IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-10695

TRENT S. GRIFFIN, SR.,

Plaintiff - Appellant

v.

AMERICAN ZURICH INSURANCE COMPANY; WALGREENS COMPANY; GREG WASSON, Chief Executive Officer; JIM REILLY, SR., Director Human Resources; CHESTER STEVENS, District Manager; JANUARI LEWIS, Pharmacy Supervisor; JERRY PADILLA, Pharmacy Supervisor; FELICIA FELTON, Store Manager; JERLINE WASHINGTON, Pharmacy Manager; VANESSA STRONG, Store Manager; MIRANDA MARTINEZ, Pharmacy Technician; DARAVANH KHANMANIVANH, Pharmacy Technician; TEXAS DEPARTMENT OF INSURANCE, Division of Workers' Compensation; RYAN BRANNAN, Texas Workers' Compensation Commissioner; ROD BORDELON, in his individual capacity; GREG ABBOTT, Governor, State of Texas and in his individual capacity; RICK PERRY, in his individual capacity; KEN PAXTON, Attorney General; HENRY WHITMAN, JR., Commissioner C.P.S.; STEPHEN MCKENNA, Child Support Officer; MARK IVERSON, Authorized Agent; WELLS FARGO BANK; ANDREW COLE, Designated Doctor; NICOLE BUSH, Market Scheduler; VALERIE RIVERA, Ombudsman; THOMAS HIGHT, Hearing Officer; TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas, Dallas

ON PETITION FOR REHEARING

Before REAVLEY, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is Denied

ENTERED FOR THE COURT: 7-17-17

UNITED STATES CIRCUIT JUDGE

REVISED June 8, 2017

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16-10695

United States Court of Appeals
Fifth Circuit
FILED
June 6, 2017
Lyle W. Cayce
Clerk

TRENT S. GRIFFIN, SR.,

Plaintiff - Appellant

v.

AMERICAN ZURICH INSURANCE COMPANY; WALGREENS COMPANY; GREG WASSON, Chief Executive Officer; JIM REILLY, SR., Director Human Resources; CHESTER STEVENS, District Manager; JANUARI LEWIS, Pharmacy Supervisor; JERRY PADILLA, Pharmacy Supervisor; FELICIA FELTON, Store Manager; JERLINE WASHINGTON, Pharmacy Manager; VANESSA STRONG, Store Manager; MIRANDA MARTINEZ, Pharmacy Technician; DARAVANH KHANMANIVANH, Pharmacy Technician; TEXAS DEPARTMENT OF INSURANCE, Division of Workers' Compensation; RYAN BRANNAN, Texas Workers' Compensation Commissioner; ROD BORDELON, in his individual capacity; GREG ABBOTT, Governor, State of Texas and in his individual capacity; RICK PERRY, in his individual capacity; KEN PAXTON, Attorney General; HENRY WHITMAN, JR., Commissioner C.P.S.; STEPHEN MCKENNA, Child Support Officer; MARK IVERSON, Authorized Agent; WELLS FARGO BANK; ANDREW COLE, Designated Doctor; NICOLE BUSH, Market Scheduler; VALERIE RIVERA, Ombudsman; THOMAS HIGHT, Hearing Officer; TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-2470

Before REAVLEY, HAYNES and COSTA, Circuit Judges.

PER CURIAM:*

Pro se Plaintiff Trent S. Griffin appeals the district court's dismissal of his claims against various defendants stemming from an alleged conspiracy which resulted in, inter alia, a foreclosure on his home and the garnishment of his veteran's benefits. We AFFIRM.

I.

Plaintiff Trent S. Griffin, proceeding pro se, initially filed suit to assert claims of violations of his rights, inter alia, under: the First, Fourth, Fifth, Thirteenth, and Fourteenth Amendment rights; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act ("ADA"); the Age Discrimination in Employment Act; and 38 U.S.C. § 5301. These claims are made against four groups of defendants: (1) American Zurich Insurance Company; (2) Walgreens Company and various employees (collectively, "Walgreens");[1] (3) Wells Fargo Bank; and (4) the Texas Department of Insurance, the Texas Department of Family and Protective Services, and various employees of the state of Texas ("State Defendants").[2] Griffin's claims appear to stem from various events, including: (a) a determination by American Zurich concerning an injury suffered during his employment at Walgreens, (b) alleged discrimination, retaliation, harassment, and a hostile work environment during his employment at Walgreens, (c) Wells Fargo's

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] These defendants are Greg Wasson, Jim Reilly, Sr., Chester Stevens, Januari Lewis, Jerry Padilla, Felicia Felton, Jerline Washington, Vanessa Strong, Miranda Martinez, and Daravanh Khanmanivanh.

[2] These defendants are Ryan Brannan, Rod Bordelon, Greg Abbott, Rick Perry, Ken Paxton, Henry Whitman, Jr., Stephen McKenna, Mark Iverson, Andrew Cole, Nicole Bush, Valerie Rivera, and Thomas Hight.

foreclosure on his house and garnishment of his veteran's benefits, and (d) some sort of dispute over custody and child care payments ordered by the State Defendants.

Griffin's complaint generated a flurry of activity, with the defendants filing motions to dismiss, Griffin filing out-of-time amended complaints and motions for summary judgment, and the defendants filing motions to strike in response to these amended complaints. The district court eventually denied most of these motions and re-set the litigation process by ordering Griffin to file a new amended complaint. Once Griffin filed his new amended complaint, American Zurich, Walgreens, and the State Defendants filed a motion to dismiss the amended complaint, while Wells Fargo filed an answer and then subsequently filed a motion to dismiss. The district court individually granted all four motions to dismiss and entered final judgment in favor of each of the groups of defendants. Griffin filed motions for new trials against each of the groups of defendants, which were subsequently denied in an electronic order. Griffin now appeals.

II.

We review de novo a district court's dismissal for either lack of subject matter jurisdiction or failure to state a claim. *Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 421 (5th Cir. 2013). When evaluating a motion to dismiss for failure to state a claim, we accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff. *Priester v. JP Morgan Chase Bank, N.A.*, 708 F.3d 667, 672 (5th Cir. 2013). We will deny such a motion if the complaint contains sufficient factual matter which, if accepted as true, states a plausible claim for relief. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As for a motion to dismiss for lack of subject matter jurisdiction, a district court can resolve factual disputes "to the extent necessary to determine jurisdiction" and, based upon such facts, we then

determine whether the district court correctly applied the law. *See Smith v. Reg'l Transit Auth.*, 756 F.3d 340, 346 (5th Cir. 2014).

Griffin's appeal also challenges the manner in which the district court handled the various motions filed in his case. The management of a district court's docket is reviewed for an abuse of discretion. *Fin. Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 291 (5th Cir. 2006).

III.

Griffin's sprawling, ninety-seven page appeal attempts to revisit most of the decisions of the district court in dismissing his claims. Our review, however, finds that the order appealed must be affirmed for substantially the same reasons given by the district court. We briefly address the discernable arguments made by Griffin both as to the district court's general handling of his case and to the specific claims against each group of defendants.

A. The District Court's Management of Griffin's Case

Griffin lodges two types of arguments against the district court's management of his claims. First, Griffin repeatedly argues that, as a pro se plaintiff, the district court was under an obligation to liberally construe his complaints and failed to do so. Griffin is correct on the law, but we conclude that the district court here liberally construed Griffin's amended complaint. "We hold pro se plaintiffs to a more lenient standard than lawyers when analyzing complaints, but pro se plaintiffs must still plead factual allegations that raise the right to relief above the speculative level." *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (per curiam), *cert. denied*, 137 S. Ct. 1339 (2017). Griffin's amended complaint, even under a liberal construction, failed to raise anything more than speculative claims. The

district court was correct to grant dismissal even granting a liberal interpretation of Griffin's amended complaint.[3]

Griffin also argues that the district court abused its discretion in managing his case. Griffin alleges that errors by the district court include: not allowing Griffin to initially amend his complaint, not requiring defendants to respond to his motion for partial summary judgment, not converting motions to dismiss his amended complaint into motions for summary judgment, forcing Griffin to respond to "untimely" motions to dismiss his amended complaint, and ultimately granting these untimely motions. We disagree. The district court did not abuse its discretion when it gave Griffin leave to file an amended complaint. Once filed, that amended complaint rendered all earlier motions, including Griffin's motion for partial summary judgment, moot. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Similarly, Griffin's claims that the motions to dismiss his amended complaint were untimely also fail given his request to refile his amended complaint. The subsequent motions to dismiss were all timely based on this refiling. *See* FED. R. CIV. P. 12(a)(1)(i). The district court did not abuse its discretion.

B. Claims Against American Zurich

Griffin's appeal argues that the district court erred when it dismissed his claims against American Zurich based on res judicata. Griffin is incorrect: res judicata bars his claim. We note that Texas, not federal, res judicata applies to Griffin's claim before the district court, as the preclusive opinion comes from

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[3] Griffin also alleges that the district court incorrectly interpreted his claims by not considering his allegations of a greater conspiracy by all four groups of defendants. Griffin's statement appears to be in reference to his claims under 42 U.S.C. § 1985. But that statute does not create any substantive rights and requires a separate violation of Griffin's rights to support a conspiracy claim. *See Miss. Woman's Med. Clinic v. McMillian*, 866 F.2d 788, 794 (5th Cir. 1989). Because the district court found that Griffin failed to plead any violation of his substantive rights, it naturally follows that Griffin failed to plead a conspiracy to violate those rights, and the district court was correct to dismiss this claim.

a state court. *See Cox v. Nueces Cty.*, 839 F.3d 418, 421 & n.3 (5th Cir. 2016). But even though the district court incorrectly applied the federal res judicata standard, its analysis nonetheless supports a finding of res judicata under Texas law.

In Texas, res judicata requires: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on claims that were raised or could have been raised in the first action. *See Cox*, 893 F.3d at 421. The district court determined that the parties were identical, that a court of competent jurisdiction rendered a final judgment on the merits, and that Griffin based both actions on the same nucleus of operative facts. These determinations support a conclusion that res judicata barred this claim under Texas law, and we therefore affirm the district court as to Griffin's claims against American Zurich.

C. Claims Against Walgreens

Griffin's appeal as to Walgreens appears to only challenge the district court's determination that his ADA claim failed because he failed to identify any major life activities that are substantially limited by an impairment. Griffin raises no new arguments to this issue, however, and our review of his complaint reveals that his pleadings on this specific point contain no facts about how his impairment affects him major life activities. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Without pleading facts of how his major life activities were limited, Griffin cannot state a sufficient claim to a claim under the ADA. *Hale v. King*, 642 F.3d 492, 499–501 (5th Cir. 2011) (per curiam). Griffin raises no other issues on appeal as to Walgreens. We

therefore hold that the district court correctly dismissed all claims against Walgreens.

D. Claims Against Wells Fargo Bank

Wells Fargo was the only party to file an answer to Griffin's amended complaint before filing its motion to dismiss. Griffin argues in his appeal that the district court improperly handled Wells Fargo's motion, but the district court correctly converted the motion to dismiss into a motion for judgment on the pleadings and ruled on that motion. *See Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999).

Griffin's substantive arguments as to Wells Fargo on appeal concern (1) the procedure surrounding Wells Fargo's placement of child support liens on his accounts and (2) the foreclosure of his home. None of these arguments is persuasive. Griffin provides no law to support his allegations that Wells Fargo was required to provide notice before placing the liens on his accounts, and our review of potentially applicable law reveals that Griffin's complaint is devoid of factual allegations that could potentially support a claim. As to Griffin's foreclosure claim, wrongful foreclosure in Texas requires a plaintiff to plead that there was (1) a defect in the foreclosure, (2) a grossly inadequate selling price, and (3) a causal connection between the two. *See Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 767–68 (5th Cir. 2016). Assuming arguendo that Griffin's complaint pleads a defect in the foreclosure, Griffin pleaded neither that the selling price was inadequate nor that the inadequate selling price was caused by that defect. *See Martins v. BAC Home Loans Serv., L.P.*, 722 F.3d 249, 256 (5th Cir. 2013) (per curiam). Accordingly, the district court was correct to grant Wells Fargo judgment on the pleadings on all claims asserted by Griffin.

E. Claims Against State Defendants

Griffin's appeal as to the State Defendants attacks various aspects of the district court order dismissing his claims on the basis of, inter alia, sovereign immunity, qualified immunity, the *Rooker-Feldman* doctrine, and Griffin's failure to state a claim. None of his arguments on appeal is persuasive.

As an initial matter, Griffin offers no response to the district court's determinations on immunity. We discern no error in the district court's analysis of this matter. Griffin repeats his claims that, under 38 U.S.C. § 5301, the State Defendants improperly garnished his veteran's benefits. But the Supreme Court has stated that § 5301 does not protect veteran's benefits from order or garnishment based on a failure to pay child support. *See Rose v. Rose*, 481 U.S. 619, 630–34 (1987); *see also Mansell v. Mansell*, 490 U.S. 581, 587 (1989) ("Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area."). Griffin's arguments as to the applicability of the *Rooker-Feldman* doctrine also ring hollow: Griffin's complaint merely attempts to challenge a state court decision under the guise of federal claims. *See Richard v. Hoechst Cleanese Chem. Grp., Inc.*, 355 F.3d 345, 351–52 (5th Cir. 2003).

As a final matter, Griffin repeatedly argues on appeal that the district court improperly set aside a default against one individual State Defendant, Valerie Rivera. Griffin is incorrect. Rivera was not properly served with Griffin's original complaint, a fact the district court noted when it granted Griffin leave to amend his complaint. Griffin fails to demonstrate that he served the amended complaint on Rivera: the summons he relies upon for his claim that service to Rivera was completed was returned months before Griffin filed his amended complaint. This summons therefore could not have included

the amended complaint. As such, the district court did not err in dismissing all claims against the State Defendants.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRENT S. GRIFFIN, SR.	§	
	§	
Plaintiff,	§	
v.	§	3:14-CV-2470-P
	§	
AMERICAN ZURICH INSURANCE COMPANY, ET AL,	§	
	§	
	§	
Defendants.	§	

FINAL JUDGMENT

Pursuant to the Court's Orders of February 24, 2016, the Court issues judgment as follows:

1) All of Trent S. Griffin, Sr., claims against all Defendants are dismissed with prejudice; and

2) Costs are assessed against Plaintiff.

IT IS SO ORDERED.

Signed this 24th day of February, 2016.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRENT S. GRIFFIN, SR.		
Plaintiff,	§	
v.	§	No. 3:14-CV-2470-P
AMERICAN ZURICH INSURANCE COMPANY; ET AL,	§	
Defendants.	§	

ORDER

Now before the Court are Walgreen Company ("Walgreens") and Walgreen Employee Defendants'[1] ("Employees," or collectively, "Defendants") Motion to Dismiss Plaintiff's Amended Complaint and Brief in Support, filed May 19, 2015. Doc. 143. Plaintiff Trent S. Griffin, Sr. ("Griffin") filed a response on June 9, 2015. Doc. 149. Defendants filed a reply on June 23, 2015. Doc. 155.

After reviewing the parties' briefing and applicable law, the Court GRANTS Defendants' Motion to Dismiss Plaintiff's Amended Complaint. Doc. 143.

I. Background

Griffin, proceeding pro se, sues more than twenty defendants, alleging violations of a variety of his federal and state rights. *See* Doc. 137 at ¶¶ 348-694. The Defendants who now move to dismiss include Walgreens and Employees. The majority of Griffin's contentions deal with alleged discrimination, harassment, hostile work environment and

[1] The Employee Defendants include Greg Wasson, Chief Executive Officer; Jim Reilly Sr., Director of Human Resources; Sr., Chester Stevens, District Manager; Januari Lewis, Pharmacy Supervisor; Jerry Padilla, Pharmacy Supervisor; Felicia Felton, Store Manager; Jerline Washington, Pharmacy Manager; Vanessa Strong, Store Manager; Miranda Martinez, Pharmacy Technician; and Daravanh Khanmanivanh, Pharmacy Technician.

retaliation that Griffin claims to have suffered at the hands of Walgreens, the co-workers and managers who Griffin interacted with during his employment at Walgreen, and certain corporate executives of Walgreens. Griffin also asserts claims against several defendants in connection with a workers' compensation claim he filed as a result of work-related injuries he claims to have suffered while employed with Walgreens.

Walgreens and Employees now move to dismiss these claims. Doc. 143.

II. Legal Standard

A. Rule 12(b)(6) Standard

Federal Rule 12(b)(6) provides for the dismissal of a complaint when a defendant shows that the plaintiff has failed to state a claim for which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The factual matter contained in the complaint must allege actual facts, not legal conclusions masquerading as facts. *Id.* ("Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" (quoting *Twombly*, 550 U.S. at 555)). Additionally, the factual allegations of a complaint must state a plausible claim for relief. *Id.* at 679. A complaint states a "plausible claim for relief" when the factual allegations contained therein infer actual misconduct on the part of the defendant, not a "mere possibility of misconduct." *Id.*; *see also Jacquez v. Procunier*, 801 F.2d 789, 791-92 (5th Cir. 1986).

The Court's focus in a 12(b)(6) determination is not whether the plaintiff should prevail on the merits but rather whether the plaintiff has failed to state a claim. *Twombly*, 550 U.S. at 563 n.8 (holding "when a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (overruled on other grounds) (finding the standard for a 12(b)(6) motion is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

B. Pro Se Plaintiff

A pro se plaintiff's pleadings are construed liberally and with all well-pleaded allegations taken as true. *Perez v. United States*, 312 F.3d 191, 194-96 (5th Cir. 2002). "[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). At the same time, a court may dismiss a frivolous complaint when it is based on indisputably meritless legal theories or when the factual allegations are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

III. Analysis

Griffin asserts a variety of claims against a variety of defendants. The Court considers each claim against Walgreens and Employees in turn.

A. Texas Constitution Bill of Rights

Defendants move to dismiss Griffin's claims under the Texas Constitution Bill of Rights for failure to state a claim under Rule 12(b)(6). Doc. 143 at 4-5. After reviewing Griffin's Complaint, however, the Court does not recognize any claims against Defendants

pursuant to the Texas Constitution Bill of Rights. *See* Doc. 137 at ¶¶ 371, 571. In response to Defendants' motion, Griffin parrots the pleading standard and states that Walgreens "benefits in all withholding proceedings." Doc. 149 at 8. This response is irrelevant and in no way supports Griffin's assertion that his pleading is sufficient. Even using a most liberal eye to the sufficiency of Griffin's pleading, Griffin fails to show any well-pleaded facts. For this reason, the Court grants Defendants' motion to dismiss Griffin's claims under the Texas Constitution Bill of Rights, to the extent any ever existed.

B. First Amendment

Griffin brings claims under the First Amendment. Doc. 137 at 80. Defendants move to dismiss these allegations for failure to state a claim. Doc. 143 at 5-6. Specifically, Defendants contend that they deserve dismissal because they are not state actors, and the First Amendment only prohibits *governmental* infringement on free speech. *Id.* In response, Griffin asserts that "Plaintiff has sufficiently linked private defendants to government officials." Doc. 149 at 9.

The Court disagrees. The Amended Complaint fails to show any connection between state action and the activities of Walgreens and its Employees—a private business entity and its employees. For these reasons, the Court grants Defendants' motion to dismiss with regard to Griffin's First Amendment claims.

C. Thirteenth Amendment

Griffin also alleges that Walgreens violated his Thirteenth Amendment right to be free from slavery and involuntary servitude. Doc. 137 at 84. Defendants move to dismiss, contending that "the conduct Walgreens and/or the Walgreen Employee Defendants are alleged to have engaged in has nothing to do with involuntary servitude or the badges of

slavery." Doc. 143 at 6. Griffin's response contains generic statements of law and in no way contradicts Defendants' motion. Doc. 149 at 9-11.

Because Griffin's Amended Complaint contains no allegations regarding slavery or involuntary servitude, the Court dismisses Griffin's claims brought under the Thirteenth Amendment.

D. Title VII, the ADA, and the ADEA Claims Against Individuals

Griffin asserts claims of race, color, sex, national origin, age and disability discrimination, retaliation, harassment and hostile-work-environment pursuant to Title VII, the ADA, and the ADEA. Doc. 137 at 86-90. Griffin asserts these allegations against Walgreens and Employees. *Id.* Defendants move to dismiss the claims against the individual Employees because they are not Griffin's "employer" under Title VII, the ADA, or the ADEA. In response, Griffin states that "[P]laintiff has not asserted any individual employee claims against defendants." Doc. 149 at 11. For this reason, and because such claims are not permitted against private individuals, the Court grants Defendants' motion to dismiss to the extent Griffin seeks claims against Employees. *See Grant v. Lone Star Co.*, 21 F.3d 649, 653 (5th Cir. 1994); *Wellington v. Texas Guaranteed*, No. A-13-CA-077-SS, 2014 WL 2114832, at *4-5 (W.D. Tex. May 20, 2014); *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 686 (5th Cir. 2001).

E. ADA Claim Against Walgreens

Griffin brings a claim against Walgreens under the ADA. Doc. 137 at 86-7. Defendants move to dismiss this claim under Rule 12(b)(6). Doc. 143 at 8. Specifically, Defendants contend that Griffin fails to plead conditions precedent to filing a disability discrimination lawsuit because he "does not identify in any way any major life activity that

is substantially limited by an impairment." *Id.* at 9. Griffin responds by pointing to more injuries. Doc. 149 at 16. For example, he reveals that he sustained a gun-shot wound that shattered bones in his hand. *Id.*

However, Griffin still fails to explain how his injuries affected major life activities. Because this is fatal to stating a claim for relief, the Court grants Defendants' motion to dismiss Griffin's ADA claim against Walgreens. *Mora v. Univ. of Texas Sw. Med. Ctr.*, 469 F. App'x 295, 297 (5th Cir. 2012).

F. ADEA Claim Against Walgreens

Griffin also sues Walgreens under the ADEA. Doc. 137 at 89-90. Defendants again move to dismiss for failure to state a claim because "Plaintiff has not alleged that his age is the 'but-for' reason for any adverse employment action." Doc. 143 at 11. In addition, Defendants point out that Griffin's Complaint states that age was merely a "motivating factor" in the alleged discrimination actions. *Id.* (citing Doc. 137 at ¶ 660). Griffin's response merely repeats legal standards and does not contradict Defendants' motion.

"[A] plaintiff must prove that age was the 'but-for' cause of the employer's adverse decision." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009). Because Griffin pleads that age was only a motivating factor in Walgreens' alleged decision, he fails to state a claim, and the Court grants Defendants' motion to dismiss.

G. FMLA

Griffin also brings a claim under the FMLA. Doc. 137 at 93-5. Defendants move to dismiss for failure to state a claim. Doc. 143 at 12.

The FMLA guarantees employees 12 workweeks of leave during any 12-month period because of a serious health condition. *Mauder v. Metro. Transit Auth. of Harris Cnty.,*

Tex., 446 F.3d 574, 579 (5th Cir. 2006). There are two types of claims that can be brought under the FMLA—for interference or for retaliation. *See Mauder v. Metro. Transit Auth. of Harris Cnty., Tex.*, 446 F.3d 574, 580 (5th Cir. 2006). To state a claim for interference, "a plaintiff must show that: (1) he was an eligible employee, (2) the Defendant was an employer subject to the FMLA's requirements, (3) he was entitled to leave, (4) he gave proper notice of his intention to take FMLA leave, and (5) the Defendant denied him the benefits to which he was entitled under the FMLA." *Spears v. Louisiana Dep't of Pub. Safety & Corr.*, 2 F. Supp. 3d 873, 877-78 (M.D. La. 2014). To state a claim for retaliation, a plaintiff must show he took FMLA leave, and that as a result he suffered an adverse employment action. *Id.* at 880-81; *see Jarjoura v. Ericsson, Inc.*, 266 F. Supp. 2d 519, 529 (N.D. Tex. May 22, 2003) *aff'd*, 82 F. App'x 998 (5th Cir. 2003).

Try as the Court might, it cannot determine whether Griffin is bringing a claim for interference or for retaliation. Griffin asserts that Defendants "forc[ed] plaintiff back to work," suggesting interference. Doc. 137 at 94. But Griffin asks the Court to assume that in doing so, Defendant denied him the benefits to which he was entitled under the FMLA. The Court refuses to make this assumption. Furthermore, in his response, Griffin asserts that "[t]her [sic] is no indication FMLA was provided to the plaintiff." Doc. 149 at 18. But it is not the Defendants job to disprove a plaintiff's claim. Rather, it is the plaintiff's job to show that his claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Because the Court concludes that Griffin has failed to make this showing, the Court grants Griffin's motion to dismiss Griffin's FMLA claim for interference, to the extent one existed.

When it comes to Griffin's claim for retaliation, Defendants argue that Griffin "has not alleged an adverse employment action" because . . . Griffin "admits that he has not been discharged by Walgreens," but rather, that he was "'removed from work by his doctor.'" Doc. 143 at 14-15 (quoting Doc. 137 at ¶ 675). Griffin fails to respond to this assertion. For this reason, Griffin fails to sufficiently plead his claim, and the Court dismisses any claims for retaliation.

H. Title VII & 42 U.S.C. § 1981

Griffin also alleges discrimination claims for race, color, sex, and national origin in violation of Title VII of the Civil Rights Act and for race in violation of 42 U.S.C. § 1981. Doc. 137 at 91-93, 95-97. Defendants move to dismiss for failure to state a claim. Doc. 143 at 16. Griffin fails to respond to Defendants' arguments in a way that the Court can understand.

Succinctly stated by Defendants, under Title VII, "it is an unlawful employment practice for an employer to . . . discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race." Doc. 143 at 16 (citing 42 U.S.C. § 2000e-2(a)). "Where, as here, a plaintiff predicates liability under Title VII on disparate treatment and also claims liability under sections 1981 . . . the legal elements of the claims are identical. A plaintiff asserting either claim must prove intentional discrimination. Therefore, we need not discuss plaintiff's Title VII claims separately from his section 1981 . . . claims." *Stallworth v. Shuler*, 777 F.2d 1431, 1433 (11th Cir. 1985) (citations omitted). In other words, "[c]laims of racial discrimination brought under § 1981 are governed by the same evidentiary framework applicable to claims of employment discrimination

brought under Title VII." *LaPierre v. Benson Nissan, Inc.*, 86 F.3d 444, 448 (5th Cir. 1996).

Griffin fails to plausibly plead intentional discrimination. Although Griffin's Amended Complaint alleges that he was "intentionally discriminated against," the Court is unable to determine how. Doc. 137 at 91. Griffin's complaint bounces around from allegation to allegation without meeting his required showing under Rule 12(b)(6). For this reason, the Court dismisses Griffin's Amended Complaint.

In addition, Griffin purports to allege discrimination on a theory of hostile work environment. "[A] hostile work environment claim requires (1) membership in a protected group; (2) harassment (3) based on a factor rendered impermissible by Title VII; (4) the harassment affected a term, condition, or privilege of employment; and (5) the employer knew or should have known of the harassment yet failed to address it promptly." *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 654 (5th Cir. 2012).

The Court recognizes no stated facts supporting elements two through five because the Court cannot sufficiently make out what Griffin alleges to have happened. For example, halfway through Griffin's Title VII claim, he alleges that Defendants defamed him. Doc. 137 at 91. The Court cannot tell if this is a separate claim or whether Griffin is arguing that defamatory acts support his Title VII claim. Either way, his pleadings are insufficient to state a claim for relief under a hostile-work-environment theory pursuant to Title VII.

I. 42 U.S.C. §§ 1985 & 1986

Defendants also ask the Court to dismiss Griffin's claims brought under 42 U.S.C §§ 1985 and 1986 for failure to state a claim under Rule 12(b)(6). Doc. 143 at 19. Griffin responds by stating that "Courts are not to impose heightened pleading requirements" and

otherwise explaining the motion to dismiss standard under Rule 12(b)(6). Doc. 149 at 22-24.

To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege

> (1) a conspiracy involving two or more persons; (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States. In so doing, the plaintiff must show that the conspiracy was motivated by a class-based animus.

Hilliard v. Ferguson, 30 F.3d 649, 652-53 (5th Cir. 1994).

Griffin's Amended Complaint, however, like the prior allegations, fails to adequately plead his claim. Instead of showing how he meets each element of his claim, he generally alleges that "Walgreens Company, its agents and/or employees directly or indirectly conspired to deprive plaintiff equal protection of the law, or equal privileges and immunities under the law." Doc. 137 at 97. Griffin makes an insufficient factual showing of the above elements. The Court recognizes that Griffin's claim incorporates the prior five hundred fifty eight paragraphs, but even after painstaking review, Griffin fails to show that any alleged conspiracy was motivated by his membership in a class. The Court therefore dismisses Griffin's 42 U.S.C § 1985 claim.

42 U.S.C. § 1986 is a companion statute to 42 U.S.C. § 1985. "A cause of action under section 1986 is premised on a violation of section 1985; thus where, as here, a plaintiff cannot maintain a claim under section 1985, his section 1986 claim must fail as well." *Rhodes v. Mabus*, 676 F. Supp. 755, 760 (S.D. Miss. 1987). For this reason, the Court also dismisses Griffin's claim under § 1986.

J. Negligence

Griffin also seems to allege negligence. Doc. 137 at 5. Defendants move to dismiss this claim because it is time-barred by Texas' two-year statute of limitations. Doc. 143 at 22 (citing Tex. Civ. Prac. & Rem. Code § 16.003(a)). Griffin's response merely recites legal authorities regarding gross negligence, ordinary duty of care, and intentional injury. Doc. 149 at 24-25.

Throughout the Amended Complaint, Griffin alleges that the on-the-job injury he suffered occurred on or about February 21, 2012. Doc. 137 at 51. Griffin did not file his lawsuit until July 10, 2014, more than two years later. For this reason, the Court grants Defendants' motion to dismiss as to Griffin's claims for negligence, to the extent any ever existed.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss and dismisses all of Griffin's claims against Walgreens and Walgreen Employees. Doc. 145. Because the Court has already allowed Griffin to re-plead, the Court refuses any request to further amend his Complaint.

IT IS SO ORDERED.

Signed this 24th day of February, 2016.

Jorge A. Solis

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRENT S. GRIFFIN, SR.		
Plaintiff,	§	
v.	§	No. 3:14-CV-2470-P
AMERICAN ZURICH INSURANCE COMPANY; ET AL,	§	
Defendants.	§	

ORDER

Now before the Court is Defendants' Motion to Dismiss Plaintiff's Amended Complaint, filed April 19, 2015. Doc. 141. Plaintiff Trent S. Griffin, Sr. ("Griffin") filed a response on June 9, 2015. Doc. 147. Defendants filed a reply on June 23, 2015. Doc. 154.

After reviewing the parties' briefing and applicable law, the Court GRANTS Defendants' Motion to Dismiss Plaintiff's Amended Complaint. Doc. 141.

I. Background

Griffin, proceeding pro se, sues more than twenty defendants, alleging violations of a variety of his federal and state rights. *See* Doc. 137 at ¶¶ 348-694. The Defendants who now move to dismiss include state agencies and officials. Griffin's claims against these State Defendants arise from two unrelated events—State Defendants' evaluation of his worker's-compensation claim and State Defendants' collection of child-support arrears.

Because Plaintiff's Amended Complaint involves claims against many unrelated parties, the Court organizes the claims made against each State Defendant:

- **Office of the Attorney General ("OAG")**: Griffin asserts claims under 42 U.S.C. §§ 1983, 1985(3), 1986, discrimination on the basis of race or sex, 38

U.S.C. § 5301, First Amendment, Fourth Amendment unlawful search and seizure, Thirteenth Amendment right to travel, Fourteenth Amendment equal protection and due process, Title II of the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act. *See* Doc. 137 at ¶¶ 143-44, 559-695.

- **Texas Department of Insurance-Division of Workers' Compensation ("TDI-DWC")**: Griffin asserts conspiracy, violation of 42 U.S.C. §§ 1983, 1985(3), 1986, the Fourteenth Amendment due process and equal protection clauses, First Amendment speech, Fifth Amendment, privacy, Title II of the ADA, and Section 504. *Id.* at ¶¶ 546-694.
- **Department of Family and Protective Services ("DFPS")**: Griffin objects to the placement of his daughter under DFPS and asserts conspiracy allegations regarding DFPS and OAG under 42 U.S.C. §§ 1983, 1985(3), and 1986, discrimination on the basis of race or sex, violations of the First Amendment, Fourth Amendment search and seizure, Thirteenth Amendment right to travel, Fourteenth Amendment due process and equal protection, Title II of the ADA, and Section 504 of the Rehabilitation Act. *Id.* at ¶¶ 563-694.
- **Former Governor Rick Perry ("Perry"), John Specia, Commissioner for DFPS ("Specia"), Rod Bordelon, former Commissioner of TDI-DWC ("Bordelon"), Thomas Hight, Hearing Officer for TDI-DWC ("Hight"), Stephen McKenna ("McKenna") and Mary Iverson ("Iverson"), employees of OAG, Andrew Cole, M.D., formerly designated Doctor for TDI-DWC ("Cole")**: Griffin brings the above claims against these state officials, some in their individual and official capacities, some in their official capacities only. *Id.* at ¶¶ 38, 44, 159, 195-223, 241-97, 275–97.

State Defendants move to dismiss these claims. Doc. 141.

II. Legal Standard

A. 12(b)(1) Standard

A district court may decide a Rule 12(b)(1) motion to dismiss "on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Barrera–Montenegro v. United States,* 74 F.3d 657, 659 (5th Cir. 1996) (*quoting Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.1981)). A motion to dismiss for lack of subject-matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his or her claim

that would entitle him or her to relief. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998).

B. 12(b)(6) Standard

Federal Rule 12(b)(6) provides for the dismissal of a complaint when a defendant shows that the plaintiff has failed to state a claim for which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The factual matter contained in the complaint must allege actual facts, not legal conclusions masquerading as facts. *Id.* ("Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" (quoting *Twombly*, 550 U.S. at 555)). Additionally, the factual allegations of a complaint must state a plausible claim for relief. *Id.* at 679. A complaint states a "plausible claim for relief" when the factual allegations contained therein infer actual misconduct on the part of the defendant, not a "mere possibility of misconduct." *Id.*; *see also Jacquez v. Procunier*, 801 F.2d 789, 791-92 (5th Cir. 1986).

The Court's focus in a 12(b)(6) determination is not whether the plaintiff should prevail on the merits but rather whether the plaintiff has failed to state a claim. *Twombly*, 550 U.S. at 563 n.8 (holding "when a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (overruled on other grounds) (finding the standard for a

12(b)(6) motion is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

C. Pro Se Plaintiff

A pro se plaintiff's pleadings are construed liberally and with all well-pleaded allegations taken as true. *Perez v. United States*, 312 F.3d 191, 194-96 (5th Cir. 2002). "[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). At the same time, a court may dismiss a frivolous complaint when it is based on indisputably meritless legal theories or when the factual allegations are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

III. Standing

Defendants first argue that Griffin has no standing to make any claim. Doc. 142 at 4-5. The doctrine of standing requires plaintiffs to demonstrate (1) that they have suffered an "injury in fact," that is (2) "fairly traceable" to the defendant's conduct, and that (3) will "likely . . . be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Defendants first challenge the second requirement—traceability. Doc. 142 at 5. Using the examples of Commissioner Specia and former Governor Perry, Defendants argue that Griffin alleges no facts demonstrating that his injury relates to defendants Perry or Specia. *Id.* Defendants next argue that Griffin's claims fail the third requirement—redressability—because his claims are barred by immunity or for other reasons. *Id.* In response, Griffin lists his alleged injuries. *See* Doc. 147 at 5-9. This list in no way addresses Defendants standing arguments.

But even though Griffin effectively fails to respond to Defendants' standing arguments, the Court still rejects them. Defendants' assertion that Griffin's claims lack standing is an attempt to cloak substantive legal arguments in the form of standing. The Supreme Court has stated that a "merits inquiry and statutory standing often 'overlap.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 n.2 (1998). A standing inquiry and other inquiries can also overlap. For example, Defendants' argument that Griffin's injury is not traceable to Perry or Specia's conduct is just another way of arguing that respondeat superior does not apply to Perry or Specia. In addition, Defendants' argument that Griffin's injury is not redressable because Defendants are immune from suit is merely an argument about immunity, not standing. These type of arguments are more appropriately addressed in motions to dismiss for failure to state a claim or for lack of subject matter jurisdiction. Problems of standing, on the other hand, usually arise when the connection between a plaintiff's alleged harm and his asserted claims are attenuated. *See Lujan*, 504 U.S. at 561-62. Defendants cannot shove round legal arguments into the square hole of standing.

The Court therefore denies Defendants' motion to dismiss as to standing.

IV. Official Capacity Claims (Eleventh Amendment Immunity)

A. Sovereign Immunity to Claims Under 42 U.S.C. §§ 1981, 1983, 1985(3), and 1986.

Defendants next argue that they are entitled to sovereign immunity against Plaintiff's 42 U.S.C. §§ 1981, 1983, 1985(3), and 1986 claims. Doc. 142 at 5-6. Defendants contend that Congress has not waived a state's sovereign immunity regarding Griffin's claims and that Texas has not consented to suit. *Id.* (citing *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100-02 (1984)). For these reasons, Defendants conclude that they are immune to Griffin's claims. *Id.* Defendants specifically assert that Perry, Abbott,

Specia, McKenna, and Iverson are immune because they are sued in their official capacity. Doc. 142 at 6.

Griffin challenges Defendants immunity arguments. First, he cites to *Ex parte Young*, 209 U.S. 123 (1908), presumably for the proposition that sovereign immunity does not apply when a party seeks prospective injunctive relief. Doc. 147 at 10. Second, Griffin cites to a long list of cases that articulate liability standards. *Id.* at 11-13. Third, he cites to case law explaining the Texas Constitution. Doc. 147 at 13-14. Besides *Ex parte Young*, Griffin's citations are irrelevant. The group of cited cases are irrelevant because they are suits against municipal or federal officers, where problems of Eleventh Amendment immunity rarely arise. *Id.* (citing *See City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Anderson v. Creighton*, 483 U.S. 635 (1987)). In addition, Texas Constitutional cases do not controvert Defendants' arguments about Griffin's federal claims.

It is well settled that, besides the *Ex parte Young* exception, the Eleventh Amendment deprives a federal court of jurisdiction to hear a suit against a state or its agencies unless sovereign immunity is expressly waived by Congress or a state has consented to suit. *Pennhurst*, 465 U.S. at 100-02. Furthermore, "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). Under *Ex parte Young*, however, "a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983." *Id.* at 71 & n.10 (1989) (citing *Ex parte Young*, 209 U.S. at 159-60). In other words, sovereign immunity under the Eleventh Amendment does not protect a defendant sued in his official capacity from § 1983 claims seeking

prospective injunctive relief. As one textbook explains, "[d]on't be confused by the fact that even in an official capacity suit, the authority-stripping rationale of *Ex parte Young* applies, so that for purposes of the Eleventh Amendment defendants are treated as stripped of their official character and are subject, like any private tortfeasor, to an injunction against continuing harm." Richard H. Fallon, Jr., John F. Manning, Daniel J. Meltzer & David L. Shapiro, *Hart and Wechler's The Federal Courts and the Federal System* 958 (6th ed. 2009).

Defendants Perry, Abbott, Specia, McKenna, and Iverson are sued in their official capacity. In addition, Congress has not waived sovereign immunity regarding these claims, and Texas has not consented to suit. *Sessions v. Rusk State Hospital*, 648 F.2d 1066, 1068-69 (5th Cir. 1981); *Hines v. Miss. Dept. of Corrections*, 239 F.3d 366 (5th Cir. 2000); *Raj. v. Louisiana State University*, 714 F.3d 322, 328 (5th Cir. 2013). Perry, Abbott, Specia, McKenna, and Iverson are therefore immune from Griffin's claims and the Court grants Defendants motion to dismiss. But to the extent that Griffin is seeking prospective injunctive relief, Defendants are not immune because of the *Ex parte Young* exception to Eleventh Amendment immunity. *See* Doc. 137. The Court recognizes that Defendants choose to make their arguments regarding *Ex Parte Young* separately. *See infra* Part VIII. But, at this point, the Court cannot dismiss these claims for prospective injunctive relief because the state officials are persons under *Ex parte Young*.

B. Quasi-Judicial Immunity of Thomas Hight

Defendants argue that Thomas Hight, the Hearing Officer for TDI-TWC, performed a quasi-judicial function and is therefore absolutely immune to Griffin's claims against him. Doc. 142 at 9. Griffin does not respond to this argument.

Executive-branch officials acting in an adjudicative process are absolutely immune to suit. *Butz v. Economou*, 438 U.S. 478, 512 (1978); *Beck v. Texas State Bd. of Dental Examiners*, 204 F.3d 629, 639 (5th Cir. 2000). Hight acted in this capacity as a hearing officer.

For this reason, the Court grants Defendants motion to dismiss regarding claims against Hight.

C. Griffin's State-Law Claims

Griffin also asserts a claim for defamation against the OAG and DFPS. Doc. 137 at ¶¶ 562-63. Defendants move to dismiss these claims because the State "and its entities [] enjoy sovereign immunity from tort claims unless expressly waived by the Texas Tort Claims Act ("TTCA")." Doc. 142 at 10. Griffin does not respond to this argument.

Because the TTCA does not waive sovereign immunity for intentional torts, the Court grants Defendants' motion and dismisses these claims. Tex. Civ. Prac. & Rem. Code § 101.057(2).

Defendants also argue that "to the extent Griffin alleges any other torts, intentional or not, against any State Defendants, they are barred" because such claims must be brought in state court under Texas Civil Practice and Remedies Code § 101.102(a). Doc. 142 at 10. Furthermore, Defendants contend that the *Ex parte Young* exception does not apply to state-law claims. *Id.* at 10-11 (citing *Pennhurst*, 465 U.S. at 106). Griffin also fails to respond to this argument.

Because the Court agrees with Defendants' assessment of the law, it grants Defendants' motion to dismiss all of Griffin's tort claims against all State Defendants.

D. Sovereign Immunity of OAG to a Private Cause of Action

Griffin asserts an independent claim against the OAG under 42 U.S.C. § 5301. Doc. 137 at ¶¶ 582-88. Specifically, he alleges that by placing a lien on his checking and savings accounts, the OAG violated the statute. *Id.* Defendants ask the Court to dismiss this claim because they assert that there is no "clear Congressional waiver of the State's sovereign immunity." Doc. 142 at 11 (citing *State of Tex. By & Through Bd. of Regents of Univ. of Texas Sys. v. Walker*, 142 F.3d 813, 820 (5th Cir. 1998)). Griffin does not respond to this argument.

Because the Court agrees with Defendants, the Court thus grants Defendants' motion as to this claim. But to the extent that Griffin is seeking prospective injunctive relief, Defendants are not immune under the *Ex parte Young* exception to Eleventh Amendment immunity.

V. Individual Capacity Claims (Qualified Immunity)

Defendants next argue that the individual State Defendants—Abbott, Specia, McKenna, Iverson, Hight, Cole, and Perry—each have qualified immunity to Griffin's claims. Doc. 142 at 11. In response, Griffin states that "Mckenna [*sic*] directly caused plaintiff's injury" and that "[i]t has been long standing law that Veteran's Administration Benefits are exempt from attachment, levy or seizure." Doc. 147 at 11. Griffin then asserts that McKenna and Iverson acted "with deliberate or reckless disregard of plaintiff's constitutional rights." *Id.*

Qualified immunity shields government officials performing discretionary functions "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). In order to overcome a pleading of qualified immunity, a plaintiff

must prove (1) that the defendants' conduct was not objectively reasonable and (2) that the defendants violated clearly established law. *Burns-Toole v. Byrne*, 11 F.3d 1270, 1274 (5th Cir. 1994) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982)).

The brunt of Griffin's argument is that Defendants acted with deliberate indifference toward the law, so their conduct was therefore not objectively reasonable. *See* Doc. 147 at 10-12. The Court disagrees. First, Defendants behavior, as alleged, appears to be objectively reasonable. Without knowing more, Griffin presents no argument that Defendants were doing anything but their jobs. Second, Defendants did not violate clearly established law. Although Griffin cites to a Third Circuit case holding that 42 U.S.C. § 5301 places some limits on recovering state-law liens from veteran's disability benefits, the Supreme Court has held that such liens are sometimes available, especially when collecting child support. *Compare Higgins v. Beyer*, 293 F.3d 683, 690 (3d Cir. 2002) *with Rose v. Rose*, 481 U.S. 619, 636 (1987).

For these reasons, the Court grants Defendants motion to dismiss as to these Defendants in their individual capacity.

VI. *Rooker-Feldman*

Defendants also assert that the *Rooker-Feldman* doctrine bars this Court from collaterally attacking a state-court judgment. *See* Doc. 142 at 14-15. Specifically Defendants contend that "Plaintiff's lawsuit, as it relates to TDI-DWC, appears to arise out of his dissatisfaction with a state court judgment." *Id.* 142 at 15. In support of this argument, Defendants point to a prior state-court action in which a Texas court granted TDI-DWC's plea to the jurisdiction, dismissing Plaintiff's worker's-compensation claim against it. *Id.* (citing *Trent S. Griffin v. American Zurich Insurance Company, et al.*, No.

DC-13-05893 (Tex. 101st Dist. Court July 26, 2013)). Defendants therefore argue that Griffin's claims against TDI-DWC, Bordelon, Hight, and Cole are all entitled to dismissal because they are related to his worker's-compensation claim.

Griffin responds by arguing that the plea-to-the-jurisdiction dismissal is not a decision on the merits and that *Rooker-Feldman* is not triggered when the federal action is filed before a state-court judgment. Doc. 147 at 14-17.

Griffin confuses the doctrine of res judicata with the *Rooker-Feldman* doctrine. Res judicata precludes a party from bringing a claim that has already been adjudicated and for which there is already a judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005). *Rooker-Feldman* prevents "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284. Unlike the claims against former defendant American Zurich, the claims against TDI-DWC were dismissed before Griffin brought this action in federal Court. *Trent S. Griffin v. American Zurich Insurance Company, et al.*, No. DC-13-05893 (Tex. 101st Dist. Court July 26, 2013). Therefore, Griffin finds himself in the position of a state-court loser complaining of injuries rendered before this Court's proceedings commenced.

For these reasons, the Court dismisses all remaining claims against TDI-DWC, Bordelon, and Cole. Claims against Hight have already been dismissed. *Supra* Part IV.B.

VII. Failure to State a Claim

A. Sections 1983 and 1985(3) Claims Against State Defendants

Defendants also move for a Rule 12(b)(6) dismissal for failure to state a claim of Griffin's §§ 1983 and 1985(3) claims. Doc. 142 at 16. The Court has already dismissed

these claims to the extent that Griffin is not seeking prospective injunctive relief. *Supra* Part IV.A. For this reason, the Court finds Defendants 12(b)(6) arguments moot to the extent Griffin is not seeking injunctive relief.

But the Court also concludes that Griffin did not sufficiently plead his claim under § 1983, even when seeking prospective injunctive relief. At ninety-nine pages, Griffin's Amended Complaint is anything but a "short and plain statement of the claim" as required by Rule 8. Courts "do not excuse pro se litigants' failure to comply with the pertinent rules of procedure and substantive law." *Houston v. Venneta Queen*, 606 F. App'x 725, 730 (5th Cir. 2015) (citing *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (per curium)). Despite Griffin's assertions that the misfortunes befalling him are violations of § 1983, for the most part, he makes no connection between the alleged injuries and the supposed claims. For example, Griffin states that "he was deprived either directly or indirectly of equal protection of the laws . . . by DFPS and OAG failing to afford the plaintiff an opportunity to care for his daughter . . . concealment of the prior abuse/neglect of his daughter, and leaving her in the care of an individual with a serious mental condition." Doc. 147 at 17. A "civil rights plaintiff must plead operative facts." *Young v. Biggers*, 938 F.2d 565, 569 (5th Cir. 1991). For this reason, with one exception,[1] the Court grants Defendants' 12(b)(6) motion to dismiss Griffin's § 1983 claim, even as to Griffin's claims for prospective and injunctive relief under Griffin's theory of *Ex parte Young*.[2]

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[1] *See infra* Part VII.E.

[2] Because Defendants filed a 12(b)(6) motion to dismiss, the Court does not grant this motion sua sponte. But the Court has the power to do so. "Generally a district court errs in dismissing a *pro se* complaint for failure to state a claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend. The district court may dismiss an action on its own motion under Rule 12(b)(6) 'as long as the procedure employed is fair.'" *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (citations omitted). Because Griffin was given a chance to amend with a warning that he plead more sufficiently, this court believes that the procedure employed was fair. Doc. 129.

Defendants also argue that Griffin failed to sufficiently plead his claim under § 1985(3). Doc. 142 at 16. In Griffin's response, he lists reasons "[i]n support of his claim for 'civil conspiracy.'" Doc. 147 at 17. But the list, though long, merely includes threadbare recitals of the law. This is in keeping with Griffin's Amended Complaint, which baldly alleges conspiracy. But "[b]ald allegations that a conspiracy exist[] are insufficient." *Lynch v. Cannatella*, 810 F.2d 1363, 1370 (5th Cir. 1987). For these reasons, the Court grants Defendants' motion to dismiss Griffin's § 1985 claim under Rule 12(b)(6), even as to Griffin's claims for prospective and injunctive relief.

B. Due Process

Griffin also appears to assert procedural-due-process claims arising out of his disagreement with a TDI-DWC determination and arising out of a child-support lien. Doc. 137 at ¶¶ 193-223, 610-15, 620-23. The Court has already dismissed Griffin's claims against most of State Defendants arising out of his disagreement with TDI-DWC under the *Rooker-Feldman* doctrine. *Supra* Part VI. In regard to the State Defendants who have not yet been dismissed, and to the claim arising out of the child-support lien, Defendants ask the Court to dismiss Griffin's due-process claims under Rule 12(b)(6) for failure to state a claim. Doc. 142 at 17-18.

In order to bring a denial of due process claim, a plaintiff must first utilize the state procedures available to him. *See Myrick v. City of Dallas*, 810 F.2d 1382, 1388 (5th Cir. 1987); *Burns v. Harris Cnty. Bail Bond Bd.*, 139 F.3d 513, 519 (5th Cir. 1998). As noted in Part VI, Griffin has already sought review of the TDI-DWC determination, which remains on appeal. *Trent S. Griffin v. American Zurich Ins. Co.*, No. 05-14-01510-cv (Tex.

App.—Dallas). In addition, Griffin does not plead that he availed himself of his statutory right to administrative review of the child-support lien through Texas Family Code § 157.328. Griffin does not respond to these arguments.

The Court thus grants State Defendants motion to dismiss as to these claims.

C. Claims Under the ADA or Section 504 of the Rehabilitation Act

Griffin has asserted claims against State Defendants under both the ADA and Section 504 of the Rehabilitation Act. Doc. 137 ¶ 635. Defendants contend that Griffin fails to adequately plead a claim for relief under either cause of action. Doc. 142 at 18. Griffin does not respond to this argument.

The Court agrees with Defendants. Griffin merely states that Defendants "intentionally discriminated against a qualified individual with a disability." Doc. 137 ¶ 635. Griffin again fails to connect his injuries with his causes of action—he sets forth no allegations demonstrating that any State Defendant denied him benefits on the basis of his purported disability. A plaintiff must demonstrate that his "exclusion, denial of benefits, or discrimination is by reason of his disability." *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 672 (5th Cir. 2004). Griffin's Section 504 claim, which reincorporates his ADA allegations, fails for the same reason. *See Maples v. Univ. of Texas Med. Branch at Galveston*, 901 F. Supp. 2d 874, 878 (S.D. Tex. 2012) (citing *Halpern v. Wake Forest Univ. Health Sciences*, 669 F.3d 454, 461 (4th Cir. 2012)).

For these reasons, the Court dismisses these claims.

D. Griffin's Constitutional Claims

Griffin asserts that various State Defendants violated his First Amendment right to free speech, his Thirteenth Amendment rights, his right to travel, his Fourth Amendment rights,

and discriminated against him on the basis of sex. Doc. 137 at 560-608. Defendants move to dismiss these claims for failure to state a claim under Rule 12(b)(6). Doc. 142 at 19-20. Besides generally stating the 12(b)(6) standard, Griffin fails to respond to Defendants' motion.

The Court grants Defendants' motion. Collecting child support arrears and administering a workers-compensation claim in no way impedes a person's freedom of speech, to travel, from slavery or involuntary servitude, or from unreasonable searches and seizures. Griffin does not demonstrate how any State Defendant violated his right to free speech. *See Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 666 (2004). Except for suits attacking compulsory labor, the Thirteenth Amendment does not create an independent cause of action. *Channer v. Hall*, 112 F.3d 214, 217 n.5 (5th Cir. 1997). And to the extent that Plaintiff brings claims pursuant to § 2 of the Thirteenth Amendment, those claims fail for reasons discussed elsewhere in this Order. *Supra* Parts IV.A, VII.A. Furthermore, placing a lien on a bank account in order to collect child-support arrears fails to establish any constitutional violation of a person's right to travel. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 276 (1993) (quoting *Zobel v. Williams*, 457 U.S. 55, 60, n. 6 (1982) (holding that the "federal guarantee of interstate travel . . . protects interstate travelers against two sets of burdens: 'the erection of actual barriers to interstate movement' and 'being treated differently' from intrastate travelers."). Griffin does not cite to any case law to support his claim that the civil post-judgment collection of child-support arrears amounts to an unreasonable search or seizure. Finally, Griffin also pleads no facts that would allow this Court to conclude that State Defendants discriminated against him on the basis of his gender.

For these reasons, the Court dismisses these claims against all State Defendants.

E. 38 U.S.C. § 5301

The Court first addressed Griffin's 38 U.S.C. § 5301 claim in Part IV.D. To the extent that Griffin brings this allegation under a § 1983 claim, State Defendants again move to dismiss Griffin's claim. Doc. 142 at 21. In support, Defendants make a host of arguments.

First, Defendants cite case law stating that § 1983 "merely provides a mechanism for enforcing rights 'secured' elsewhere . . . [O]ne cannot go into court and claim a 'violation of § 1983.'" *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284-85 (2002). But even Defendants admit that Griffin is bringing more than the mechanism without the law—he is asserting his federal 38 U.S.C. § 5301 claim through 42 U.S.C. § 1983. Although it is not clear that §1983 creates a remedy for § 5301, the cases that have dealt with the issue have decided in favor of 1983 liability. *See Higgins v. Beyer*, 293 F.3d 683, 690 (3d Cir. 2002); *Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001).

Second, Defendants contend that 38 U.S.C. § 5301 does not always preclude payment of child support out of veteran's benefits. *Id.* (citing *Rose v. Rose*, 481 U.S. 619, 636 (1987)). Although the Court found this case law sufficient to protect some state officers through qualified immunity, it does not necessarily preclude liability here. *Supra* Part V. The enactment of 38 U.S.C. § 5301 had as its purpose "to insure the public against the pauperism of the recipient of [veteran's] benefits or that of his dependents." *In re Flanagan*, 31 F. Supp. 402, 403 (D.D.C 1940). But in *Rose*, the Supreme Court held that garnishing a veteran's benefits in order to collect child support did not interfere with 38 U.S.C. § 5301 because "state contempt proceedings to enforce a valid child support order coincide with Congress' intent to provide veterans' disability compensation for the benefit

of both appellant and his dependents." *Rose*, 481 U.S at 631. Tennessee law sufficiently takes veteran's needs "into account, along with the needs of his children, in setting the child support obligation." *Id.* at 636. Texas law requires a similar kind of balancing when calculating child support obligations. *See generally* Tex. Fam. Code Ann. § 154 (determining child support guidelines based on the monthly net resources of an obligor).

For this reason, the Court also grants this motion as to Griffin's § 5301 claim.

VIII. Injunctive Relief

Defendants save their arguments against injunctive relief for last. They ask for dismissal, asserting that Griffin's Complaint "fails to articulate prospective relief that would qualify under the *Ex parte Young* exception to State Defendants' Eleventh Amendment immunity." Doc. 142 at 21. Griffin does not respond to this argument. The Court has already dismissed all of Griffin's claims against State Defendants. Therefore, no legal basis exists for a claim for injunctive relief.

The Court thus grants Defendants' motion to dismiss Griffin's claim for injunctive relief.

IX. Conclusion

For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss. Doc. 141. In summary, all of Griffin's claims against State Defendants have been dismissed. Because the Court has already allowed Griffin to re-plead, the Court refuses any request to further amend his Complaint.

IT IS SO ORDERED.

Signed this 24th day of February, 2016.

Jorge A. Solis

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRENT S. GRIFFIN, SR.	§	
Plaintiff,	§	
v.	§	No. 3:14-CV-2470-P
	§	
AMERICAN ZURICH INSURANCE COMPANY; ET AL,	§	
	§	
Defendants.	§	

ORDER

Now before the Court is Defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") Motion to Dismiss Plaintiff's Amended Complaint for Lack of Subject Matter Jurisdiction and/or for Failure to Properly Plead or to State a Claim upon Which Relief Can Be Granted, filed May 19, 2015. Doc. 144. Plaintiff Trent S. Griffin, Sr. ("Griffin") filed a response on June 5, 2015. Doc. 146. Wells Fargo filed a reply on June 17, 2015. Doc. 152.

After reviewing the parties' briefing and applicable law, the Court GRANTS Wells Fargo's Motion to Dismiss. Doc. 144.

I. Background

Griffin, proceeding pro se, sues more than twenty defendants, alleging violations of a variety of his federal and state rights. *See* Doc. 137 at ¶¶ 348-694. The majority of Griffin's contentions deal with alleged discrimination, harassment, hostile work environment and retaliation that Griffin claims to have suffered at the hands of his former employer, Walgreens Company. Griffin also brings claims against the State of Texas and state officials which appear to arise from their evaluation of his workers' compensation claim and collection of child-support arrears.

Griffin's claim against Wells Fargo, appears to bear some sort of relationship with the state's efforts to collect child support arrears. Wells Fargo admits that it withdrew around thirteen-hundred dollars from Griffin's Wells Fargo accounts. Doc. 144 at 3-4. But Wells Fargo insists that it "complied with all procedural and legal requirements" in doing so. *Id.* at 5.

Wells Fargo now moves to dismiss these claims under Rule 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim. Doc. 144.

II. Legal Standard

A. 12(b)(1) Standard

A district court may decide a Rule 12(b)(1) motion to dismiss "on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Barrera–Montenegro v. United States,* 74 F.3d 657, 659 (5th Cir. 1996) (*quoting Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.1981)). A motion to dismiss for lack of subject-matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his or her claim that would entitle him or her to relief. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.,* 143 F.3d 1006, 1010 (5th Cir. 1998).

B. 12(b)(6) Standard

Federal Rule 12(b)(6) provides for the dismissal of a complaint when a defendant shows that the plaintiff has failed to state a claim for which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S.

662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The factual matter contained in the complaint must allege actual facts, not legal conclusions masquerading as facts. *Id.* ("Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" (quoting *Twombly*, 550 U.S. at 555)). Additionally, the factual allegations of a complaint must state a plausible claim for relief. *Id.* at 679. A complaint states a "plausible claim for relief" when the factual allegations contained therein infer actual misconduct on the part of the defendant, not a "mere possibility of misconduct." *Id.*; *see also Jacquez v. Procunier*, 801 F.2d 789, 791-92 (5th Cir. 1986).

The Court's focus in a 12(b)(6) determination is not whether the plaintiff should prevail on the merits but rather whether the plaintiff has failed to state a claim. *Twombly*, 550 U.S. at 563 n.8 (holding "when a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (overruled on other grounds) (finding the standard for a 12(b)(6) motion is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

C. Pro Se Plaintiff

A pro se plaintiff's pleadings are construed liberally and with all well-pleaded allegations taken as true. *Perez v. United States*, 312 F.3d 191, 194-96 (5th Cir. 2002). "[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).

At the same time, a court may dismiss a frivolous complaint when it is based on indisputably meritless legal theories or when the factual allegations are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

III. Analysis

A. Subject Matter Jurisdiction

In his Amended Complaint, Griffin contends that the Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, 1343, and 1348. Doc. 137 at 5 ¶ 19. Wells Fargo challenges Griffin's assertion of subject matter jurisdiction, arguing that diversity jurisdiction fails because the claim does not meet the amount in controversy requirement under 28 U.S.C. § 1332, that federal question jurisdiction under § 1331 fails because "[n]one of the claims Plaintiff asserts against Wells Fargo in this suit involve a federal question or stem from federal law," that jurisdiction under § 1343 fails because the Amended Complaint "is devoid of any factual allegations supporting a claim against Wells Fargo for a civil rights violation, involvement with a conspiracy to interfere with civil rights or any other basis for jurisdiction set forth in 28 U.S.C. § 1343," and finally, that jurisdiction under § 1348 fails because that statute has "no possible relation or application to the instant case . . . [b]ecause Plaintiff is not an officer of the United States." Doc. 144 at 7-8. Griffin's response does not address these assertions. *See* Doc. 146.

The Court makes no comment on Wells Fargo's arguments but determines that, at the very least, supplemental jurisdiction exists under 28 U.S.C. § 1367. Although Griffin never asserts supplemental jurisdiction, a plaintiff does not need to cite to the statutory basis of jurisdiction as long as he pleads sufficient facts to establish jurisdiction. *See Andrus v. Charlestone Stone Products Co.*, 436 U.S. 604, 607 n.6 (1978).

Federal courts have original jurisdiction over federal question claims and supplemental jurisdiction over any claims "so related" to those federal claims. *See* 28 U.S.C. §§ 1331, 1367(a). Claims are "so related" to the same case or controversy when they "derive from a common nucleus of operative fact, such that the relationship between the federal claim and the state claim permits the conclusion that the entire action before the court comprises but on constitutional case." *Chicago v. Int'l College of Surgeons,* 522 U.S. 156, 165–66 (1997) (internal quotation omitted). When determining whether the Court has supplemental jurisdiction, courts identify the common or overlapping facts, if any, that give rise the state-law and federal-law claims. *Id.* at 165 ("[T]he state and federal claims 'derive from a common nucleus of operative fact,' namely, ICS' unsuccessful efforts to obtain demolition permits from the Chicago Landmarks Commission.") (citation omitted); *compare Mammel v. Hoag,* No. 3:10–CV–2028–G, 2011 WL, (N.D. Tex. Aug.18, 2011) (The "patent-infringement claim and the third-party plaintiffs' tortious interference claim involve significantly overlapping facts and evidence."); *with Bates v. Tech Clean Indus. ., Inc.,* No. 3:01–CV–1304–L, 2002 WL 32438759 (N.D. Tex. Oct 15, 2002) ("The only commonality between the claims is that they relate to [plaintiff's] employment). Even if claims form a part of the same common nucleus of operative fact, district courts can decline to exercise supplemental jurisdiction if:

(1) the claim raises a novel or complex issue of state-law,

(2) the state-law claim substantially predominates over any claims over which the court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

§ 1367(c).

Wells Fargo does not dispute that the claim against it arises from the same operative facts behind Griffin's claims against the State Defendants. *See* Doc. 144. Griffin's claims against the State Defendants, for the most part, are federal question claims under 28 U.S.C. § 1331—Griffin claims a whole host of federal statutory and Constitutional violations. *See* Doc. 137. The Court therefore has original jurisdiction over such claims, which serve as qualifying civil actions over Griffin's claims against Wells Fargo. 28 U.S.C. § 1367(a). Furthermore, the Court sees no reason to dismiss for the listed reasons found in § 1367(c).

For this reason, the Court denies Wells Fargo's motion to dismiss for lack of subject matter jurisdiction.

B. Failure to State a Claim

Wells Fargo also moves to dismiss for failure to state a claim under Rule 12(b)(6). Doc. 144 at 6-7. Wells Fargo simply states that "there were no acts or omissions by Wells Fargo that could conceivably support any claims against Wells Fargo even if Plaintiff had effectively asserted them." *Id.* at 7. Griffin's response does nothing to contradict this statement. *See* Doc. 146.

The Court agrees that Griffin fails to allege sufficient facts in support of the vast majority of his claims. In fact, just as with all of Griffin's claims against other parties, the Court has trouble determining exactly what claims Griffin makes. In Paragraph 298 of his Amended Complaint, Griffin states that "Wells Fargo Bank committed conversion, common-law and statutory fraud violating [] federal and state security laws through

deceptive trade practices violating [sic] other State of Texas laws, such as the Texas Fraudulent Act." Doc. 137. In paragraph 311, he states that "Wells Fargo Bank, N.A. made a contract with the Plaintiff that was an illusory promise." In paragraph 312, he asserts claims for deceptive trade practices. In paragraph 314, he asserts violations of his right to free speech. In paragraph 316, he asserts a violation of his right to privacy. In paragraph 328, he states that Wells Fargo violated the Texas Penal Code. Yet Griffin makes no connection between these claims and any alleged facts that support them. *See* Doc. 137.

The only claim that has any connection between the facts Griffin alleges and the claim he asserts is his claim under 38 U.S.C. § 5301—a claim for which Griffin creates a separate subsection. *Id.* at 79. 38 U.S.C. § 5301 states that payments of veteran's benefits "shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever." 38 U.S.C. § 5301(a)(1). Furthermore, Wells Fargo admits that it withdrew around thirteen-hundred dollars from Griffin's accounts. Doc. 144 at 3-4. However, in this same subsection, Griffin proceeds to throw in a bunch of unconnected allegations—including deprivation of due course of law, due process and equal protection claims under the Texas and Federal Constitutions, and deprivations of "privileges, immunities, life, liberty, and/or property." Doc. 137 at 79-80. This string of allegations causes the Court to doubt whether Griffin even intends to bring a claim under 38 U.S.C. § 5301 against Wells Fargo. Nevertheless, by separate Order, the Court has already dismissed Griffin's § 5301 claim against the State Defendants. For the same reasons, and because the claim involves the same alleged facts as his claim

against the State Defendants, the Court now dismisses Griffin's § 5301 claim, if any, against Wells Fargo. The Court thus dismisses all of Griffin's claims against Wells Fargo.

IV. Untimely Motion

In his response, Griffin correctly points out that Wells Fargo's 12(b) motion was brought after his responsive pleading in contravention of Rule 12. Doc. 146 at 8. Wells Fargo does not deny this peccadillo and asks the Court to forgive its mistake by treating its 12(b)(6) motion to dismiss as a 12(c) Motion for Judgment on the Pleadings. Doc. 152 at 5.

"[A] post-answer Rule 12(b)(6) motion is untimely and some other vehicle, such as a motion for judgment on the pleadings or for summary judgment, must be used to challenge the failure to state a claim of relief." 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 2d* § 1357, at 300-01 (2d ed. 1990). The Court agrees with Wells Fargo that Courts confronted with a 12(b)(6) motion filed after a defendant has answered "have chosen to overlook the semantic faux pas and [have] restyled the motion as a Rule 12(c) motion." *Dolenz v. Akin*, No. CIV.A.3:95-CV-1605-P, 1997 WL 21388, at *1 (N.D. Tex. Jan. 14, 1997) (citations omitted) *aff'd,* 129 F.3d 612 (5th Cir. 1997). Therefore, rather than striking Defendants' Motion to Dismiss, the Court will simply treat it as a motion under Rule 12(c) and will consider the motion.

In recasting a post-answer Rule 12(b)(6) motion as a Rule 12(c) motion, courts apply the 12(b)(6) legal standard to the Rule 12(c) motion. *See Turbe v. Government of V.I.,* 938 F.2d 427, 428 (3d Cir. 1991). The same legal standard applied under Rule 12(b)(6) is applied to Rule 12(c) motions because "[i]n this context, Rule 12(c) is merely serving as

an auxiliary device that enables a party to assert ... [the defense of failure to state a claim] after the close of the pleadings." *Dolenz*, 1997 WL 21388, at *2 (citations omitted).

For these reasons, the Court's above analysis is unaffected by Griffin's correct understanding of the Federal Rules of Civil Procedure.

V. Sanctions

In his response, Griffin demands that the Court sanction Wells Fargo under Rule 11 for violating the Federal Rules of Civil Procedure. Doc. 152 at 10. For a whole host of reasons, this is an improper request. First, Griffin's request violates the Federal Rules of Civil Procedure because "[a] motion for sanctions must be made separately from any other motion." Fed. R. Civ. P. 11(c)(2). In addition, as stated above, the Court sees no basis for sanctioning Wells Fargo.

The Court understands that Griffin is a pro se plaintiff with a layman's understanding of the Federal Rules, but the Court warns Griffin that requesting sanctions is serious business. The legal system is not a spear that a person can use to attack all of his perceived wrongdoers. Just as a party can only seek relief when there is legal redress for his claims, he can only seek Rule 11 sanctions under Federal Rule 11(b).

VI. Conclusion

For the foregoing reasons, the Court GRANTS Wells Fargo's Motion for Judgment on the Pleadings. Doc. 144.

IT IS SO ORDERED.

Signed this 24th day of February, 2016.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRENT S. GRIFFIN, SR.	§	
Plaintiff,	§	
v.	§	No. 3:14-CV-2470-P
AMERICAN ZURICH INSURANCE COMPANY; ET AL,	§	
Defendants.	§	

ORDER

Now before the Court is Defendant American Zurich Insurance Company's ("Zurich") Motion to Dismiss Pursuant to Rule 12(b)(1) and (6), filed May 15, 2015. Doc. 139. Plaintiff Trent S. Griffin, Sr. filed a response on June 4, 2015. Doc. 145. Zurich filed a reply on June 18, 2015. Doc. 153.

After reviewing the parties' briefing and applicable law, the Court GRANTS Zurich's Motion to Dismiss Pursuant to Rule 12(b)(1) and (6). Doc. 139.

I. Background

Griffin sustained a neck injury on February 21, 2012 and sought worker's compensation benefits. Doc. 37 at 5. He previously sued Zurich in state court to appeal a determination concerning the compensatory injury, where he lost on summary judgment. *Id.* at 4, 18.

Griffin, who is proceeding pro se, now again sues Zurich and more than twenty other defendants, adding additional causes of action. *See* Doc. 137 at ¶¶ 348-694.

Zurich moves to dismiss these claims. Doc. 139.

II. Legal Standard

A district court may decide a Rule 12(b)(1) motion to dismiss "on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Barrera–Montenegro v. United States,* 74 F.3d 657, 659 (5th Cir. 1996) (*quoting Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.1981)). A motion to dismiss for lack of subject-matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his or her claim that would entitle him or her to relief. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.,* 143 F.3d 1006, 1010 (5th Cir. 1998).

Federal Rule 12(b)(6) provides for the dismissal of a complaint when a defendant shows that the plaintiff has failed to state a claim for which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). The factual matter contained in the complaint must allege actual facts, not legal conclusions masquerading as facts. *Id.* ("Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" (quoting *Twombly,* 550 U.S. at 555)). Additionally, the factual allegations of a complaint must state a plausible claim for relief. *Id.* at 679. A complaint states a "plausible claim for relief" when the factual allegations contained therein infer actual misconduct on the part of the defendant, not a "mere possibility of misconduct." *Id.*; *see also Jacquez v. Procunier,* 801 F.2d 789, 791-92 (5th Cir. 1986).

The Court's focus in a 12(b)(6) determination is not whether the plaintiff should prevail on the merits but rather whether the plaintiff has failed to state a claim. *Twombly*, 550 U.S. at 563 n.8 (holding "when a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (overruled on other grounds) (finding the standard for a 12(b)(6) motion is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

III. Analysis

Zurich asks the Court to dismiss Griffin's claims on three general grounds. *See* Doc. 140 at 2. First, it asserts that Griffin's claims are subject to the exclusive jurisdiction of a state agency. *Id.* Second, it argues that Griffin's claims are precluded as a collateral attack on a state-court judgment. *Id.* Third, it contends that Griffin's complaint fails to state claims. *Id.* Because the Court decides this motion based on res judicata, the Court only addresses Zurich's second argument.

Under federal res judicata law "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Montana v. United States,* 440 U.S. 147, 153 (1979). Hence, for a prior judgment to bar an action on the basis of res judicata, four elements must be met: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions. *Petro–Hunt, L.L.C., v. United States,* 365 F.3d 385, 396 (5th Cir. 2004).

Explaining its argument, Zurich asserts that Griffin's prior state-court petition "concern[s] the same factual allegations" as his federal amended complaint. Doc. 140 at 8. Griffin's response, to the extent that it contradicts Zurich's motion, attempts to avoid res judicata by arguing that he filed this suit before the adverse state court judgment. Doc. 145 at 7-8.

Griffin properly recites the elements of res judicata. *Id.* at 8-9. But it is clear by his application that he is confusing the doctrine of res judicata with the *Rooker-Feldman* doctrine. Griffin is correct to conclude that the *Rooker-Feldman* doctrine is confined to cases in which a state-court judgment occurs before a plaintiff brings suit in federal court, but this limitation on the *Rooker-Feldman* doctrine does nothing to change the law of claim preclusion. As the Supreme Court stated in *Exxon Mobil*,

> [t]he *Rooker–Feldman* doctrine . . . is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Thus, a party may still be precluded from continuing its claim through res judicata as soon as a judgment occurs.[1] The Court must thus apply the elements of res judicata.

A. The parties are identical, the prior action's judgment was rendered by a court of competent jurisdiction, and it was a final judgment on the merits

[1] The Court does not mean to say that subject matter jurisdiction terminates on entry of judgment in state court but that a federal court may be bound to recognize the claim-preclusive effect of a state-court judgment. *See id.* at 293. The Court also notes that Zurich asserts its res judicata argument under Rule 12(b)(1), but because preclusion law is not a jurisdictional matter, the Court analyzes Zurich's argument under Rule 12(b)(6). *Compare* Doc. 140 *with Exxon*, 544 U.S. 280 at 293 ("Preclusion, of course, is not a jurisdictional matter.").

Griffin does not dispute that the parties are identical in the prior suit and this current action. In addition, Griffin does not dispute that the judgment in the prior suit was rendered by a court of competent jurisdiction and that it was a final judgment on the merits. Therefore, the Court has no problem concluding that the first, second, and third elements of the res judicata test are satisfied.

B. Griffin bases the two actions on the same nucleus of operative facts

Griffin never argues that the two actions are not based on the same nucleus of operative facts, but he does bring more claims than he brought in his prior state-court action. *Compare* Doc. 137 *with* Doc. 37.

The Court determines whether two suits involve the same claim or cause of action by applying the transactional test of the Restatement (Second) of Judgments, § 24. *Petro–Hunt, L.L.C. v. United States,* 365 F.3d 385, 395 (5th Cir. 2004). Under the transactional test, our inquiry focuses on whether the two cases under consideration are based on "the same nucleus of operative facts." *In re Southmark Corp.*, 163 F.3d 925, 934 (5th Cir. 1999) (quoting *In re Baudoin,* 981 F.2d 736, 743 (5th Cir. 1993)). The nucleus of operative facts, rather than the type of relief requested, substantive theories advanced, or types of rights asserted, defines the claim. *Agrilectric Power Partners, Ltd. v. Gen. Elec. Co.*, 20 F.3d 663, 665 (5th Cir. 1994). If the cases are based on the same nucleus of operative facts, the prior judgment's preclusive effect "extends to all rights the original plaintiff had 'with respect to all or any part of the transaction, or series of connected transactions, out of which the [original] action arose.'" *Petro–Hunt,* 365 F.3d at 395 (citing Restatement (Second) of Judgments § 24(1)).

The Court is only limited to analyzing the operative facts in the state-court suit and this

suit and cannot consider the legal theories advanced, forms of relief requested, and types of rights asserted. *See Agrilectric Power Partners, Ltd.*, 20 F.3d at 665. The operative facts in this case and the state-court action are identical. Both cases are based on the same transactions and factual events, namely refusal to provide workers' compensation coverage and other consequential damages surrounding Griffin's February 21, 2012 work injury. *Compare* Doc. 137 at ¶¶ 224-97 *with* Doc. 37 at 4-8. Although Griffin now asserts many more claims, the operative facts that inspired both lawsuits are the same. For these reasons, the Court grants Zurich's motion to dismiss.

The Court understands that Griffin feels that he has been wronged in many ways, but the law only allows for plaintiffs to take one bite of the apple. *See Matter of Baudoin*, 981 F.2d 736, 740-41 (5th Cir. 1993) (citing *Sure–Snap Corp. v. State Street Bank and Trust Co.*, 948 F.2d 869, 870 (2d Cir.1991) ("Restraining litigious plaintiffs from taking more than 'one bite of the apple' has been our avowed purpose since the common law doctrine of res judicata first evolved.")).

Because the Court now dismisses all of Griffin's claims against Zurich, the Court finds moot Zurich's other argued bases for dismissal.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Zurich's Motion to Dismiss Pursuant to Rule 12(b)(1) and (6). Doc. 139.

IT IS SO ORDERED.

Signed this 24th day of February, 2016.

Jorge A. Solis

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE