

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER CARREA,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

1:10-cv-01004 OWW GSA

**ORDER REGARDING PLAINTIFF'S
COMPLAINT**

(Document 1)

Plaintiff Christopher Carrea, Jr. ("Plaintiff"), appearing pro se and proceeding in forma pauperis, filed the instant complaint alleging damages for personal injuries against the State of California, Attorney General Edmund G. Brown, Governor Arnold Schwarzenegger, the County of Los Angeles, the County of San Diego, the Jury Commissioner of Los Angeles County, the Jury Commissioner of San Diego County, and the district attorneys of both Los Angeles and San Diego counties¹ ("Defendants"). Plaintiff seeks general damages of \$5,000,000 and punitive

¹Plaintiff does not identify the district attorneys in the caption of his complaint, rather these Defendants are identified in the body of Plaintiff's individual claims.

1 damages of \$5,000,000.² Additionally, Plaintiff seeks injunctive relief in the form of the state
2 devising a system to include minority candidates in jury pools in proportion to the relevant
3 population. (Doc. 1.)

4 DISCUSSION

5 A. *Screening Standard*

6 Pursuant to Title 28 of the United States Code section 1915(e)(2), the Court must conduct
7 an initial review of the complaint for sufficiency to state a claim. The Court must dismiss a
8 complaint or portion thereof if the Court determines that the action is legally “frivolous or
9 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
10 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If the Court determines
11 that the complaint fails to state a claim, leave to amend may be granted to the extent that the
12 deficiencies of the complaint can be cured by amendment.

13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing
17 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
18 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
19 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While legal conclusions
20 can provide a framework of a complaint, they must be supported by factual allegations. *Iqbal*,
21 129 S.Ct. at 1950. While factual allegations are accepted as true, legal conclusion are not. *Iqbal*
22 at 1949.

25 ²On page three of the form portion of Plaintiff’s complaint, he references \$10,000,000 in
26 damages; however, the Court notes that on the last page of the appended, typed portions of his
27 complaint (his page number 29), Plaintiff seeks a total of \$3,000,000 in general and punitive
28 damages.

1 In reviewing a complaint under this standard, the Court must accept as true the allegations
 2 of the complaint in question, *Hospital Bldg. Co. V. Trustees of Rex Hospital*, 425 U.S. 738, 740
 3 (1976), construe the pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*
 4 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor,
 5 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

6 A pleading may not simply allege a wrong has been committed and demand relief. The
 7 underlying requirement is that a pleading give "fair notice" of the claim being asserted and the
 8 "grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v.*
 9 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

10 **B. Federal Claims**

11 **1. 1983 Actions**

12 The Civil Rights Act under which this action was filed provides as follows:

13 Every person who, under color of [state law] . . . subjects, or causes to be
 14 subjected, any citizen of the United States . . . to the deprivation of any rights,
 15 privileges, or immunities secured by the Constitution . . . shall be liable to the
 party injured in an action at law, suit in equity, or other proper proceeding for
 redress.

16 42 U.S.C. § 1983. Thus, to state a claim under Title 42 of the United States Code section 1983,³
 17 a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant
 18 deprived him of rights secured by the Constitution or federal law. *Long v. County of Los*
 19 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

20 Moreover, section 1983 requires that there be an actual connection or link between the
 21 actions of defendant and the deprivation allegedly suffered. *See Monell v. Department of Social*
 22 *Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit Court of
 23 Appeals has held that "a person 'subjects' another to deprivation of constitutional right, within
 24 the meaning of section 1983, if he does an affirmative act, participates in another's affirmative
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26 ³All further statutory references are to Title 42 of the United States Code unless otherwise
 27 indicated.

1 acts or omits to perform an act which he is legally required to do that causes the deprivation of
2 which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

3 **2. 1985 Actions**

4 Plaintiff is advised that a claim brought for violation of section 1985(3) requires “four
5 elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any
6 person or class of persons of the equal protection of the laws, or of equal privileges and
7 immunities under the laws; and (3) an act in furtherance of this conspiracy; (4) whereby a person
8 is either injured in his person or property or deprived of any right or privilege of a citizen of the
9 United States.” *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (citation
10 omitted). A racial, or perhaps otherwise class-based, invidiously discriminatory animus is an
11 indispensable element of a section 1985(3) claim. *Sprewell v. Golden State Warriors*, 266 F.3d
12 979, 989 (9th Cir. 2001) (quotations & citation omitted). To state a claim under section 1985(3),
13 a plaintiff must allege sufficient facts showing “a deprivation of a right motivated by ‘some
14 racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the
15 conspirators’ actions.”” *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002)
16 (quoting *Sever v. Alaska Pulp Corp.*, 978 F.2d at 1536).

17 **3. 1986 Actions**

18 Plaintiff is advised that “[s]ection 1986 authorizes a remedy against state actors who have
19 negligently failed to prevent a conspiracy that would be actionable under [section] 1985.”
20 *Cerrato v. San Francisco Cmty. Coll. Dist.*, 26 F.3d 968, 971 n.7 (9th Cir. 1994). Thus, Plaintiff
21 shall keep in mind that he may not pursue a claim for relief under section 1986 unless he has first
22 stated a claim for relief under section 1985. *McCalden v. California Library Assoc.*, 955 F.2d
23 1214, 1223 (9th Cir. 1992).

24 **C. Plaintiff’s Allegations**

25 Although Plaintiff’s complaint is rambling and verbose, generally speaking, it appears he
26 contends that (1) Defendants State of California, Attorney General Brown and Governor
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Schwarzenegger have violated his constitutional rights by purposefully and deliberately denying blacks to be considered and/or serve as jurors in criminal cases; (2) Defendants County of Los Angeles, the Jury Commissioner of Los Angeles County and the Los Angeles County District Attorney have purposefully and deliberately violated Plaintiff's Fifth and Fourteenth Amendment rights and state constitutional rights for similar reasons; and (3) Defendants County of San Diego, the Jury Commissioner of San Diego County and the San Diego County District Attorney's Office have also purposefully and deliberately violated Plaintiff's federal and state constitutional rights.

D. Rule 8(a)

Rule 8(a) of the Federal Rules of Civil Procedure states that a complaint must contain "a short and plain statement of the claim." The rule expresses the principle of notice-pleading, whereby the pleader need only give the opposing party fair notice of a claim. *Conley v. Gibson*, 355 U.S. at 45-46. Rule 8(a) does not require an elaborate recitation of every fact a plaintiff may ultimately rely upon at trial, but only a statement sufficient to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* at 47.

Here, Plaintiff will be given an opportunity to amend his complaint to comply with Rule 8(a). Plaintiff should avoid an elaborate recitation of every fact. In the paragraphs that follow, the court will provide Plaintiff with additional legal standards that appear to apply to his claims. Plaintiff should carefully review the standards and amend only those claims that he believes, in good faith, are cognizable. Plaintiff is advised that his amended complaint must contain all necessary allegations. Moreover, if Plaintiff wishes to allege causes of action, he must separate each claim and state facts in support of each individual claim against each defendant.

E. Rule 18 of the Federal Rules of Civil Procedure

Initially, this Court cautions Plaintiff that his action appears to involve two separate actions in contravention of Rule 18 of the Federal Rules of Civil Procedure.

1 The controlling principle appears in Fed.R.Civ.P. 18(a) “A party asserting
2 a claim to relief as an original claim, counterclaim, cross-claim, or third-party
3 claim, may join, either as independent or alternate claims, as many claims, legal
4 equitable, or maritime, as the party has against an opposing party.” Thus multiple
5 claims against a single party are permissible, but Claim A against Defendant 1
should not be joined with unrelated Claim B against Defendant 2. *Unrelated
claims against different defendants belong in different suits*, not only to prevent
the sort of morass (a multiple claim, multiple defendant) suit produces, but also to
ensure that prisoners pay the required filing fees.

6 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), emphasis added.

7 Here, Plaintiff asserts claims against certain Defendants for certain actions that occurred
8 in San Diego county, then asserts another claim against other Defendants for certain actions that
9 occurred in Los Angeles County. These claims are likely unrelated and belong in different suits.

10 **F. Statute of Limitations**

11 The Court notes that Plaintiff’s complaint is completely devoid of any information
12 regarding when his purported injuries occurred. Plaintiff is cautioned as follows regarding
13 applicable statutes of limitation.

14 Federal civil rights statutes have no independent limitations period. *Johnson v. State of*
15 *California*, 207 F.3d 650, 653 (9th Cir. 2000); *Taylor v. Regents of the Univ. of Cal.*, 993 F.2d
16 710, 711 (9th Cir. 1993) (California’s statute of limitations for personal injury actions governs
17 claims brought pursuant to §§ 1981, 1983 & 1985); *Abreu v. Ramirez*, 284 F.Supp.2d 1250, 1257
18 (C.D. Cal. 2003). The applicable limitations period is determined by borrowing the forum state’s
19 limitations period for personal injuries. *Johnson*, 207 F.3d at 653; *Abreu*, 284 F.Supp.2d at
20 1257. Section 1983 and related federal civil rights claims “are best characterized as personal
21 injury actions.” *Wilson v. Garcia*, 471 U.S. 261, 280 (1985).

22 Pursuant to *Wilson*, the Ninth Circuit held that the appropriate statute of limitations for
23 section 1983 and section 1985 claims brought in California is the limitation set forth in
24 California Code of Civil Procedure section 340(3). *See Usher v. City of Los Angeles*, 828 F.2d
25 556, 558 (9th Cir.1987) (deciding Cal. C.C.P. § 340(3) applies to claims brought pursuant to §
26 1983); *McDougal v. County of Imperial*, 942 F.2d 668, 674 (9th Cir.1991) (deciding that Cal.

1 C.C.P. § 340(3) applies to claims brought pursuant to § 1985(3)); *Taylor v. Regents of Univ. of*
2 *California*, 993 F.2d at 711-12 (holding that Cal. C.C.P. § 340(3) applies to claims brought
3 pursuant to § 1985). On January 1, 2003, section 340(3) was replaced with California Code of
4 Civil Procedure section 335.1⁴, which lengthened the limitations period for personal injury
5 claims to two years. Although state law provides the statute of limitations for claims under
6 sections 1983 and 1985, federal law determines when a civil rights claim accrues. *Knox v. Davis*,
7 260 F.3d 1009, 1013 (9th Cir. 2001). “Under federal law, ‘a claim accrues when the plaintiff
8 knows or has reason to know of the injury which is the basis of the action.’ ” *Id.*, quoting *Two*
9 *Rivers v. Lewis*, 174 F.3d 987, 992 (9th Cir. 1999).

10 Although the statute of limitations is an affirmative defense that normally may not be
11 raised by the Court sua sponte, it may be grounds for sua sponte dismissal of an in forma
12 pauperis complaint where the defense is complete and obvious from the face of the pleadings or
13 the court’s own records. *Franklin v. Murphy*, 745 F.2d 1221, 1228-1230 (9th Cir. 1984).

14 This Court acknowledges that pro se plaintiffs proceeding in forma pauperis must be
15 given an opportunity to amend their complaint unless it is “absolutely clear that the deficiencies
16 of the complaint could not be cured by amendment.” *Franklin v. Murphy*, 745 F.2d at 1228, n. 9.
17 Here, because Plaintiff’s complaint lacks any information whatsoever with regard to the relevant
18 time periods, he will be provided an opportunity to amend his complaint to include this important
19 information.

20 **G. Standing**

21 Next, the Court is not now certain that Plaintiff has standing to assert the claims as
22 alleged. At times Plaintiff is asserting personal violations, yet at other times, it appears Plaintiff
23 is seeking relief for other minority groups as a whole. (Doc. 1 at 21, 27.)

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26 ⁴California Code of Civil Procedure section 335.1 provides: “Within two years: An action
27 for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or
neglect of another.”

Because the complaint is not clear, and because Plaintiff will be given an opportunity to cure the deficiencies identified herein, he is advised that at a bare minimum, standing requires that a plaintiff “show that [he] suffered an injury in fact, there was a causal connection between the injury and the conduct complained of, and the injury is likely to be redressed by a favorable decision.” *Davis v. Yageo Corp.*, 481 F.3d 661, 673 (9th Cir. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992)). In other words, Plaintiff cannot represent the legal interests of others as he has no standing to do so.⁵

H. Eleventh Amendment

Plaintiff is advised the Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991) (citation omitted); *see also Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars suits against state agencies as well as those where the state itself is named as a defendant. *See Natural Resources Defense Council v. California Dep't of Transp.*, 96 F.3d 420, 421 (9th Cir. 1996); *Brooks*, 951 F.2d at 1053; *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). "The Eleventh Amendment's jurisdictional bar covers suits naming state agencies and departments as defendants, and applies whether the relief is legal or equitable in nature." *Brooks*, 951 F.2d at 1053.

The Eleventh Amendment's bar to actions against states and their entities in federal courts provides a ground upon which to recommend dismissal of Defendant "State of California"

⁵Although a non-attorney may appear in propria persona in his or her own behalf, that privilege is personal to him. *McShane v. United States*, 366 F.2d 286, 288 (9th Cir. 1966). "A litigant appearing in propria persona has no authority to represent anyone other than himself." *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962). Non-attorney litigants may not represent others. *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997); *Church of the New Testament v. U.S.*, 783 F.2d 771, 774 (9th Cir. 1986).

1 from Plaintiff's complaint. "The Eleventh Amendment bars suits for money damages in federal
2 court against a state, its agencies, and state officials in their official capacities." *Aholelei v. Dept.*
3 *of Public Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). Thus, Plaintiff's claim
4 for money damages from the State of California fails as a matter of law. Plaintiff should
5 therefore refrain from naming the State of California as a defendant in his amended complaint.

6 **I. Municipalities**

7 Further, Plaintiff names the County of Los Angeles and the County of San Diego as
8 Defendants in his complaint. Aside from the question of whether two separate actions must be
9 brought to assert these claims (*see subh. E*), Plaintiff is advised that section 1983 requires that
10 there be an actual connection or link between the actions of defendant and the deprivation
11 allegedly suffered. *See Monell v. Department of Social Services*, 436 U.S. 658; *Rizzo v. Goode*,
12 423 U.S. 362. The Ninth Circuit Court of Appeals has held that "a person 'subjects' another to
13 deprivation of constitutional right, within the meaning of section 1983, if he does an affirmative
14 act, participates in another's affirmative acts or omits to perform an act which he is legally
15 required to do that causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588
16 F.2d at 743.

17 To the extent Plaintiff seeks to pursue a section 1983 claim, the complaint fails to allege a
18 *Monell* claim against either the County of Los Angeles or San Diego. A local government unit
19 may not be held liable for the acts of its employees under a respondeat superior theory. *Monell*,
20 436 U.S. at 691; *Davis v. Mason County*, 927 F.2d 1473, 1480 (9th Cir. 1991), *cert. denied*, 502
21 U.S. 899 (1991); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989).
22 Because liability of a local governmental unit must rest on its actions, not the actions of its
23 employees, a plaintiff must go beyond the respondeat superior theory and demonstrate the alleged
24 constitutional violation was the product of a policy or custom of the local governmental unit.
25 *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197 (1989); *Pembaur v. City of*
26 *Cincinnati*, 475 U.S. 469, 478-480, 106 S.Ct. 1292 (1986).

1 A “rule or regulation promulgated, adopted, or ratified by a local governmental entity’s
 2 legislative body unquestionably satisfies *Monell*’s policy requirements.” *Thompson*, 885 F.2d at
 3 1443. Official policy may derive from “a decision properly made by a local governmental
 4 entity’s authorized decisionmaker – i.e., an official who possesses final authority to establish
 5 [local government] policy with respect to the [challenged] action.” *Thompson*, 885 F.2d at 1443
 6 (internal quotation marks omitted). “Only if a plaintiff shows that his injury resulted from a
 7 ‘permanent and well-settled’ practice may liability attach for injury resulting from a local
 8 government custom.” *Thompson*, 885 F.2d at 1444. “[O]fficial policy must be the moving force
 9 of the constitutional violation in order to establish the liability of a government body under §
 10 1983.” *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (internal quotation marks omitted); *see*
 11 *Rizzo*, 423 U.S. at 370-377 (general allegation of administrative negligence fails to state a
 12 constitutional claim cognizable under § 1983).

13 Here, Plaintiff’s complaint lacks any allegation of a policy or custom and resulting
 14 constitutional violation to set forth a *Monell* claim. Simply alleging a wrong has been committed
 15 and demanding relief is not enough. *See Conley v. Gibson*, 355 U.S. at 47-48.

16 **J. Governor Schwarzenegger & Attorney General Brown**

17 Plaintiff also asserts in his first claim that Governor Schwarzenegger and Attorney
 18 General Brown have purposefully and deliberately “denied blacks as jurors in the administration”
 19 of criminal cases. More particularly, he claims the governor and attorney general have failed to
 20 perform their duties are required by Article V of the California Constitution and thus have
 21 breached their “duty to correct equal protection and constitutional violation[s] committed.”
 22 (Doc. 1 at 6-18.)

23 “Although there is no pure respondeat superior liability under § 1983, a supervisor [may
 24 be held] liable for the constitutional violations of subordinates ‘if the supervisor participated in
 25 or directed the violations, or knew of the violations and failed to act to prevent them.’” *Hydrick*
 26 *v. Hunter*, 500 F.3d at 988 (quoting *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)).

1 Plaintiff fails to explain the supervisory role of these named Defendants and fails to
2 make any allegations of direct participation. While it may appear to the Court unlikely that the
3 governor or the attorney general had any direct involvement necessary to sustain supervisory
4 liability under section 1983 in this case, Plaintiff will be permitted an opportunity to amend his
5 complaint to so allege.

6 **K. Immunity of Government Officials**

7 Plaintiff is informed that government officials enjoy qualified immunity from civil
8 damages unless their conduct violates "clearly established statutory or constitutional rights of
9 which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
10 In ruling upon the issue of qualified immunity, the initial inquiry is whether, taken in the light
11 most favorable to the party asserting the injury, the facts alleged show the defendant's conduct
12 violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If, and only if, a
13 violation can be made out, the next step is to ask whether the right was clearly established. *Id.*
14 The inquiry "must be undertaken in light of the specific context of the case, not as a broad
15 general proposition" *Saucier v. Katz*, 533 U.S. 194, 201 (2002). "[T]he right the official is
16 alleged to have violated must have been 'clearly established' in a more particularized, and hence
17 more relevant, sense: The contours of the right must be sufficiently clear that a reasonable
18 official would understand that what he is doing violates that right." *Saucier v. Katz*, 533 U.S. at
19 202 (citation omitted). In resolving these issues, a court must view the evidence in the light most
20 favorable to the plaintiff and resolve all material factual disputes in favor of the plaintiff.
21 *Martinez v. Stanford*, 323 F.3d 1178, 1184 (9th Cir. 2003). Qualified immunity protects "all but
22 the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S.
23 335, 341 (1986).

24 With specific regard to Plaintiff naming the jury commissioners of both Los Angeles and
25 San Diego counties as Defendants, Plaintiff is advised that jury commissioners may be entitled to
26 absolute immunity where the acts taken are functionally comparable to those of judges, i.e.,
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1 duties that involve the exercise of discretion in resolving disputes. *Antoine v. Byers & Anderson,*
 2 *Inc.*, 508 U.S. 429, 435, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993). Analogous to the occupation
 3 at issue here, the Ninth Circuit has held that “court clerks have absolute quasi-judicial immunity
 4 from damages for civil rights violations when they perform tasks that are an integral part of the
 5 judicial process . . . unless [the] acts were done in the clear absence of all jurisdiction.” See
 6 *Mullis v. U.S. Bankr. Court*, 828 F.2d 1385, 1390 (9th Cir. 1987). This includes merely
 7 administrative acts that are a part of the judicial function, including a clerks' filing or refusing to
 8 file documents with the court. *Id.*; *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002).

9 **L. Habeas Corpus**

10 Plaintiff seeks relief for numerous civil rights violations, in large part pursuant to section
 11 1983. Nevertheless, Plaintiff complaint also references actions by Defendants that may be more
 12 properly brought by way of a writ of habeas corpus. For example, at page 21 of his complaint
 13 Plaintiff asserts he “was subjected to a trial in Los Angeles County where all the district attorney
 14 witnesses stated they wanted the Plaintiff arrested because he was black and a judge of the case
 15 and more than half the jury stated they had committed the same alleged crime (bounced check on
 16 his own account) but still convicted the Plaintiff due to his race for an alleged crime they
 17 themselves committed.” In another example, at page 27, Plaintiff states he “was subjected to a
 18 trial in San Diego County where after the conviction illegally wa[s] given an illegal sentence,
 19 which happens for blacks in the County of San Diego.”

20 To the degree Plaintiff’s complaint can be interpreted to challenge the legality or duration
 21 of his custody, or attempts to raise a constitutional challenge which could entitle him to an earlier
 22 release, Plaintiff is advised that his sole federal remedy is a writ of habeas corpus. *Wilkinson v.*
 23 *Dotson*, 544 U.S. 74, 125 S.Ct. 1242, 1245-48 (2005); *Preiser v. Rodriguez*, 411 U.S. 475
 24 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991).

25 In the first example above, it appears Plaintiff is claiming, at least in part, juror
 26 misconduct or bias and judicial misconduct or bias, going to the legality of his custody. In the
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1 second example, Plaintiff challenges the legality of his sentence. Both are properly presented by
2 way of a petition for writ of habeas corpus.

3 Moreover, when seeking relief for an allegedly unconstitutional conviction or
4 imprisonment, “a § 1983 plaintiff must prove that the conviction or sentence has been reversed
5 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
6 make such determination, or called into question by a federal court’s issuance of a writ of habeas
7 corpus, 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 487-88 (1994). “A claim . . .
8 bearing that relationship to a conviction or sentence that has not been so invalidated is not
9 cognizable under § 1983.” *Id.* at 488.

10 Plaintiff has not indicated his conviction or sentence in either county was reversed or
11 otherwise declared invalid.

12 **M. Injunctive Relief**

13 Finally, Plaintiff seeks monetary damages and injunctive relief. More specifically,
14 Plaintiff seeks “emergency injunctive relief and relief for the State of California to come up with
15 a sy[s]tem that includes minorities pr[o]portioned to the population in jury pools.” (Doc. 1 at 3,
16 ¶ V.)

17 Plaintiff is advised that as a general matter, monetary injury, even severe monetary injury,
18 is an insufficient ground for injunctive relief. *Sampson v. Murray*, 415 U.S. 61, 90-92, 94 S.Ct.
19 937, 952-953 (1974). That is because monetary loss may be compensated at law. Put differently,
20 a person suffering monetary injury has an adequate remedy at law and, accordingly, equitable
21 relief should be denied. Additionally, Plaintiff is cautioned that in the context of injunctive
22 relief, Plaintiff must allege an injury in fact, as well as a sufficient likelihood that he will again
23 be wronged in a similar way. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). That is, a
24 real and immediate threat of repeated injury exists. *O’Shea v. Littleton*, 414 U.S. 488, 496, 94
25 S.Ct. 669 (1974). In light of the claims Plaintiff has presented, it appears highly unlikely to this
26 Court that Plaintiff can allege a sufficient likelihood of a real and immediate threat of repeated
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injury absent Plaintiff's assertion that he is likely to face future criminal trial proceedings as the result of future criminal conduct.

CONCLUSION

For the above reasons, Plaintiff's complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff's first amended complaint is due within thirty (30) days of the date of service of this order. If Plaintiff fails to file a first amended complaint, the Court will recommend that this action be dismissed for failure to follow a court order.

Plaintiff is cautioned that an amended complaint supercedes the original complaint, and must be "complete in itself without reference to the prior or superceded pleading." *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); Local Rule 220. Plaintiff is warned that "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." *King*, 814 F.2d at 567, citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981); *accord Forsyth*, 114 F.3d at 1474.

IT IS SO ORDERED.

Dated: November 10, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE