NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAYWARD JACKSON, Plaintiff-Appellant, v. EQUIFAX WORKFORCE SOLUTIONS, DBA Labor Ready Southwest; et al., Defendants-Appellees.	No. 17-56831 D.C. No. 5:17-cv-00143-FMO-JPR MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted October 11, 2018**

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges.

Hayward Jackson appeals pro se from the district court's judgment dismissing his employment action alleging federal and state-law claims. The Equal Employment Opportunity Commission has filed an amicus brief on Jackson's behalf. We have jurisdiction under 28 U.S.C. § 1291. We review de

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

novo a dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014), and we affirm.

The district court properly dismissed Jackson's discrimination claim under 42 U.S.C. § 1981 because Jackson failed to allege facts sufficient to show that his termination was based on racial animus. *See Hebbe v. Pliler*, 627 F.3d 338, 341–42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Evans v. McKay*, 869 F.2d 1341, 1344 (9th Cir. 1989) (in a section 1981 action, "plaintiffs must show intentional discrimination on account of race."). Contrary to Jackson's contentions, the district court did not err by requiring Jackson to allege factual content demonstrating the plausibility of his claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 683 (2009) (complaint must contain factual allegations "sufficient to plausibly suggest [a] discriminatory state of mind").

The district court properly dismissed Jackson's claims under 42 U.S.C. § 1985(3) and § 1986 because Jackson's second amended complaint contained only conclusory allegations and failed to attribute specific wrongful conduct to any individual defendant. *See Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 267–68 (1993); *Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985) ("[A] cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim

for relief under section 1985.").

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAYWARD JACKSON, Plaintiff, v. PEOPLE READY, INC. et al., Defendants.	Case No. EDCV 17-0143-FMO (JPR) REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, U.S. District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the U.S. District Court for the Central District of California.

PROCEEDINGS

On January 26, 2017, Plaintiff filed pro se a civil-rights action under 42 U.S.C. §§ 1981, 1985(3), and 1986. He was later granted in forma pauperis status.

The undersigned Magistrate Judge screened the Complaint under 28 U.S.C. § 1915(e)(2) and dismissed it with leave to amend on March 16, 2017. On April 13, 2017, Plaintiff filed a First

Amended Complaint, which named the same Defendants, raised the same claims, and failed to correct most of the deficiencies identified in the March 16 Order.

On May 24, 2017, before the Court could screen the FAC or issue an order directing service, Defendants Stephanie Vanegas, Waleska Stanford, and Raquel Madrigal moved to dismiss it under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.[1] On May 30, 2017, the undersigned issued another screening order, dismissing the FAC with leave to amend and denying as moot the motion to dismiss.

On June 28, 2017, Plaintiff filed the operative Second Amended Complaint, which continues to sue the same Defendants[2] on the same theories based on allegations nearly identical to those in his first two pleadings, still failing to remedy the vast majority of the deficiencies identified by the Court in its dismissal orders. Defendants Vanegas, Stanford, and Madrigal

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[1] Although 28 U.S.C. § 1915 and Fed. R. Civ. P. 4(c)(3) provide for the U.S. Marshal to serve process for any plaintiff proceeding in forma pauperis, and only after the Court orders such service, Plaintiff apparently nonetheless prematurely served Defendants Vanegas, Stanford, and Madrigal. See Montgomery v. L. V. Metro. Police Dep't, No. 2:11-cv-02079-MMD-PAL, 2013 WL 3198305, at *2 (D. Nev. June 20, 2013) (service of process by plaintiff proceeding in forma pauperis premature when court had not completed required screening under § 1915). The Court has not ordered service of any pleading in this matter, and no proof of service has been filed as to any Defendant.

[2] The SAC names the same Defendants in its caption but refers in its body to a "Defendant Vargas," who is not named in the caption and was not named or referred to in any previous pleadings. (See SAC ¶¶ 18, 46.) Although Defendants point out this deficiency in their motion to dismiss (see Mot. Dismiss, Mem. P. & A. at 6), Plaintiff's opposition provides no explanation.

moved to dismiss the SAC on July 14. Plaintiff filed opposition on August 3, 2017, and the moving Defendants filed a reply on August 11.

The SAC's allegations still fail to state any claims under §§ 1981, 1985(3), or 1986. Because it is clear that Plaintiff cannot cure the deficiencies by amendment, Defendants Stanford, Vanegas, and Madrigal's motion to dismiss should be granted and the SAC dismissed without leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se litigant must be given leave to amend complaint unless absolutely clear deficiencies cannot be cured by amendment); Nevijel v. N. Coast Life Ins., 651 F.2d 671, 674 (9th Cir. 1981) (affirming dismissal of amended complaint that was "equally [deficient] as the initial complaint"); Mitchell v. Powers, 411 F. App'x 109, 110 (9th Cir. 2011) (affirming dismissal of prisoner's amended complaint with prejudice for raising "same deficiencies as the original complaint"). Because the SAC sues all Defendants on all theories based on a single set of undifferentiated factual allegations, the claims against the nonmoving Defendants should be dismissed as well without leave to amend.[3]

ALLEGATIONS OF THE SAC

Plaintiff is an African-American man residing in San Bernardino County. (SAC ¶¶ 7, 60.) Defendant People Ready,

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[3] Should Plaintiff wish to argue some reason why the claims against the nonmoving Defendants should be allowed to proceed, he may do so in any objections to this Report and Recommendation he chooses to file.

Inc., also known as Equifax Work Solutions,[4] is a temporary staffing agency doing business as Labor Ready Southwest. (Id. ¶ 1.) Labor Ready has offices in Upland and San Bernardino. (Id. ¶ 15.) Defendants Vanegas, Madrigal, Stanford, and David Montez reside in San Bernardino. (Id. ¶¶ 2-5.) At pertinent times, "each . . . Defendant[]" was the "agent and employee" of the other Defendants. (Id. ¶ 10.)

Labor Ready "requires drug testing" of employees "periodically" because it "hires temporary employees for light industrial work" and wishes to reduce its liability for workers' compensation claims in the event an employee is "high on drugs while injured at work." (Id. ¶ 16.)

Before April 30, 2015, Plaintiff was "employed as a temporary employee" at Labor Ready after "filling out an . . . application." (Id. ¶ 14.) He was an "at-will" employee and "does not remember filling [out] a contract." (Id.) He was "in good standing." (Id. ¶ 15.) He "was given temporary jobs" at the San Manuel Indian Bingo & Casino. (Id. ¶ 17.) He "was ordered drug tested" each Wednesday night before those jobs and passed. (Id.)

"On or about April 30, 2015," Plaintiff "was assigned" to the Labor Ready office in Upland. (Id. ¶ 18.) He was taken to the "job site" by another temporary employee, who had smoked marijuana that day. (Id.) A "Defendant Vargas" at the Upland

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[4] The moving Defendants contend that Labor Ready's proper name is PeopleReady, Inc., formerly known as Labor Ready Southwest, Inc. (See Mot. Dismiss SAC, Mem. P. & A. at 5 n.1.) That Defendant has not been served or appeared in this matter. (Id.)

Labor Ready office required Plaintiff and the temporary employee who had transported him to take a drug test and "falsely stated that he failed." (Id.) Defendants Stanford, "Vargas," and Madrigal "set the drug test to fail" because they "did not want Plaintiff to work there because of his race." (Id. ¶ 19.) Plaintiff "and other employees" "heard" that Defendant Stanford "said that she did not like African-Americans" because she used to live in the "Little Africa" neighborhood of San Bernardino and "felt harassed by African-Americans." (Id.)

Plaintiff took "the very similar drug test[,] . . . like the test they use at all Labor Ready [o]ffices," at the San Bernardino Labor Ready "day later [sic]" and passed. (Id. ¶ 18.) Despite having passed the second test, Plaintiff was "terminated" from his employment with Labor Ready because Defendants "did not want [him] to work at any Labor Ready because of his race." (Id. ¶ 20.) As a result of Defendants' conduct, Plaintiff was "almost totally deprived of his liberty and his freedom from personal harm" and "suffered humiliation, anxiety, and emotional and physical distress." (Id. ¶¶ 22, 30, 37, 50; see also ¶¶ 28, 40, 55-56.) He also was "caused to suffer severe and lasting physical and psychological injuries, medical expenses, loss of income, and the expense of hiring counsel and prosecuting this action."[5] (Id. ¶¶ 63, 70.)

Plaintiff brings seven causes of action against all Defendants: federal civil-rights claims under 42 U.S.C. §§ 1981, 1985(3), and 1986 as well as state-law claims for intentional

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[5] Plaintiff is in fact representing himself.

infliction of emotional distress and violations of the California Fair Housing and Employment Act and the Unruh Civil Rights Act, Cal. Civil Code §§ 51-52. He seeks general, special, and punitive damages plus "exemplary damages," a "civil award of $25,000," and attorney's fees and costs. (SAC at 14 ¶¶ 1-3 & 15 ¶¶ 4-5.)

STANDARD OF REVIEW

A complaint may be dismissed as a matter of law for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010) (as amended) (citation omitted); accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In considering whether a complaint states a claim, a court must generally accept as true all the factual allegations in it. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept as true, however, "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th Cir. 2012) (finding that district court properly dismissed civil-rights claim when plaintiff's "conclusory allegations" did not support it). Although a complaint need not include detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Yagman v.

Garcetti, 852 F.3d 859, 863 (9th Cir. 2017). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

"A document filed pro se is 'to be liberally construed,' and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted). But district courts are required to grant leave to amend only if a complaint "can possibly be saved." Lopez, 203 F.3d at 1129. Courts are not required to grant leave to amend if a complaint "lacks merit entirely." Id.

DISCUSSION

I. The SAC does not state a claim for relief under §§ 1981, 1985(3), or 1986

A. Section 1981

As discussed in the Court's March 16 and May 30 orders, to state a claim under § 1981, a plaintiff must show that (1) he has or would have rights under the relevant contract and (2) the defendant acted to impair those rights because of discriminatory racial animus. Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 476 (2006); (see also Mar. 16, 2017 Order at 5; May 30, 2017 Order at 5-6). A complaint must allege a "direct connection" between a defendant's actions and the claimed discrimination. Ivey v. Bd. of Regents of the Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982) (upholding dismissal of § 1981 action for failure to state claim because plaintiff's allegations were "not supported by reference to any specific actions, practices, or

policies" of defendants).

Assuming that Plaintiff had a contractual interest in employment with Labor Ready, see Domino's Pizza, 546 U.S. at 476, the SAC does not contain factual allegations showing that that interest was impaired by the conduct of any Defendant. The crux of Plaintiff's claim of discrimination is the allegation that "Upland Labor Ready" and Defendants Vanegas, Stanford, and Madrigal[6] "set the drug test to fail" because of Defendant Stanford's alleged dislike of African-Americans. (SAC ¶ 19.) At some point after the Upland drug screening and a second screening "[a] day later" at Labor Ready's San Bernardino office, which Plaintiff passed, his employment at Labor Ready was terminated. (Id. ¶¶ 18, 20, 46-47.) The SAC does not indicate what reason, if any, Labor Ready cited for that decision.

Plaintiff bases his claim of racial discrimination on the allegation that Stanford "used to live in the 'Little Africa' neighborhood of San Bernardino and felt harassed by African-Americans." (Id. ¶¶ 20, 46.) The SAC does not allege that Stanford or any other Defendant actually said that, only that "Plaintiff and other employees heard" that Stanford felt that way. (Id. ¶¶ 19, 46.) The SAC makes no specific allegations as to whether, when, or how that belief was communicated to other Defendants, nor how that belief led Stanford or any other Defendant to tamper with or falsify Plaintiff's drug-screening

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[6] The SAC names David Montez as a Defendant and claims that Montez worked at Labor Ready but otherwise contains no factual allegations against him. (See SAC ¶¶ 5, 10.) It is unclear what role Plaintiff contends Montez had in the allegedly unlawful conduct by other Defendants.

results. In short, Plaintiff's allegations are nothing but speculation.

The only allegation Plaintiff adduces in support of a causal nexus between Stanford's alleged belief and his failing the Upland drug test is that he took "the very similar drug test" at Labor Ready's San Bernardino location about a day later "and ***he passed.***" (Id. ¶ 18 (emphasis in original); see also id. ¶ 45.) The SAC alleges that the San Bernardino test was "like the test they use at all Labor Ready Offices," but it contains no specific allegations of how the two tests were similar or different, such as which substances were tested for each time, how and by whom each test was administered, how and by whom the results were obtained, and why the different results could not be attributed to factors other than discrimination, such as that Plaintiff allegedly rode to the Upland office with a temporary employee who had been smoking marijuana, or the natural passage of substances from the body in the time between the two tests. (See SAC ¶ 18.) Indeed, Plaintiff does not even allege that when he took the Upland test he had not recently used drugs. As the Court noted in its March 16 and May 30 orders, in the absence of such allegations, Plaintiff's contention that the results of the Upland drug test were necessarily falsified because he passed another drug test at a later time is not plausible. (See Mar. 16 Order at 7-8, May 30 Order at 7.)

Moreover, even if the Upland results were falsified based on racial discrimination, Plaintiff has not alleged facts showing that that act proximately caused the cessation of his employment with Labor Ready. The SAC does not allege which Defendant made

the decision to terminate Plaintiff's employment, the relationship between the decisionmaker and Defendant Stanford, when the decision was made, or how, if at all, that decision was affected by the drug-screening results or any Defendant's allegedly discriminatory beliefs. Indeed, Plaintiff alleges that Labor Ready conducted drug testing not necessarily for hiring and firing purposes but "to cut down on worker compensation claims in the event the employee is high on drugs while injured at work." (See SAC ¶ 16); see also Williams v. Cnty. of L.A. Dep't of Pub. Soc. Servs., No. CV 14-7625 JVS (JC), 2016 WL 8229038, at *8 (C.D. Cal. Dec. 21, 2016) (dismissing civil-rights complaint arising from multiple "unrelated and/or irrelevant" incidents against "indistinguishable group of defendants" for failure to allege sufficient facts to state claim), accepted by 2017 WL 532935 (C.D. Cal. Feb. 8, 2017).

Plaintiff's opposition cites numerous cases purportedly showing that the SAC should not be subject to a "heightened pleading standard." (See Opp'n at 2-3.) To the extent those cases predate 2008 - as most of them do - and are inconsistent with Iqbal and Twombly, they do not govern. Further, Plaintiff is apparently under the impression that the Court dismissed his previous pleadings under the heightened pleading standard of Federal Rule of Civil Procedure 9(b). (Id. (quoting Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1102-03 (9th Cir. 2008) (only civil cases averring fraud or mistake are subject to Rule 9(b) standard)).) That is not the case. As Plaintiff correctly notes, Rule 8 requires no more than a "short and plain statement" of the claim. (See id. at 3 (quoting Johnson v. City of Shelby,

Miss., 135 S. Ct. 346, 346-47 (2014)).) For the reasons discussed here (see Section II) and in the Court's two previous dismissal orders, he has not made that showing.

Plaintiff also cites Johnson for the proposition that he need not identify the correct legal theory to survive a motion to dismiss (see Opp'n at 3), but he has had no difficulty identifying the legal theories under which he wishes to sue. The SAC's problems lie elsewhere, as previously discussed. Finally, Plaintiff cites In re National Security Agency Telecommunications Records Litigation, 595 F. Supp. 2d 1077, 1085 (N.D. Cal. 2009), for the proposition that he need not provide proof of his allegations at this stage. (See id.) That case is inapposite, as it concerned the prospective unsealing of classified information under the Foreign Intelligence Surveillance Act, and in any event the Court has not demanded that Plaintiff provide any proof of his allegations, only that he allege sufficient additional facts to state a plausible claim to relief.

For all these reasons, the SAC fails to state a claim under § 1981.

B. Sections 1985(3) and 1986

Plaintiff has also failed to plead any facts to support a claim under §§ 1985(3) or 1986. As discussed in the Court's March 16 and May 30 orders, to state a claim under § 1985(3), a plaintiff must allege "specific facts" to support the existence of the claimed conspiracy, including facts showing an "agreement amongst" the Defendants to violate his civil rights. Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 929-30 (9th Cir. 2004); (see also Mar. 16, 2017 Order at 8; May 30, 2017 Order at 8).

Plaintiff's purported cause of action under § 1985(3) alleges a conspiracy among "two or more" Defendants, "and each of them," to deprive him of "equal protection and immunities under the law," "for the purpose of preventing and hindering the constituted authorities from giving and securing to Plaintiff equal protection of the law a [sic] deprivation of liberty and property without due process of law." (SAC ¶¶ 26-27.) The SAC, much like its predecessors, states conclusorily that "an agreement or understanding between or among Defendants" existed to engage in wrongful conduct, but it contains no specific allegations of meetings or communication between or among any Defendants. (Id. ¶ 29.) It alleges that Defendants Stanford, Madrigal, Vanegas, and "the Upland Labor Ready" "set the drug test to fail" but does not allege facts showing that they worked in concert to do so (much less with the requisite discriminatory animus), or that they even knew of each other's existence. (See id. ¶ 19.) Along the same lines, the SAC alleges "an act or acts in furtherance of the object of the conspiracy" without providing any details as to the nature of the act in question. (Id. ¶ 27.) Accordingly, it does not state a claim for conspiracy. See Iqbal, 556 U.S. at 678 ("[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," insufficient to state claim (citation omitted)); see also Garber v. Mohammadi, No. CV 10-7144-DDP (RNBx), 2013 WL 4012633, at *16 (C.D. Cal. Aug. 6, 2013) (complaint must "contain facts describing the overt acts" committed in furtherance of conspiracy; mere allegation of existence of conspiracy does not suffice under § 1985 (citation omitted)).

Plaintiff's third federal cause of action alleges that "Defendants, and each of them," unlawfully failed to intervene to prevent the conspiracy to deprive Plaintiff of his civil rights, in violation of § 1986. (SAC ¶¶ 34-39.) As discussed in the Court's March 16 and May 30 orders, "[A] 'claim can be stated under section 1986 only if the complaint contains a valid claim under section 1985.'" Garity v. APWU Nat'l Labor Org., 655 F. App'x 523, 526 (9th Cir. 2016) (quoting Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 626 (9th Cir. 1988)); (see also Mar. 16, 2017 Order at 10; May 30, 2017 Order at 9). Because the SAC fails to state a valid claim under § 1985, an action under § 1986 also will not lie.[7]

II. The SAC fails to comply with the notice pleading requirements of Federal Rule of Civil Procedure 8

The SAC falls short of Federal Rule of Civil Procedure 8's notice pleading requirements because it does not specify which claims under which legal theory or theories Plaintiff purports to raise against which Defendants. He continues to enumerate seven separate federal and state causes of action against five named Defendants and 10 Does, almost never alleging which conduct by which Defendant is implicated by each claimed cause of action. There are no factual allegations as to which Defendants administered the two drug tests, which Defendants made the

[7] Plaintiff also brings four state-law causes of action, arising from the same alleged nexus of conduct, under 28 U.S.C. § 1367(a). The Court should decline to exercise supplemental jurisdiction over the state-law claims because he has failed to state a federal cause of action. Herman Family Revocable Tr. v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001).

decision to terminate Plaintiff's employment, which Defendants took part in the claimed conspiracy, or which Defendants failed to intervene to stop it. Further, the SAC contains no factual allegations indicating which of Plaintiff's many theories of damages is intended to apply to which Defendant.

Even construing Plaintiff's allegations liberally and affording him the benefit of any doubt, the Court finds that his SAC fails to allege sufficient "factual content that allows the [C]ourt to draw the reasonable inference that [each] defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. The only substantive factual allegations against the moving Defendants are that Plaintiff "heard" that Defendant Stanford did not like African-Americans and that one or more of Defendants Stanford, Madrigal, and "Vargas" somehow "set the drug test to fail" through unspecified means, either separately or in concert, for unknown reasons that may or may not have had any relationship with Stanford's allegedly discriminatory views or with Plaintiff's loss of employment. (See SAC ¶¶ 19, 46.) The SAC contains no factual allegations against Defendant Montez and gives no hint as to how that individual or the Doe Defendants were involved in any prohibited conduct. This does not meet the Rule 8 standard. See Starr v. Baca, 652 F.3d 1202, 1216-17 (9th Cir. 2011) (to comply with Rule 8, complaint must allege sufficient facts to give fair notice and to enable other party to defend itself effectively, and it must plausibly suggest entitlement to relief such that it is not unfair to require opposing party to be subjected to expense of discovery and continued litigation); Brazil v. U.S. Dep't of Navy, 66 F.3d 193,

199 (9th Cir. 1995) (Rule 8 requires that complaint provide "minimum threshold" giving defendant "notice of what it is that it allegedly did wrong").

III. Plaintiff has still not alleged facts to support his damages claims

The SAC asserts that as a result of Defendants' conduct, Plaintiff "has been almost totally deprived of his liberty and his freedom from personal harm," and he "has and will have suffered humiliation, anxiety, and emotional and physical distress as well as possible future personal injuries . . . unless this Court intervenes." (SAC ¶¶ 22-23, 30-31, 37-38, 50-51; see also id. ¶¶ 63, 70 (allegations of "loss of income," "severe and lasting physical and psychological injuries," and "medical expenses").) These claims appear to be copied verbatim from Plaintiff's two previous pleadings. (Compare SAC ¶¶ 22-23, with FAC ¶¶ 21-22, with Compl. ¶¶ 18-19.) As explained in the Court's March 16 and May 30 orders, the Court cannot infer from the facts alleged that the result of the Upland drug screening or any action by Defendants caused Plaintiff to suffer the multitude of harms claimed. See Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 971 (9th Cir. 2010) (plaintiff's "speculative" allegations of "psychological trauma," "loss of liberty," and potential impairment of future employment opportunities insufficient to claim damages in civil-rights case); (see also Mar. 16, 2017 Order at 12-13; May 30, 2017 Order at 11-12).

IV. Plaintiff's claim for attorney's fees is not cognizable

Plaintiff again requests "reasonable attorney's fees" in his

prayer for relief. (SAC at 15 ¶ 4.) As the Court has twice informed Plaintiff, he is acting in pro se and thus is not entitled to attorney's fees. See Blanchard v. Morton Sch. Dist., 509 F.3d 934, 938 (9th Cir. 2007) (as amended); (see also Mar. 16, 2017 Order at 13; May 30, 2017 Order at 12). His claim for them is thus improper.

V. Leave to amend is not warranted

As discussed above, Plaintiff has failed to state any federal cause of action against any Defendant and has not complied with the notice pleading requirements of Rule 8 despite having had three chances to do so and having twice been given clear and specific instructions on the requirements of Rules 8 and 12. It is apparent at this point that he has not alleged the additional facts needed to bring his pleading into compliance with federal standards because he has no such additional facts to allege. It is thus clear that further leave to amend would be futile. See Griggs v. Pace Am. Grp., Inc., 170 F.3d 877, 879 (9th Cir. 1999) (discretion to deny leave to amend is broad after court previously granted leave to amend). Futility alone is sufficient to deny leave to amend. See Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995).

Plaintiff has also continued to include speculative and fantastical claims for damages and a noncognizable demand for attorney's fees after having twice been admonished against doing so. Plaintiff was duly warned in each of the prior dismissal orders that failure to timely file a sufficient amended pleading curing those and the other deficiencies could result in dismissal of the action with prejudice. The SAC nevertheless is legally

insufficient. Because it is absolutely clear that granting leave to file a third amended complaint would be futile, and because Plaintiff has repeatedly failed to comply with court orders, the Court recommends that the SAC be dismissed without leave to amend. See Nevijel, 651 F.2d at 674; Mitchell, 411 F. App'x at 110; Seto v. Thielen, 519 F. App'x 966, 969 (9th Cir. 2013) (upholding dismissal of complaint when "[p]laintiffs repeatedly failed to comply with the district court's orders directing them to remedy the drastic shortcomings of their pleadings" and they "were warned several times that failure to comply . . . would result in automatic dismissal"); see also Ferdik v. Bonzelet, 963 F.2d 1258, 1261-62 (9th Cir. 1992) (as amended) (upholding dismissal of pro se civil-rights action for failure to comply with court order requiring remedying deficient caption).

RECOMMENDATION

For all these reasons, IT IS RECOMMENDED that the District Judge (1) accept this Report and Recommendation; (2) grant Defendants Vanegas, Madrigal, and Stanford's motion to dismiss the claims against them without leave to amend; (3) dismiss the claims against the nonmoving Defendants without leave to amend; and (4) direct that Judgment be entered dismissing the action with prejudice.

DATED: September 22, 2017

JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAYWARD JACKSON, Plaintiff, v. PEOPLE READY, INC. et al., Defendants.	Case No. EDCV 17-0143-FMO (JPR) ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE

The Court has reviewed the Second Amended Complaint, records on file, and Report and Recommendation of U.S. Magistrate Judge. See 28 U.S.C. § 636. On October 12, 2017, Plaintiff filed objections to the R. & R., and on October 26 Defendants Stephanie Vanegas, Waleska Stanford, and Raquel Madrigal filed a response. Plaintiff for the most part simply repeats, verbatim, arguments made in his opposition to Defendants' motion to dismiss. Those arguments were thoroughly addressed in the Magistrate Judge's Report and Recommendation.

Having made a de novo determination of those portions of the R. & R. to which Plaintiff objected, the Court accepts the findings and recommendations of the Magistrate Judge. IT THEREFORE IS ORDERED that Defendants' motion to dismiss the Second Amended Complaint without leave to amend is GRANTED, the

claims against the nonmoving Defendants are dismissed without leave to amend, and judgment be entered for all Defendants. The Court declines to exercise supplemental jurisdiction over Plaintiff's state-law claims, and they are dismissed without prejudice.

DATED: November 7, 2017

/s/
FERNANDO M. OLGUIN
U.S. District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HAYWARD JACKSON, Plaintiff, v. PEOPLE READY, INC. et al., Defendants.	Case No. EDCV 17-0143-FMO (JPR) **J U D G M E N T**

Pursuant to the Order Accepting Findings and Recommendations of U.S. Magistrate Judge,

IT IS HEREBY ADJUDGED that Plaintiff's federal claims are dismissed with prejudice and his state-law claims are dismissed without prejudice.

DATED: November 7, 2017

/s/
FERNANDO M. OLGUIN
U.S. DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAYWARD JACKSON, Plaintiff-Appellant, v. EQUIFAX WORKFORCE SOLUTIONS, DBA Labor Ready Southwest; et al., Defendants-Appellees.	No. 17-56831 D.C. No. 5:17-cv-00143-FMO-JPR Central District of California, Riverside ORDER

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges.

Appellant's motion to recall the mandate is hereby DENIED. No further filings shall be entertained.

So ORDERED.

UNITED STATES CONSTITUTION
FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CODE
42 U.S.C., §1981

(a)STATEMENT OF EQUAL RIGHTS

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b)"MAKE AND ENFORCE CONTRACTS" DEFINED

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c)PROTECTION AGAINST IMPAIRMENT

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

UNITED STATES CODE
42 U.S.C., §1985

(1) PREVENTING OFFICER FROM PERFORMING DUTIES

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

UNITED STATES CODE
42 U.S.C., §1986

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.