

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**

RICHARD WILLIFORD,)	Case No.: 1:15-cv-00653 - KJM - JLT
)	
Plaintiff,)	ORDER GRANTING DEFENDANT’S MOTION
)	TO DISMISS AND DISMISSING THE
v.)	COMPLAINT WITH LEAVE TO AMEND
)	
ZACK SCRIVNER,)	(Doc. 10)
)	
Defendant.)	
)	
)	

Defendant Zack Scrivner seeks dismissal the complaint filed by Richard Williford pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 10.) Because Plaintiff fails to allege facts sufficient for the Court to determine that it has jurisdiction in this matter and Plaintiff fails to identify a claim or state facts sufficient for the Court to determine he has suffered harm, Defendant’s motion to dismiss is **GRANTED**.

I. Factual and Procedural History

In his complaint, Plaintiff alleges Defendant “intruded into the operations of Mountain Meadows Community Services District” by removing a seated Board Member of the District and appointing a new Board Member. (*Id.* at 1-2.) According to Plaintiff, this has action has caused the “District financial harm without cause,” by affecting “employees (sic) wages, taxes, insurances and its obligations to long term contracts, debts, and every day operating costs.” (*Id.* at 2.)

///

1 **II. Motion to Dismiss Pursuant to Rule 12(b)(1)**

2 **A. Legal Standard**

3 The district court is a court of limited jurisdiction, and is empowered only to hear disputes
4 “authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
5 (1994); *Exxon Mobil Corp v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The federal courts are
6 “presumed to lack jurisdiction in a particular case, unless the contrary affirmatively appears.” *A-Z Int’l.*
7 *v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003). Thus, a plaintiff is required to demonstrate the Court
8 has subject matter jurisdiction. *Kokkonen*, 511 U.S. at 377 (citing *McNutt v. General Motors*
9 *Acceptance Corp*, 298 U.S. 178, 182-83 (1936)); *Vacek v. United States Postal Serv.*, 447 F.3d 1248,
10 1250 (9th Cir. 2006).

11 Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party may challenge a
12 claim for relief for lack of subject matter jurisdiction. A motion to dismiss under Rule 12(b)(1) “may
13 either attack the allegations of the complaint or may be made as a ‘speaking motion’ attacking the
14 existence of subject matter jurisdiction in fact.” *Thornhill Pub. Co., Inc. v. Gen. Tel. & Electronics*
15 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (citing *Land v. Dollar*, 330 U.S. 731, 735 (1947)). Thus, “[a]
16 jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or by
17 presenting extrinsic evidence.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
18 2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). The Ninth Circuit explained:

19 In a facial attack, the challenger asserts that the allegations contained in a complaint are
20 insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack,
21 the challenger disputes the truth of the allegations that, by themselves, would otherwise
22 invoke federal jurisdiction.

22 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1038 (9th Cir. 2004).

23 **B. Discussion and Analysis**

24 Where, as here, a defendant presents a facial challenge to the Court’s jurisdiction (Doc. 10 at 2-
25 3), the Court must presume the truth of the Plaintiff’s factual allegations “and draw all reasonable
26 inferences in his favor.” *Doe v. Holy*, 557 F.3d 1066, 1073 (9th Cir. 2009); *Savage v. Glendale Union*
27 *High Sch. Dist. No. 205*, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003), *cert. denied*, 541 U.S. 1009 (2004).
28 The Court should not “assume the truth of legal conclusions merely because they are cast in the form of

1 factual allegations.” *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

2 Significantly, Plaintiff does not identify the claim(s) upon which he seeks to proceed in his
3 complaint. (*See* Doc. 1.) From the face of the complaint, it appears Plaintiff believes that Scrivner
4 exercised an “abuse of power” by removing a Board Member of the Mountain Meadows Community
5 Services District. In Plaintiff’s “motion for summary judgment,” he asserts “this case pertains to civil
6 rights being violated by Defendant.” (Doc. 9 at 1.) However, Plaintiff fails to identify what civil rights
7 he believes were violated or, even, whether he claims those rights belonged to him. Because the
8 allegations of the complaint do not demonstrate the basis for this Court’s jurisdiction, Defendant’s
9 motion to dismiss pursuant to Rule 12(b)(1) is **GRANTED**.

10 **III. Motion to Dismiss Pursuant to Rule 12(b)(6)**

11 **A. Legal Standard**

12 A Rule 12(b)(6) motion “tests the legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d
13 729, 732 (9th Cir. 2001). Dismissal under Rule 12(b)(6) is appropriate when “the complaint lacks a
14 cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v.*
15 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). Thus, under Rule 12(b)(6), “review is
16 limited to the complaint alone.” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993).

17 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
18 true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
19 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Supreme Court explained,

20 A claim has facial plausibility when the plaintiff pleads factual content that allows the
21 court to draw the reasonable inference that the defendant is liable for the misconduct
22 alleged. The plausibility standard is not akin to a “probability requirement,” but it asks
23 for more than a sheer possibility that a defendant has acted unlawfully. Where a
complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops
short of the line between possibility and plausibility of ‘entitlement to relief.’”

24 *Iqbal*, 556 U.S. at 678 (internal citations, quotation marks omitted). Further, allegations of a
25 complaint must be accepted as true when the Court considers a motion to dismiss. *Hospital Bldg. Co.*
26 *v. Rex Hospital Trustees*, 425 U.S. 738, 740 (1976).

27 A court must construe the pleading in the light most favorable to the plaintiff, and resolve all
28 doubts in favor of the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). “The issue is not

1 whether a plaintiff will ultimately prevail, but whether the claimant is entitled to officer evidence to
2 support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote
3 and unlikely but that is not the test.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Therefore, the
4 Court “will dismiss any claim that, even when construed in the light most favorable to plaintiff, fails to
5 plead sufficiently all required elements of a cause of action.” *Student Loan Marketing Assoc. v.*
6 *Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998).

7 **B. Failure to state a claim**

8 As noted above, Plaintiff fails to identify any causes of action his complaint, and the facts
9 alleged are insufficient for the Court to determine the claim(s) upon which Plaintiff seeks to proceed.
10 Although Plaintiff asserts Scrivner’s actions “cause[d] financial harm to MMCS D” (Doc.1 at 2), he
11 fails to allege facts that support a determination that *Plaintiff* has suffered any injury, or explain how
12 Defendant violated his civil rights. Without such allegations, Plaintiff fails to give Defendant fair
13 notice of his claims. *See, e.g., Rizzo v. Goode*, 423 U.S. 362, 371-72 (1976) (to proceed on a claim for
14 civil rights violations, a plaintiff must allege a specific injury was suffered, and show causal
15 relationship between the defendant’s conduct and the injury suffered). Consequently, Defendant’s
16 motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED**.

17 **C. Standing**

18 The Supreme Court explained: “[T]o satisfy Article III’s standing requirements, a plaintiff must
19 show (1)[he] has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or
20 imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of
21 the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by
22 a favorable decision.” *Friends of the Earth v. Laidlaw Env’tl. Servs., Inc.*, 528 U.S. 167, 180–81
23 (2000). The burden of establishing standing falls upon the plaintiff. *Lujan v. Defenders of Wildlife*,
24 504 U.S. 555, 561 (1992); *see also Bennett v. Spear*, 520 U.S. 154, 167 (1997) (“each element of
25 Article III standing must be supported in the same way as any other matter on which the plaintiff bears
26 the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of
27 the litigation”). The Ninth Circuit explained the causation element is not satisfied when an “injury
28 caused by a third party is too tenuously connected to the acts of the defendant.” *Citizens for Better*

1 *Forestry v. U.S. Dept. of Agric.*, 341 F.3d 961, 975 (9th Cir.2003).

2 Here, though it appears that Plaintiff feels the District has been treated improperly by Scrivner,
3 he fails to allege sufficient facts that *he* has suffered injury. There is no showing that Scrivner's
4 actions that were directed at the District equates to an injury suffered by Plaintiff such that he may
5 bring suit. Thus, Plaintiff's failure to demonstrate standing is fatal to this action and Defendant's
6 motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED**.

7 **IV. Conclusion and Order**

8 Plaintiff has failed to meet his burden to demonstrate the Court has subject matter jurisdiction
9 over his claim, to allege facts sufficient to provide the defendant with fair notice of the claims against
10 him or to demonstrate he has standing. *See Kokkonen*, 511 U.S. at 377; *Iqbal*, 556 U.S. at 678.
11 Because it is not "absolutely clear that the deficiencies of the complaint could not be cured," Plaintiff
12 will be given leave to amend his complaint. *See Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir.
13 1987).

14 The amended complaint must reference the docket number of assigned to this case and must be
15 labeled "First Amended Complaint." Plaintiff is advised that an amended complaint supersedes the
16 original complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814
17 F.2d 565, 567 (9th Cir. 1987). The amended complaint must be "**complete in itself** without reference
18 to the prior or superseded pleading." Local Rule 220, emphasis added. Thus, once Plaintiff files an
19 amended complaint, Plaintiff's original complaint will not serve any function in the case.

20 Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 21 1. Defendant's motion to dismiss (Doc. 10) is **GRANTED**;
- 22 2. Plaintiff's complaint is **DISMISSED** with leave to amend; and
- 23 3. Plaintiff **SHALL** file his First Amended Complaint within thirty days of the date of
24 service of this order.

25 ///

26 ///

27 ///

28 ///

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

Failure to comply with this order will result in a recommendation that the matter be dismissed.

IT IS SO ORDERED.

Dated: June 19, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE