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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARIO BOYD

vs.

MULTIFAMILY USA APTS.,
VINTABE POINT ASST. MGR.

Plaintiff,

Defendant.

CASE NO. 12cv2080-GPC-BLM

**ORDER DISMISSING
AMENDED COMPLAINT
WITHOUT PREJUDICE FOR
LACK OF FEDERAL SUBJECT
MATTER JURISDICTION**

[Dkt. No. 8.]

On August 23, 2012, Plaintiff Mario Boyd, proceeding *pro se* and *in forma pauperis*, commenced this action against Defendants Multifamily USA Apts. and Vintage Point Asst. Mgr. (Dkt. No. 1.) On December 20, 2012, the Court *sua sponte* dismissed Plaintiff's Complaint for lack of subject matter jurisdiction and granted Plaintiff thirty (30) days to file an amended complaint. (Dkt. No. 5.) The Court's Order was returned as undeliverable. (Dkt. No. 6.) On December 26, 2013, Plaintiff filed an Amended Complaint. (Dkt. No. 8.) For the following reasons, the Court again *sua sponte* **DISMISSES** the Amended Complaint for lack of federal subject matter jurisdiction.

DISCUSSION

A complaint filed by any person proceeding *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and dismissal

1 by the Court to the extent it is “frivolous, or malicious; fails to state a claim upon which
2 relief may be granted; or seeks monetary relief against a defendant immune from such
3 relief.” 28 U.S.C. § 1915(e)(2)(B); Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001)
4 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”).

5 As stated in the Court’s Order dismissing Plaintiff’s initial Complaint, a federal
6 court cannot reach the merits of any dispute until it confirms that it retains subject
7 matter jurisdiction to adjudicate the issues presented. See Steel Co. v. Citizens for a
8 Better Environ., 523 U.S. 83, 95 (1998). Federal courts are under a continuing duty to
9 confirm their jurisdictional power and are “obliged to inquire *sua sponte* whenever a
10 doubt arises as to [its] existence” Mt. Healthy City Sch. Dist. Bd. of Educ. v.
11 Doyle, 429 U.S. 274, 278 (1977) (citations omitted).

12 As explained in the Court’s prior order, federal courts are courts of limited
13 jurisdiction. Unlike state courts, they have no ‘inherent’ or ‘general’ subject matter
14 jurisdiction. They can adjudicate only those cases which the Constitution and Congress
15 authorize them to adjudicate, i.e. those involving diversity of citizenship, a federal
16 question, or to which the United States is a party. See Finley v. United States, 490 U.S.
17 545 (1989). Federal courts are presumptively without jurisdiction over civil actions and
18 the burden of establishing the contrary rests upon the party asserting jurisdiction. See
19 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994).

20 Plaintiff’s Amended Complaint fails to cure the defects of Plaintiff’s original
21 Complaint. As in his initial Complaint, Plaintiff’s Amended Complaint alleges
22 “wrongful discrimination base[sic] on sexual orientation by landlord manager . . . I was
23 subjected to racial based upon my race, also perceived sexual orientation as being gay
24 which became hostile environment.” (Dkt. No. 8 at 1.) However, Plaintiff again fails
25 to invoke a federal question or show that diversity jurisdiction exists. Moreover, the
26 United States is not a party to this case. As a result, Plaintiff has not presented a
27 sufficient basis for federal jurisdiction. Accordingly, the Court *sua sponte* DISMISSES
28 the Amended Complaint without prejudice.

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CONCLUSION AND ORDER

For the reasons set forth above, the Court **DISMISSES** Plaintiff's Amended Complaint, without prejudice, for lack of subject matter jurisdiction. The Court **GRANTS** Plaintiff forty-five (45) days from the date of this order to file a second amended complaint curing the deficiencies identified herein.

IT IS SO ORDERED.

DATED: March 27, 2014


HON. GONZALO P. CURIEL
United States District Judge