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

RICHARD J. MARRAPESE JR., et al.,  
Plaintiffs,  
vs.  
UNIVERSITY OF CALIFORNIA BOARD  
OF REGENTS, et al.,  
Defendants.

CASE NO. 13cv947-LAB (BGS)  
**ORDER DISMISSING AMENDED  
COMPLAINT**

Plaintiff Richard Marrapese, Jr., proceeding *pro se*, filed his complaint on April 19, 2013, bringing his own claims as well as those of a putative Plaintiff, his deceased father Richard Marrapese, Sr. Although the complaint mentioned Marrapese, Sr.’s own claims, neither his estate nor the executor nor administrator of his estate is named as a party.

Marrapese, Jr. moved to proceed *in forma pauperis*, and for appointment of counsel, which the Court denied. The Court also dismissed the complaint, identifying defects in it that appeared to deprive the Court of jurisdiction, but permitted him to file an amended complaint.

Marrapese, Jr. has now filed his amended complaint, and it appears the Court lacks jurisdiction over it as well. The Court is obligated to examine its own jurisdiction, regardless of whether either party raises the issue, and to dismiss the complaint if jurisdiction is lacking. See *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc).

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1 As pointed out in the Court’s order dismissing the original complaint, Marrapese, Jr.  
2 lacks standing to sue on behalf of his deceased father. Furthermore, he cannot represent  
3 his father’s estate in bringing any claims his father’s estate might have had, even assuming  
4 they were not extinguished at his death. See *Karras v. Teledyne Indus., Inc.*, 191 F. Supp.  
5 2d 1161, 1170–73 (S.D.Cal., 2002). Most of the amended complaint’s claims arise under  
6 state law. The parties are obviously not diverse, so the Court’s power to adjudicate the  
7 claims depends on whether the amended complaint includes one or more claims arising  
8 under federal law, and the state-law claims are part of the same case or controversy. See  
9 28 U.S.C. § 1367.

10 The amended complaint brings three broad claims. Of those, only the first includes  
11 claims brought by Marrapese, Jr. The remainder of the first claim, as well as the second and  
12 third claims, are putatively brought on behalf of Marrapese, Sr. Marrapese, Jr. was kept  
13 from seeing his father, Marrapese, Sr. while the latter was in the hospital receiving treatment.  
14 It concludes that this was done in retaliation for Marrapese, Jr.’s “protesting Sr.’s plight in  
15 non-violent way.” (Am. Compl., 2:9–12.) In order to state a claim, Marrapese, Jr. must plead  
16 facts that, accepted as true, state a plausible claim for relief. See *Ashcroft v. Iqbal*, 556 U.S.  
17 662, 678 (2009). A claim is plausible based on pleaded facts, not based on a plaintiff’s own  
18 legal conclusions. *Id.*

19 To state a claim for violation of First Amendment rights based on retaliation, a plaintiff  
20 must show that Defendants acted so as to deter or chill the plaintiff’s speech, and whether  
21 such deterrance was a substantial or motivating factor in their conduct. *Lacey v. Maricopa*  
22 *County*, 693 F.3d 896, 916 (9<sup>th</sup> Cir. 2012). A plaintiff need not show that his speech was  
23 actually inhibited or suppressed, but rather whether the official’s acts would chill or silence  
24 a person of ordinary firmness. *Id.* Such a claim would be brought under 42 U.S.C. § 1983.

25 The Defendants in this case are the University of California Board of Regents, and  
26 the UCSD Medical Center. What either or both of these Defendants did is not alleged in  
27 either the original complaint or the amended complaint. The original complaint alleges that  
28 “UCSD police” and the UCSD Medical Center’s “senior management” removed him from the

1 hospital, claiming that he was disrupting his father's medical treatment. The complaint never  
2 alleges who did these things, nor does it allege facts showing he had any right to be present  
3 in the hospital or authority to direct his father's medical treatment. It also does not allege  
4 facts showing anyone took actions that would chill or silence a person of ordinary firmness.


5       There is no *respondeat superior* liability under § 1983; rather, government officials are  
6 liable only for their own conduct. *Maxwell v. County of San Diego*, 708 F.3d 1075, 1097 (9<sup>th</sup>  
7 Cir. 2013). A supervisor may be liable where the supervisor participated in the violation,  
8 however. See *id.* To state a claim, the complaint must allege facts showing that the  
9 supervisor breached a legal duty to the plaintiff, that the breach was the proximate cause of  
10 the plaintiff's constitutional injury, and that the supervisor had the required *mens rea* as  
11 would be required for a direct violation of the plaintiff's rights. *Id.* The amended complaint  
12 alleges none of these things, nor are any officials even named as Defendants.

13       Because it doesn't appear the Court has jurisdiction over the claims raised in the  
14 amended complaint, it is **DISMISSED WITHOUT PREJUDICE**. If Marrapese, Jr. thinks he  
15 can correct the defects this order has identified, he may do so by filing a second amended  
16 complaint no later than **June 5, 2013**. A second amended complaint that does not comply  
17 with this order or does not state a cognizable claim over which this Court can exercise  
18 jurisdiction will be dismissed without leave to amend.

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**IT IS SO ORDERED.**

DATED: May 22, 2013

  
**HONORABLE LARRY ALAN BURNS**  
United States District Judge