.*, 680 F.Supp. 1377, 1388 (N.D. Cal.
18 1987). A claim under § 1981 thus requires a plaintiff to “show intentional discrimination on
19 account of race.” *Evans v. McKay*, 869 F.2d 1341, 1344 (9th Cir. 1989). Section 1981 can only be
20 violated by purposeful discrimination. *General Bld. Contractor’s Ass’n, Inc. v. Pennsylvania*, 458
21 U.S. 375, 391 (1982); *Evans*, 869 F.2d at 1344. “[O]vert acts coupled with some direct evidence
22 that the defendants’ conduct was motivated by racial animus” are sufficient to survive dismissal
23 at the pleading stage of litigation. *Evans*, 869 F.2d at 1345, *citing Usher v. City of Los Angeles*,
24 828 F.2d 556, 561 (9th Cir. 1987).
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26 Plaintiff explains that he is African-American and applied to enter into a private contract
27 with SJVOA. (Complaint ¶ 15(e), ECF No. 1.) He alleges that Defendants have a history of
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1 excluding African-Americans from the SJVOA Board of Directors and from contracts with
2 SJVOA. (Complaint ¶¶ 15(d), (g), ECF No. 1.) He also alleges that he was the most qualified
3 candidate to apply for the contract, although he does not allege that the contract was eventually
4 awarded to a non-African-American. (Complaint ¶ 15(f), ECF No. 1.)

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6 Construing the Complaint liberally for the purposes of a pro se screening, Plaintiff has
7 sufficiently stated a claim against Defendants.

8 **b. 42 U.S.C. § 1983**

9 To state a claim under § 1983, a plaintiff “must allege a violation of a right secured by the
10 Constitution and laws of the United States, and must show that the alleged deprivation was
11 committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988).
12 Plaintiff must demonstrate that each defendant personally participated in the deprivation of his
13 rights. *Iqbal*, 556 U.S. at 677; *Simmons v. Navajo Cnty., Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir.
14 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009). The complaint must allege
15 that every defendant also acted with the requisite state of mind to violate underlying
16 constitutional provision. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1070 (9th Cir. 2012).

17
18 Plaintiff does not explain which of his rights was violated by Defendants’ actions that give
19 rise to a § 1983 claim. *Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995) (“In a section
20 1983 action, the plaintiff must establish that Congress created an enforceable statutory right”).
21 However, the Complaint fails because the private parties named in the Complaint were not acting
22 under color of state law. “[P]rivate parties are not generally acting under color of state law,” and
23 the mere allegation that a private party was acting under color of state law does not make it so.
24 *Price v. State of Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991); *Gauvin v. Trombatore*, 682
25 F.Supp. 1067, 1071 (N.D. Cal. 1988) (“The relationship between the state and the private actor
26 which establishes state action must be pled in some detail”). The Complaint explains that
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1 Defendants are a private business that contracts with Fresno County to provide sports officiating
2 services and individuals associated with that business. A contractual relationship with a state
3 actor does not convert a private business into a state actor itself, however. *Gauvin*, 682 F.Supp. at
4 1071 (private defendants who contracted with CalTrans not state actors under § 1983).

5
6 Leave to amend cannot remedy this deficiency. The allegations that Plaintiff has already
7 made in the Complaint make clear that Defendants are not state entities. More factual allegations
8 will not allow Plaintiff to resolve the inconsistencies he has already established in the Complaint.

9 **c. 42 U.S.C. § 2000d**

10 Section 2000d of Title 42 of the United States Code provides that:

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12 No person in the United States shall, on the ground of race, color, or national
13 origin, be excluded from participation in, be denied the benefits of, or be
14 subjected to discrimination under any program or activity receiving Federal
15 financial assistance.

16 To state a claim under this statute, “a plaintiff need only allege that (1) the entity involved
17 is engaging in racial discrimination; and (2) the entity involved is receiving federal financial
18 assistance.” *Clarke v. Upton*, 703 F.Supp.2d 1037, 1050 (E.D. Cal. 2010), *quoting Epileptic*
19 *Found. v. City and County of Maui*, 300 F.Supp.2d 1003, 1011 (D. Haw. 2003). Plaintiff has
20 pleaded both of these elements. He alleges that he was not retained to provide services for
21 Defendants because they had a historical practice against working with any “African-American
22 contractor seeking to subcontract or do business” with SJVOA. (Complaint ¶ 15(i), ECF No. 1.)
23 He further contends that SJVOA was a recipient of federal financial assistance, albeit indirectly,
24 through funds received by Fresno County for its school athletic programs.¹ (Complaint ¶ 21, ECF
25 No. 1.) Construing Plaintiff’s Complaint liberally (as the Court is required to do), Plaintiff has

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27 ¹ An entity need not receive federal funds *directly* to fall within the definition of “receiving Federal financial
28 assistance,” although merely benefitting from federal funds is not enough. *NCAA v. Smith*, 525 U.S. 459, 468 (1999)
 (“Entities that receive federal assistance, whether directly or through an intermediary, are recipients within the
 meaning of Title IX; entities that benefit economically from federal assistance are not”).

1 sufficiently stated a claim under 42 U.S.C. § 2000d.

2 **V. RECOMMENDATION**

3 For the reasons set forth above, the Court RECOMMENDS the following:

- 4 1. Plaintiff's claim against Defendants under 42 U.S.C. § 1981 (First Cause of Action) be
5 allowed to proceed;
- 6 2. Plaintiff's claim against Defendants under 42 U.S.C. § 2000d (Third Cause of Action)
7 be allowed to proceed; and
- 8 3. Plaintiff's claim against Defendants under 42 U.S.C. § 1983 (Second Cause of Action)
9 be DISMISSED WITH PREJUDICE.
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11 These findings and recommendations will be submitted to the district judge assigned to
12 this case pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
13 being served with these Findings and Recommendations, Plaintiff may file written objections
14 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings
15 and Recommendations." Plaintiff is advised that failure to file objections within the specified
16 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th
17 Cir. 1991).
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21 IT IS SO ORDERED.

22 Dated: June 3, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE