



1 a motion to dismiss the complaint, asserting Plaintiff failed to establish that this Court has subject  
2 matter jurisdiction and clearly identify his claims, which was granted on June 22, 2015. (Doc. 23)

3 Plaintiff filed his First Amended Complaint on July 16, 2015, alleging Defendant usurped  
4 Plaintiff's authority by giving instructions to the Mountain Meadows Community Service District  
5 without the authority to do so. (Doc. 22 at 1-2) In addition, Plaintiff asserts: "Defendant Hall made  
6 defamatory statement to the news reporter of [the] local newspaper," including telling the reporter that  
7 "Plaintiff had misused District funds; was hiding something from [the] public ... [and] was operating  
8 [the] district illegally." (*Id.* at 3) Plaintiff alleges Defendant "intentionally interfered with Plaintiff's  
9 contractual prospective economic advantage" and "is responsible "for [Plaintiff's] financial loss in the  
10 amount of gross contract with [the] District," and seeks damages "for violating Plaintiff's civil rights of  
11 freedom, dignity and respect." (*Id.* at 3, 4) Further Plaintiff asserts Defendant is liable for defamation  
12 and a violation of California Civil Code § 52.1. (*Id.*)

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

14 The district court is a court of limited jurisdiction, and is empowered only to hear disputes  
15 "authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
16 (1994); *Exxon Mobil Corp v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The federal courts are  
17 "presumed to lack jurisdiction in a particular case, unless the contrary affirmatively appears." *A-Z Int'l.*  
18 *v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003). Thus, a plaintiff bears the burden of demonstrating  
19 the Court has subject matter jurisdiction. *Kokkonen*, 511 U.S. at 377 (citing *McNutt v. General Motors*  
20 *Acceptance Corp*, 298 U.S. 178, 182-83 (1936)); *Vacek v. United States Postal Serv.*, 447 F.3d 1248,  
21 1250 (9th Cir. 2006).

22 Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party may challenge a  
23 claim for relief for lack of subject matter jurisdiction. A motion to dismiss under Rule 12(b)(1) "may  
24 either attack the allegations of the complaint or may be made as a 'speaking motion' attacking the  
25 existence of subject matter jurisdiction in fact." *Thornhill Pub. Co., Inc. v. Gen. Tel. & Electronics*  
26 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (citing *Land v. Dollar*, 330 U.S. 731, 735 (1947)). Thus, "[a]  
27 jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or by  
28 presenting extrinsic evidence." *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.

1 2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). The Ninth Circuit explained:

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

5 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1038 (9th Cir. 2004). On a motion to dismiss under  
6 Rule 12(b)(1), the standards that must be applied by the Court vary according to the nature of the  
7 jurisdictional challenge.

### 8 **III. Discussion and Analysis**

9 A federal court “ha[s] an independent obligation to address sua sponte whether [it] has subject-  
10 matter jurisdiction.” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the obligation of  
11 the district court “to be alert to jurisdictional requirements.” *Grupo Dataflux v. Atlas Global Group*,  
12 *L.P.*, 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide the merits of a  
13 case or order any relief. *Morong Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d  
14 1376, 1380 (9th Cir. 1988). The burden of establishing jurisdiction rests upon plaintiff as the party  
15 asserting jurisdiction. *Kokkonen*, 511 U.S. at 377; *see also Hagans v. Lavine*, 415 U.S. 528, 543 (1974)  
16 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,  
17 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy within  
18 the jurisdiction of the District Court”).

19 Significantly, here, Plaintiff alleges only claims for defamation; interference with a contract;  
20 and the California Civil Code § 52.1, also known as the Bane Act.<sup>1</sup> (*See* Doc. 22 at 3-4) These claims  
21 arise only under California law. *See McKenzie v. Watkins*, 2014 U.S. Dist. LEXIS 152347 at 6, n.2  
22 (E.D. Cal. Oct. 27, 2014) (“Defamation, however, is a state law cause of action which does not provide  
23 this court with subject matter jurisdiction”); *United Nat. Maint., Inc. v. San Diego Convention Ctr.,*  
24 *Inc.*, 766 F.3d 1002, 1006 (9th Cir. 2014) (recognizing that a claim for tortious interference with  
25 contractual relations arises under California law); *Parkison v. Butte County Sheriff’s Dep’t*, 2013 U.S.  
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28 <sup>1</sup> Plaintiff also alleges information in his amended complaint related to Anti-SLAPP. (Doc. 22 at 4) However, Anti-SLAPP is a basis for dismissal of an action; it is not a cause of action. Notably, Defendant has not argued the case is a SLAPP action. Thus, exactly why this material is included in the complaint is unclear.

1 Dist. LEXIS 35018, at \*14, 27-28 (E.D. Cal. March 13, 2013) (explaining the Bane Act is the manner  
2 for which a plaintiff to pursue civil rights violations under California law).

3 Moreover, as noted above, Plaintiff alleges Defendant violated Cal. Civ. Code § 52.1, also  
4 known as “the Bane Act,” which provides:

5 If a person or persons, whether or not acting under the color of law, interferes by threats,  
6 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion,  
7 with the exercise or enjoyment by any individual or individuals of right secured by the  
8 Constitution or the laws of the United States, or the rights secured by the Constitution or  
9 laws of this state. . . [any individual whose said rights have been interfered with] may  
10 bring a civil action for injunctive and other appropriate equitable relief . . . .

11 Thus, a claim under the Bane Act “requires a showing of ‘an attempted or completed act of interference  
12 with a legal right, accompanied by a form of coercion.’” *Martin v. County of San Diego*, 650 F.Supp.2d  
13 1094, 1108 (S.D. Cal. 2009) (quoting *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 334 (1998)). Unless there  
14 were threats, coercion or intimidation coupled with the constitutional violation, the Bane Act does not  
15 apply. *See Gant v. County of Los Angeles*, 765 F. Supp. 2d 1238, 1253-54 (C.D. Cal. 2011). In  
16 evaluating the threatening or coercive conduct, the Court must consider “whether a reasonable person,  
17 standing in the shoes of the plaintiff, would have been intimidated by the actions of the defendants and  
18 have perceived a threat of violence.” *Richardson v. City of Antioch*, 722 F.Supp.2d 1133, 1147  
(N.D.Cal.2010).

19 Previously, this Court explained: “The text of the Bane Act . . . indicates that a cause of action  
20 under the act requires a predicate — the application of threat, intimidation or coercion — and an object  
21 — interference with a constitutional or statutory right.” *Rodriguez v. City of Fresno*, 819 F.Supp.2d  
22 937, 953 (E.D. Cal. 2011). Put another way, a plaintiff must demonstrate that a constitutional violation  
23 “occurred *and* that the violation was accompanied by threats, intimidation or coercion within the  
24 meaning of the statute.” *Barsamian v. City of Kingsburg*, 597 F.Supp.2d 1054, 1057 (E.D. Cal. 2009)  
(emphasis added).

25 Though Plaintiff asserts his “civil rights of freedom, dignity and respect” were violated by  
26 Defendant as support for his claim under the Bane Act, Plaintiff fails to identify any specific  
27 Amendment to the United States Constitution or the California Constitution he believes is at issue.  
28 While construing the pleading most favorably and most broadly in Plaintiff’s favor, the Court simply

1 cannot determine what constitutional right Plaintiff claims was violated nor can it find that  
2 Defendant's conduct rose to the level of a threat, intimidation or coercion.

3 **IV. Conclusion and Order**

4 Previously, the Court granted Plaintiff an opportunity to file an amended complaint that set  
5 forth facts sufficient to support his claims and to provide Defendant with fair notice. (Doc. 20 at 5,  
6 citing *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987)) Although Plaintiff identified the  
7 claims upon which he seeks to proceed, he failed to meet his burden to allege facts sufficient to  
8 support the federal court jurisdiction. See *Iqbal*, 556 U.S. at 678. Because it is not "absolutely clear  
9 that the deficiencies of the complaint could not be cured," Plaintiff will be given **one final**  
10 **opportunity** allege facts sufficient to support his claims. See *Noll*, 809 F.2d at 1448-49.

11 The amended complaint must reference the docket number of assigned to this case and must be  
12 labeled "Second Amended Complaint." Plaintiff is advised that an amended complaint supersedes the  
13 previously filed complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v.*  
14 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). In addition, Plaintiff is advised that he is not required to  
15 include citations to the law or legal authorities in his pleadings. Rather, Plaintiff need only state the  
16 facts alleged in a short and clear manner, which is sufficient to give Defendant fair notice of claims  
17 against him and the grounds upon which he seeks to impose liability. See Fed. R. Civ. P. 8.

18 **Plaintiff is advised that his failure to allege facts sufficient to support this Court's**  
19 **jurisdiction will result in a determination that he is legally unable to do so and will be the basis**  
20 **of a recommendation that the matter be dismissed without leave to amend.** See *Lopez*, 203 F.3d  
21 at 1127-28 (leave to amend is not futile when the deficiencies may be cured).threat and, more  
22 importantly, fails to identify any constitutional rights that he claims were violated.

23 **IV. Order**

24 Based upon the foregoing, the Court **ORDERS:**

- 25 1. Defendant's motion to dismiss (Doc. 24) be **GRANTED with leave to amend;**

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2. Plaintiff **SHALL** file his Second Amended Complaint within thirty days of the date of service of this order.

IT IS SO ORDERED.

Dated: August 17, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE