

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 4 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LISA WASHINGTON,

Plaintiff-Appellant,

v.

DIANA DELEON; et al.,

Defendants-Appellees.

No. 19-16457

D.C. No. 4:19-cv-02271-JSW
Northern District of California,
Oakland

ORDER

Before: TASHIMA, M. SMITH, and CHRISTEN, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (dismissal of complaint with leave to amend is not appealable); *see also* Fed. R. Civ. P. 54(b); *Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981) (order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA WASHINGTON,

Plaintiff,

v.

DIANE DELEON, et al.,

Defendants.

Case No. 19-cv-02271-JSW

**ORDER DISMISSING FIRST
AMENDED COMPLAINT, WITH
LEAVE TO AMEND IN PART**

Re: Dkt. No. 12

This matter comes before the Court upon consideration of Plaintiff's First Amended Complaint ("FAC"). Plaintiff is proceeding *in forma pauperis*, and the Court must determine whether Plaintiff should be given leave to file the FAC. See 28 U.S.C. § 1915. For the reasons set forth in this Order, the Court DISMISSES the FAC. The Court will grant Plaintiff one final opportunity to amend, in part and on the conditions set forth below.

BACKGROUND

A. Procedural History.

On April 25, 2019, Plaintiff filed the original complaint in this action. The allegations in that complaint are summarized in a Report and Recommendation ("Report") issued on May 7, 2019 by Chief Magistrate Judge Spero, in which he recommended that the Court: (1) grant Plaintiff's application to proceed *in forma pauperis*; and (2) dismiss her complaint with leave to amend (the "Report"). Because not all parties consented to the jurisdiction of a magistrate judge, the matter was reassigned, and the undersigned received the case.

On May 21, 2019, Plaintiff filed a timely objection to the Report and requested that the Court recuse itself from the matter. On May 28, 2019, the Court denied Plaintiff's motion for recusal, and it adopted the Report and dismissed the complaint with leave to amend. (Order

Denying Plaintiff's Request for Recusal and Adopting Report and Recommendation ("Order on Report").) In the Report, Chief Magistrate Judge Spero recommended that Plaintiff limit her claims to a subset of the Defendants. This Court did not require Plaintiff to limit the claims against the Defendants, but it did advise her that "as drafted the Complaint does not contain a sufficient factual basis for joining the parties she has named as Defendants in a single complaint." (Order on Report at 2:28-3:4.)

Plaintiff timely filed the FAC on June 27, 2019.

B. Allegations in the FAC.

In her FAC, Plaintiff names as defendants Mary Oaklund, Amanda Plowman, M. Brett Burns, Diana Deleon, Doreen Carr, Everest Leap, LLC, Jehovah's Witnesses National Organization, Watchtower Bible and Tract Society of New York, and Union City Congregation of Jehovah's Witnesses (the Court refers to the latter three entities as "the Jehovah's Witness entities"), each of whom were named Defendants in the original complaint.

Plaintiff amended her complaint to add the following individuals and organizations as Defendants: Nona Washington; Gregory D. Pike, Esq.; Jeffrey V. Rocha, Esq.; Michael Barnes; Elizabeth Throne; Rebecca Olsen; Allstate Corporation ("Allstate"); Knox Ricksen, LLP ("Knox Ricksen"); Dentons US, LLP ("Dentons"); The Regents of the University of California, Janet Napolitano, in her official capacity as the President of the University of California, Berkeley, and Carol T. Christ, in her official capacity as Chancellor of the University of California, Berkeley (collectively the "UC Berkeley defendants"); Transportation Brokerage Specialists, Inc. ("TBS"), Amazon, Full Steam Staffing, LLC ("Full Steam"), Nora Aung, and Mindy Oong, as well as twenty-five (25) Doe defendants.

In the Report, Judge Spero noted that Plaintiff's allegations included allegations relating to a family court proceeding and alleged corruption in that proceeding, a federal lawsuit Plaintiff filed against Lowes HIW, Inc., a car accident, an unlawful detainer action, harassment and discrimination by certain employers, and allegations relating to Ms. Deleon. (Report at 2:19-4:18.) Plaintiff includes many of these same allegations in the FAC.

More particularly, Plaintiff alleges that she had a family court proceeding in Alameda

1 County Superior Court. Oaklund represented Plaintiff's ex-husband during those proceedings.
2 Plaintiff alleges that she wrote a letter to the presiding judge of Alameda County Superior Court
3 accusing Judge Winifred Smith, Commissioner Sue Alexander, Commissioner Boyden Hall,
4 Oaklund, and Trina Blackshire of engaging in an enterprise to embezzle money from Alameda
5 County court appointed program. Plaintiff also alleges these Defendants bribed Plaintiff's
6 employers and court officers. (FAC ¶¶ 8-16.) Plaintiff alleges that Oaklund and others found out
7 about the letter and "the enterprise retaliated against Plaintiff" and conspired to "deprive Plaintiff
8 of due process of the law" and "the honest services of the courts." (*Id.* ¶¶ 14, 17.)

9 Plaintiff also alleges that an unspecified Defendant "bribed and influenced" Plaintiff's case
10 against Lowes HIW Inc., her former employer, which was assigned to Judge Charles R. Breyer.
11 (*Id.* ¶ 18.) Burns represented the defendant in that case. (*Id.*) Plaintiff alleges that the case
12 management conference was rescheduled three times and that at a hearing on or about December
13 5, 2019, Plaintiff was only allowed to state her name, whereas Burns and another individual
14 allegedly met with Judge Breyer in his chambers for more than thirty minutes. (*Id.* ¶¶ 19-21.)

15 Plaintiff also alleges that Magistrate Judge Elizabeth Laporte "is associated with one of the
16 members of the enterprise," and that Judge Laporte granted a discovery motion and assessed
17 sanctions of \$200 against Plaintiff. (*Id.* ¶¶ 23-24.) Plaintiff also alleges that Judge Breyer granted
18 a motion for summary judgment filed by Burns, even though Burns did not present oral argument.
19 Plaintiff alleges that Burns "furthered the fraud by submitting a bill of costs for \$5,618.15." (*Id.*
20 ¶¶ 25-26.) Plaintiff also alleges that she appealed the order to the United States Court of Appeals
21 for the Ninth Circuit, which "put the defendants back on the case" and added new attorneys. (*Id.* ¶
22 28.)

23 Plaintiff once again includes allegations that she was hit by a car on her way to a hearing in
24 January of 2014. (*Id.* ¶ 29.) Plaintiff alleges that she filed a complaint in the Alameda County
25 Superior Court about two years later against Allstate, Olsen, and Evangelina Cayetanel Paz. (*Id.* ¶
26 30). Plaintiff alleges that Barnes, Throne, and Denton represented Allstate and Olsen. Plaintiff
27 alleges there were delays in the case, that the defendants in that case did not respond in a timely
28 manner, that the defendants filed a demurrer, and that the judge issued a tentative ruling and did

1 not hold a hearing. Plaintiff also alleges that Rocha and Throne had *ex parte* meetings with the
2 presiding judge in chambers. Plaintiff alleges that she was required to pay Olsen \$435.00 and that
3 Thorne got a judgment against Plaintiff for Allstate for \$555.00. Plaintiff alleges that Allstate
4 obstructed justice and bribed the presiding judge to swing the case in its favor. (*See generally id.*
5 ¶¶ 31-39.)

6 Plaintiff also alleges that several employers, including the UC Berkeley defendants, a
7 Burmese restaurant, Full Steam, 858 bakery café, TBS, and Amazon “intentionally and willfully
8 participated in the fraudulent schemes” and violated various laws relating to her employment. (*Id.*
9 ¶¶ 42-43.) Plaintiff alleges that she worked for the UC Berkeley defendants in a dining hall in
10 August 2018, and during one week worked more than forty (40) hours but did not receive
11 overtime and missed eleven (11) meal periods. (*Id.* ¶¶ 44-45.) Plaintiff also alleges that she was
12 “subjected to harasment [*sic*] and sexual harassment, and hostal [*sic*] work environment due to her
13 religious beliefs.” (*Id.* ¶ 45.)

14 Plaintiff alleges she was subject to age discrimination by the Burmese restaurant and was
15 harassed by other employees. According to Plaintiff, Aung and Oong “participated in the
16 enterprise by trying to poison plaintiff with a TB virus.” (*Id.* ¶ 46.) Plaintiff alleges that the 858
17 bakery café and Full Steam did not pay Plaintiff her last check, that she had to work through
18 breaks, and that she was subject to harassment by other employees. (*Id.* ¶ 47.)

19 Plaintiff alleges that in December 2018, she was employed by TBS and was subject to
20 harassment, sexual harassment, and that it “along with Amazon made working for them a
21 nightmare.” Plaintiff further alleges that TBS did not provide her with a final paycheck and owes
22 her over \$2000.00. (*Id.* ¶ 48.) Plaintiff filed a complaint with the Labor commissioner about these
23 alleged violations. Plaintiff attaches an exhibit for a notice of hearing in August with respect to
24 wage claims against TBS. (*Id.* ¶ 49, Ex. E.)

25 Finally, Plaintiff reasserts allegations against Deleon. Plaintiff alleges that in March 2018,
26 she and Deleon entered into a verbal contract for a room in Deleon’s home. Plaintiff alleges she
27 cleaned the house, which she alleges was filthy, and served as a house manager for four other
28 tenants living there. (*Id.* ¶¶ 52-56.) Plaintiff alleges that Deleon and Carr stayed at the property

1 on weekends, and Carr would sleep in Plaintiff's room. (*Id.* ¶¶ 57-58.) Carr and Deleon began to
2 harass Plaintiff about her TV, room divider, and alarm clock. (*Id.* ¶ 59.) Plaintiff alleges that, in
3 April 2018, Deleon told her that she was going to evict her. Plaintiff sent Deleon a letter stating
4 that she would leave the house in sixty days and demanded \$500 for her services cleaning the
5 house. (*Id.* ¶¶ 61-63.)

6 Plaintiff further alleges that on April 22, 2018, Deleon returned from a meeting at the
7 Kingdom Hall of Jehovah's Witnesses and told Plaintiff that she needed to leave the house
8 immediately. Plaintiff alleges she advised Deleon that Plaintiff needed a thirty day notice, which
9 Plaintiff alleges Deleon did for a white male two weeks earlier. (*Id.* ¶¶ 64-66.) Plaintiff alleges
10 that Deleon became angry, grabbed Plaintiff's arms and scratched her. Plaintiff also alleges that
11 Deleon called the San Joaquin Sheriff's Department, and that the deputy who responded told
12 Deleon that she must give Plaintiff thirty days' notice to vacate. Plaintiff alleges the deputy also
13 told Deleon and Plaintiff that he "deemed the incident" mutual combat. *Id.* (*Id.* ¶¶ 67-71.)

14 Plaintiff alleges that on April 23, 2018, Deleon filed fraudulent elder abuse charges against
15 Plaintiff. Plaintiff also alleges that she was arrested and that a restraining order was entered
16 against her without a hearing, a police report, or probable cause. Plaintiff also alleges that she was
17 not given the right to an attorney and that while she was in custody, she was subjected to a strip
18 search and that male deputy officers were observing the female inmates while the female inmates
19 were undressed. (*Id.* ¶¶ 72-86.)

20 Based on these and other allegations, which the Court shall address as necessary, Plaintiff
21 asserts the following claims for relief:

22 (1) a violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18
23 U.S.C. section 1962(c), against Plowman, Pike, Rocha, Barnes, Allstate, Throne, Olsen, Denton,
24 and Knox Ricksen (FAC ¶¶ 122-172);

25 (2) a conspiracy to violate RICO, 18 U.S.C. section 1962(d), against Pike, Plowman,
26 Rocha, Barnes, Allstate, Throne, Olsen, Dentons, LLP, Knox Ricksen, Oaklund, Blackshire,
27 Washington, Burns, DeLeon, and the Jehovah's Witness entities (*id.* ¶¶ 173-179);

28 (3) a violation of RICO against Oaklund, Washington, Blackshire, the Jehovah's Witness

1 entities, Burns, Deleon, and Carr (*id.* ¶¶ 180-204);

2 (4) common law fraud against Pike, Plowman, Rocha, Barnes, Allstate, Throne, Olsen,
3 Denton, Knox Ricksen, Oaklund, Blackshire, Washington, Burns, and Deleon (*id.* ¶¶ 205-213);

4 (5) civil conspiracy to defraud against Oaklund, Washington, Plowman, Pike, Rocha,
5 Burns, Barnes, Throne, Olsen, Allstate, Knox Ricksen, Dentons, Everest Leap, the UC Berkeley
6 defendants, TBS, Amazon, Full Steam Staffing, Deleon, Carr, the Jehovah's Witness entities,
7 Aung, and Oong (*id.* ¶¶ 214-220);

8 (6) a violation of the provisions of the California Labor code relating to meal breaks
9 against the UC Berkeley defendants, TBS, Amazon, and Full Steam (the "meal breaks claim") (*id.*
10 ¶¶ 221-231); and

11 (7) age discrimination in violation of the Age Discrimination in Employment Act ("ADEA
12 claim") against TBS and the UC Berkeley defendants (*id.* ¶¶ 232-240).

13 ANALYSIS

14 A. Applicable Standard of Review.

15 Plaintiff has been granted leave to proceed *in forma pauperis*. Accordingly, the Court
16 must screen the FAC and dismiss any claims that are: (1) frivolous or malicious; (2) fail to state a
17 claim on which relief may be granted; or (3) seek monetary relief from a defendant who is
18 immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *see also Cato v. United States*, 70
19 F.3d 1103, 1106 (9th Cir. 1995). The Court evaluates whether Plaintiff has stated a claim under
20 the same standard which governs motions to dismiss under Federal Rule of Civil Procedure
21 12(b)(6). *See Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). However inartful a *pro*
22 *se* complaint may be, the Court holds it to less stringent standards than formal pleadings drafted by
23 lawyers. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

24 In order to state a claim a "complaint must contain sufficient factual matter, accepted as
25 true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678
26 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). Rule 12(b)(6) "is read
27 in conjunction with Rule 8(a) which requires not only 'fair notice of the nature of the claim, but
28 also grounds on which the claim rests.'" *Zixiang Li v. Kerry*, 710 F.3d 995, 998-99 (9th Cir.

2013) (quoting *Twombly*, 550 U.S. at 556 n.3). Rule 8 requires a “short and plain statement of the claim showing that the pleader is entitled to relief” and commands that “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(a)(2), (d)(1). Even under Rule 8, however, “a plaintiff’s obligation to provide the grounds of [her] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal quotations, citations, and brackets omitted).

Plaintiff also asserts a claim for fraud and her RICO Claims also are premised on allegedly fraudulent conduct. Claims sounding in fraud or mistake are subject to heightened pleading requirements, which require that a plaintiff claiming fraud “must state with particularity the circumstances regarding fraud or mistake.” Fed. R. Civ. P. 9(b). Rule 9(b)’s particularity requirements must be read in harmony with Rule 8, which requires a “short and plain” statement of the claim. The particularity requirement is satisfied if the complaint “identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations.” *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). Accordingly, “[a]llegations of fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

B. Subject Matter Jurisdiction.

Plaintiff asserts four federal claims, the three RICO claims and the ADEA claim. Therefore, the Court has subject matter jurisdiction pursuant 28 U.S.C. section 1331. The Court could have supplemental jurisdiction over Plaintiff’s state law claims, if they are so related to the federal claims that they can be considered part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367(a).¹

The Court will begin its analysis with the federal claims and shall then determine whether it has supplemental jurisdiction over the state law claims and, if it does, whether it will exercise its

¹ Plaintiff asserts she is a resident of Union City, California. The allegations show that, at the very least, Carr and Deleon also are residents of California. Thus, the parties are not completely diverse. As currently drafted, the FAC does not allege facts to show there would be diversity jurisdiction over the state law claims.

1 discretion to consider those claims. *See* 28 U.S.C. § 1367(c); *Acri v. Varian Associates, Inc.*, 114
2 F.3d 999, 1001 (9th Cir. 1997).

3 **C. The Civil RICO Claims.**

4 It is “unlawful for any person employed by or associated with any enterprise engaged in, or
5 the activities which affect, interstate or foreign commerce, to conduct or participate, directly or
6 indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or
7 collection of unlawful debt.” 18 U.S.C. § 1962(c). It also is “unlawful for any person to conspire
8 to violate any of the provisions of the subsections (a), (b), or (c) of this section.” *Id.* § 1962(d).

9 In order to state a Civil RICO claim, Plaintiff must allege facts showing: “(1) conduct (2)
10 of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5)
11 causing injury to plaintiff’s ‘business or property.’” *Living Designs, Inc. v. E.I. Dupont de*
12 *Nemours and Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (quoting *Grimmett v. Brown*, 75 F.3d 506,
13 510 (9th Cir.1996), in turn citing 18 U.S.C. §§ 1964(c), 1962(c)). In order to state a claim for
14 RICO conspiracy, Plaintiff must allege that a person conspired to violate section 1962(c), and that
15 she suffered RICO injury by reason of overt acts, which constitute predicate acts under the RICO
16 statute, in furtherance of the conspiracy. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 295
17 (9th Cir. 1990).

18 A RICO “enterprise” is “any individual, partnership, corporation, association, or other
19 legal entity, and any union or group of individuals associated in fact although not a legal entity[.]”
20 18 U.S.C. § 1961(4). An associated-in-fact enterprise is “a group of persons associated together
21 for a common purpose of engaging in a course of conduct.” *United States v. Turkette*, 452 U.S.
22 576, 583 (1981). A plaintiff need not allege that an associated-in-fact enterprise has “any
23 particular organizational structure, separate or otherwise[.]” *Odom v. Microsoft, Inc.*, 486 F.3d
24 541, 551 (9th Cir. 2007).

25 Plaintiff alleges that there are two enterprises. The first appears to encompass the
26 Defendants connected to the litigation that ensued after Plaintiff was hit by a car, and the second
27 encompasses the Defendants allegedly involved in the family law case, the federal case, Carr, and
28 Deleon. Plaintiff attempts to link these two enterprises and all of the alleged RICO violations

1 together by way of her RICO conspiracy claim. To allege an associated-in-fact enterprise, a
 2 plaintiff must allege three basic elements: (1) a common purpose; (2) an ongoing organization,
 3 whether formal or informal; (3) that functions as a continuing unit. *Odom*, 486 F.3d at 552-53;
 4 accord *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015).

5 Plaintiff's allegations are largely conclusory. However, to the extent she does include
 6 facts, the Court concludes those facts are not sufficient show that either of the two alleged
 7 enterprises share a common purpose, are an ongoing organization, or that they function as a
 8 continuing unit. By way of example only, Plaintiff includes no facts to show how the alleged
 9 wrongdoing in her family law case is plausibly connected to Burns' alleged conduct during the
 10 federal litigation or Deleon's conduct as her landlord. The Court concludes that Plaintiff fails to
 11 state a claim for alleged violations of RICO. Because Plaintiff fails to state a substantive RICO
 12 violation, she also fails to state a viable RICO conspiracy claim.² *Howard v. America Online, Inc.*,
 13 208 F.3d 741, 751 (9th Cir. 2000).

14 Plaintiff was granted leave to amend these claims, and she failed to rectify the deficiencies
 15 identified by Judge Spero. The Court concludes that any further amendments would be futile, and
 16 it DISMISSES the RICO Claims with prejudice.

17 **D. The Employment Discrimination Claims.**

18 As in her original complaint, Plaintiff scatters allegations throughout her FAC that various
 19 past employers, none of whom are allegedly connected to one another, engaged in sexual
 20 harassment, created hostile working environments, or otherwise discriminated against her.³
 21 Multiple defendants can be joined in a single action where: "(A) any right to relief is asserted
 22 against them jointly, severally, or in the alternative with respect to or arising out of the same
 23 transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or
 24

25 ² There also are insufficient facts to show the two alleged association-in-fact enterprises or
 26 any of their individual members conspired with one another.

27 ³ To the extent Plaintiff included these allegations to demonstrate that these Defendants are
 28 part of and participated in the alleged RICO violations, they are not sufficient to show these
 Defendants are part of an associated-in-fact enterprise.

fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

With the exception of her claim for alleged violations of the ADEA, Plaintiff still does not include any facts to support her claims of discrimination, and therefore she fails to state a claim under the standards set forth in *Twombly*. Plaintiff also includes no facts to show how the claims against the various employer defendants arise out of the same nucleus of operative facts, such that each of her alleged employers could be joined in a single lawsuit. Although Judge Spero addressed these deficiencies in his Report, Plaintiff failed to rectify them in the FAC. The Court concludes any further efforts to amend putative claims for employment discrimination and/or harassment, other than the ADEA claim discussed in the following section, shall be dismissed without further leave to amend.

In her seventh claim, Plaintiff specifically alleges the UC Berkeley defendants and TBS violated the ADEA. In the fact section of the FAC, Plaintiff did allege that the Burmese restaurant also discriminated against her based on her age, but she includes no facts to support that allegation in the body of the FAC or in this claim. With respect to the UC Berkeley defendants, Plaintiff alleges that she was 50 years old at the time she applied for employment as a cook, that she was qualified for that position, and that a 21 year old with less experience was hired. (FAC ¶¶ 233-235.) With respect to TBS, Plaintiff alleges people “would make nasty comments about older people,” and that she contacted the labor board to make a complaint. (*Id.* ¶ 236.)

Under the ADEA,

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed--

(A) within 180 days after the alleged unlawful practice occurred; or

(B) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

29 U.S.C. § 626(d)(1). Therefore, in order to pursue a claim for age discrimination before this

1 Court, Plaintiff must first file a charge of age discrimination with the EEOC.⁴ *See Forrester v.*
2 *Chertoff*, 500 F.3d 920, 924 (9th Cir. 2007). Plaintiff does not allege facts to show she filed any
3 charges with the EEOC within the time limits set forth in Section 626(d)(1), that address her
4 experiences at the Burmese restaurant, at TBS, or at UC Berkeley. The Court also concludes the
5 allegations against TBS and against the Burmese restaurant are insufficient to state a claim for age
6 discrimination.

7 Because it might be possible for Plaintiff to amend to include facts demonstrating that she
8 has filed a charge with the EEOC within the time limits set forth in 29 U.S.C. section 626(d), the
9 Court will dismiss the ADEA claims with leave to amend as to the UC Berkeley defendants only.
10 However, the Court denies leave to amend as to TBS and the Burmese restaurant. Judge Spero
11 placed Plaintiff on notice that conclusory allegations of discrimination, unsupported by facts, are
12 not sufficient to state a claim for discrimination or harassment. She failed to cure those defects in
13 the FAC.

14 **E. The State Law Claims.**

15 Finally, Plaintiff asserts state law claims for fraud, conspiracy to commit fraud, and alleged
16 violations of California's labor code regarding meal breaks. The Court concludes that the
17 allegations regarding fraud and conspiracy to commit fraud would be sufficient to show those
18 claims arise out of a common nucleus of operative facts to the alleged RICO claims. The meal
19 break claim is a closer question, but it is possible that Plaintiff could show a sufficient connection
20 to the ADEA claim to the extent she alleges the UC Berkeley defendants violated that provision of
21 the Labor Code.

22 The Court may decline to exercise that jurisdiction where: (1) a novel or complex issue of
23 state law is raised; (2) the claim substantially predominates over the federal claim; (3) the district
24 court dismisses the federal claims; or (4) under exceptional circumstances. *See* 28 U.S.C. §
25 1367(c). In order to make this determination, courts should consider factors such as "economy,
26 convenience, fairness, and comity." *Acri*, 114 F.3d at 1001. When "federal-law claims are

27
28 ⁴ Plaintiff also fails to allege facts that show she exhausted federal or state administrative
perquisites for any other claims of discrimination or harassment.

1 eliminated before trial, the balance of factors to be considered ... will point toward declining to
2 exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484
3 U.S. 343, 350 n.7 (1988), superseded by statute, 28 U.S.C. § 1447(c); *see also United Mine*
4 *Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966) (suggesting in dicta that “if federal claims
5 are dismissed before trial, ... the state claims should be dismissed as well”) (footnote omitted),
6 superseded by statute, 28 U.S.C. § 1367.

7 Because the Court has dismissed the federal RICO claims, the Court finds the factors set
8 forth above weigh against exercising supplemental jurisdiction over the state law fraud claims, and
9 the Court dismisses those claims without prejudice. Because it is possible that Plaintiff could still
10 assert an ADEA claim against the UC Berkeley defendants, the Court will dismiss the meal break
11 claim with leave to amend only as to the UC Berkeley defendants. Otherwise, the Court finds the
12 factors set forth above weigh against exercising supplemental jurisdiction over that claim as to any
13 other defendant.

14 CONCLUSION

15 For the foregoing reasons, the Court DISMISSES Plaintiff’s RICO claims (first, second,
16 and third claims) with prejudice. The Court DISMISSES the state law fraud claims without
17 prejudice. The Court dismisses the ADEA claim as to TBS and the Burmese restaurant with
18 prejudice. The Court dismisses the meal break claim as to all defendants other than the UC
19 Berkeley defendants without prejudice.

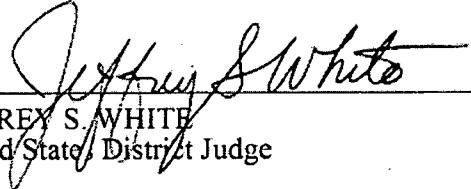
20 The Court shall give Plaintiff one final opportunity to amend her ADEA claim and meal
21 break claim solely as to the UC Berkeley defendants, if Plaintiff can in good faith allege that she
22 filed a charge of age discrimination with the EEOC within the time limits set forth 29 U.S.C.
23 section 626(d) and can allege facts to show the Court would have supplemental jurisdiction over
24 the meal break claim.

25 If Plaintiff chooses to file an amended complaint on the terms set forth in this Order, she
26 must do so by no later than August 12, 2019. If Plaintiff fails to file a second amended complaint
27 that comports with this Order by that date, the Court will enter a final order of dismissal and enter
28 //

1 judgment accordingly.

2 **IT IS SO ORDERED.**

3 Dated: July 9, 2019

4 
JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California

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