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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
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7 **JOHN P GINGRAS,**  
8 **Plaintiff,**  
9 **vs.**  
10 **COUNTY OF SACRAMENTO, CALIFORNIA**  
11 **STATE TEACHERS RETIREMENT SYSTEM, and**  
12 **METROVIEW CONSULTING,**  
13 **Defendant(s).**

**Case No.: 12-CV-05509 YGR**  
**ORDER GRANTING DEFENDANTS’ MOTIONS**  
**TO DISMISS WITH LEAVE TO AMEND**

United States District Court  
Northern District of California

14 Plaintiff alleges that Defendant County of Sacramento<sup>1</sup> over-garnished \$48,000.00 in past-  
15 due child support obligations from an account Plaintiff has with Defendant California State  
16 Teachers Retirement System (“CalSTRS”), and that the County of Sacramento hired a private  
17 investigation firm, Defendant Metroview Consulting, to follow Plaintiff. Plaintiff brings seven  
18 claims: (1) Fraudulent Intentional Misuse of Process; (2) Silent Malicious Intentional Fraud; (3)  
19 Conversion; (4) Fraudulent Misrepresentation; (5) Violations of Due Process Rights as Guaranteed  
20 by the Bill of Rights; (6) Intentional and Negligent Emotional Distress; and (7) Invasion of Privacy.

21 Both the County of Sacramento and CalSTRS have filed Motions to Dismiss. Plaintiff  
22 separately has moved for a temporary restraining order to prevent Metroview Consulting’s private  
23 investigators from physically and electronically stalking him. Having carefully considered the  
24 papers submitted and the pleadings in this action, the Court hereby **GRANTS IN PART** both Motions  
25 to Dismiss **WITH LEAVE TO AMEND** consistent with this Order, and **DENIES** the Motion for an *Ex*  
26 *Parte* Temporary Restraining Order.

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<sup>1</sup> The County of Sacramento has been sued as Sacramento County Department of Child Support Services.

1 **I. DISCUSSION**

2 The County of Sacramento moves to dismiss on the grounds that: (1) Plaintiff fails to set  
3 forth sufficient factual allegations to support any of his claims; (2) his state law claims for fraud,  
4 conversion, and negligent and intentional infliction of emotional distress are common law claims  
5 that cannot be brought against a public entity, *see* Cal. Gov. Code § 815; (3) his fraud and  
6 conversion claims are barred by Cal. Gov. Code § 818.8; (4) he failed to comply with the  
7 Government Claims Act, Cal. Gov. Code § 945.4; and (5) this action was filed in the wrong venue  
8 because it should have been filed in the Eastern District of California. CalSTRS moves to dismiss  
9 on the grounds that: (1) claims against a state agency are barred by the Eleventh Amendment; (2) a  
10 state agency is not a “person” subject to suit under 42 U.S.C. § 1983; (3) Plaintiff has failed to state  
11 a claim against CalSTRS upon which relief may be granted; (4) he failed to present a claim to  
12 CalSTRS under the Government Claims Act, Cal. Gov. Code §§ 910, 945.4 & 950.2; and (5)  
13 service of the Complaint on CalSTRS was inadequate.

14 The Court **GRANTS** both Motions to Dismiss **WITH LEAVE TO AMEND** for failure to state a  
15 claim upon which relief can be granted. The Court **DENIES** both Motions to Dismiss insofar as they  
16 seek dismissal for improper venue or improper service. The Court **DENIES** Plaintiff’s Motion for  
17 an *Ex Parte* Temporary Restraining Order because Plaintiff has not set forth sufficient grounds to  
18 show that he is entitled to emergency relief without providing actual notice to the parties he seeks  
19 to enjoin.

20 All of the pleading deficiencies identified in the Defendants’ motions have merit. Plaintiff  
21 concedes that he has failed to allege compliance with the administrative claim processing  
22 requirement and indicates that he will be amending his complaint to allege such compliance.  
23 However, Plaintiff will need to address all of the pleading deficiencies that the Defendants have  
24 identified, as set forth herein:

25 **(1) Eleventh Amendment Immunity.**

26 Plaintiff needs to allege specific facts that show the Eleventh Amendment does not bar his  
27 claims against CalSTRS. The Eleventh Amendment provides sovereign immunity for states and  
28 bars lawsuits in federal court against states or their agencies unless the state has specifically waived

1 its sovereign immunity. *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th  
2 Cir. 1991). Congress can abrogate or limit a state’s Eleventh Amendment immunity under § 5 of  
3 the Fourteenth Amendment, but such abrogation requires an “unequivocal expression” of  
4 Congressional intent, and is a limited power. *See Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91  
5 (2000). The Eleventh Amendment does not bar lawsuits against counties. *Greater L.A. Council on*  
6 *Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987); *see also Monell v. Dep’t of Soc.*  
7 *Servs.*, 436 U.S. 658, 690 n.54 (1978).

8 **(2) Federal Constitutional Claims.**

9 Section 1983 of Title 42 of the United States Code, 42 U.S.C. § 1983, (“Section 1983”) can  
10 provide a cause of action against persons<sup>2</sup> acting under color of state law who have violated the  
11 United States Constitution. *See Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995). In  
12 general, governmental entities such as the County of Sacramento may not be held responsible for  
13 the acts of their employees. *See Bd. of County Comm’rs v. Brown*, 520 U.S. 397, 403 (1997).  
14 Because municipal liability must be based on the actions of the municipality and not the actions of  
15 its employees, to impose liability on the County of Sacramento under Section 1983, Plaintiff must  
16 demonstrate that the constitutional deprivation was the product of a policy, practice, or custom of  
17 the local governmental entity. *Id.*

18 In order to state a Section 1983 cause of action against a local governmental entity such as  
19 the County of Sacramento, Plaintiff will need to identify:

- 20 a) A specific federal constitutional right that was violated;
- 21 b) A specific custom, policy or practice of the entity that has deprived Plaintiff  
22 of that constitutional right;
- 23 c) An affirmative causal link between the custom, policy or practice and the  
24 alleged constitutional violation; and

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27 <sup>2</sup> A state is not a “person” for purposes of Section 1983. *See Arizonans for Official English v. Arizona*, 520  
28 U.S. 43, 69 (1997). CalSTRS asserts that it is an agency of the State of California, which for purposes of the  
Section 1983 analysis would make CalSTRS an arm of the State of California, and Section 1983 claims  
against CalSTRS would be barred by the Eleventh Amendment. *See Howlett v. Rose*, 496 U.S. 356, 365  
(1990).

1           d) Sufficient facts to allow the Court to draw the reasonable inference that the  
2 defendant can be liable for the misconduct alleged. *See Bell Atlantic Corp. v. Twombly*, 550  
3 U.S. 544 (2007).

4           **(3) State Law Claims.**

5           Section 1983 does not provide a cause of action for violations of state law. *See Galen v.*  
6 *County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007). In addition, the Eleventh Amendment  
7 bars lawsuits in federal court against states or their agencies on the basis of violations of state law,  
8 unless the state has specifically waived its sovereign immunity. *See Pennhurst State Sch. & Hosp.*  
9 *v. Halderman*, 465 U.S. 89, 124-25 (1984). In order to sue a governmental entity for violations of  
10 state law (for example, here, Plaintiff's state law causes of action include Conversion and  
11 Fraudulent Misrepresentation), Plaintiff must:

12           a) Identify the specific statute(s), if any, that waives that governmental entity's  
13 immunity from suit;

14           b) Provide sufficient factual content that allows the Court to draw the  
15 reasonable inference that the defendant can be liable for the misconduct alleged. *See*  
16 *Twombly, supra*, 550 U.S. 544; and

17           c) Allege facts that show Plaintiff complied with the administrative  
18 requirements of the Government Claims Act, if such facts exist.

19           **II. CONCLUSION**

20           For the reasons set forth above, the Court Orders as follows:

21           (1) Defendant County of Sacramento's Motion to Dismiss is **GRANTED IN PART**;

22           (2) Defendant CalSTRS' Motion to Dismiss is **GRANTED IN PART**;

23           (3) Pursuant to Federal Rule of Civil Procedure 12(b)(6), Plaintiff's Complaint is  
24 **DISMISSED** for failure to state a claim upon which relief can be granted **WITH LEAVE TO AMEND**  
25 to the extent the Complaint can be amended consistent with this Order;

26           (4) Plaintiff must file his amended complaint by no later than **February 28, 2013**;

27           (5) Failure to file an amended complaint by such date will result in dismissal of this lawsuit  
28 for failure to prosecute;

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(6) Plaintiff's Motion for an *Ex Parte* Temporary Restraining Order is **DENIED**.  
This Order Terminates Docket Numbers 4, 7 & 19.  
**IT IS SO ORDERED.**

**Date: January 28, 2013**



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**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**