APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT DENYING PETITION FOR REHEARING, FILED SEPTEMBER 18, 2020

UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT

No. 18-56613

DANIEL KRISTOF LAK, Esquire,

Appellant,

v.

STATE OF CALIFORNIA, et al.,

Appellees.

September 18, 2020
Appeal from the United States District Court for the Central District of California
(No. 8:18-cv-00160-PSG-KK).

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

2A.

UNITED STATES COURT OF APPEALS

FILED

SEP 18 2020

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

FOR THE NINTH CIRCUIT

DANIEL KRISTOF LAK, Esquire,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 18-56613

D.C. No. 8:18-cv-00160-PSG-KK
Central District of California,
Santa Ana

ORDER

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

Lak's petition for panel rehearing (Docket Entry No. 39) is denied.

No further filings will be entertained in this closed case.

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT, FILED JUNE 5, 2020

UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT

No. 18-56613

DANIEL KRISTOF LAK, Esquire,

Appellant,

v.

STATE OF CALIFORNIA, et al.,

Appellees.

JUNE 5, 2020
Appeal from the United States District Court for the Central District of California
(No. 8:18-cv-00160-PSG-KK).

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

4A.

NOT FOR PUBLICATION

FILED

JUN 5 2020

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL KRISTOF LAK, Esquire, Plaintiff-Appellant, v. STATE OF CALIFORNIA; et al., Defendants-Appellees.	No. 18-56613 D.C. No. 8:18-cv-00160-PSG-KK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted June 2, 2020**

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

Daniel Kristof Lak appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis that the complaint failed to comply with the notice pleading requirements of Federal Rule

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

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

of Civil Procedure 8. *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968 (9th Cir. 2006). We affirm.

The district court properly dismissed Lak's action because Lak failed to give each "defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation and internal quotation marks omitted, alteration in original); *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996) (complaint does not comply with Rule 8 if "one cannot determine from the complaint who is being sued, for what relief, and on what theory").

Defendant State of California's motion to dismiss for lack of subject matter jurisdiction is denied as moot.

AFFIRMED.

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT OF THE CENTRAL DISTRICT OF CALIFORNIA, FILED SEPTEMBER 10, 2018

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 18-cv-00160-PSG-KK

DANIEL KRISTOF LAK, Esquire,

Appellant,

v.

STATE OF CALIFORNIA, et al.,

Appellees.

September 10, 2018
Appeal from the United States District Court for the Central District of California
(No. 8:18-cv-00160-PSG-KK).

Before: Honorable Philip S. Gutierrez, United States District Judge.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DANIEL KRISTOF LAK, Plaintiff, v. STATE OF CALIFORNIA, ET AL., Defendant(s).	Case No. SACV 18-160-PSG (KK) JUDGMENT

Pursuant to the Order Accepting Findings and Recommendation of United States Magistrate Judge,

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

Dated: 9/10/18

HONORABLE PHILIP S. GUTIERREZ
United States District Judge

APPENDIX D — ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE FILED SEPTEMBER 10, 2018

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 18-cv-00160-PSG-KK

DANIEL KRISTOF LAK, Esquire,

Appellant,

v.

STATE OF CALIFORNIA, et al.,

Appellees.

September 10, 2018
Appeal from the United States District Court for the Central District of California
(No. 8:18-cv-00160-PSG-KK).

Before: Honorable Philip S. Gutierrez, United States District Judge.

8A.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DANIEL KRISTOF LAK,

Plaintiff,

v.

STATE OF CALIFORNIA, ET AL.,

Defendants.

Case No. SACV 18-160-PSG (KK)

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge. The Court has engaged in de novo review of those portions of the Report to which Plaintiff has objected. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered dismissing Plaintiff's federal law claims with prejudice and Plaintiff's state law claims without prejudice.

Dated: 9/10/18

HONORABLE PHILIP S. GUTIERREZ
United States District Judge

APPENDIX E — REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE FILED JULY 17, 2018

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 18-cv-00160-PSG-KK

DANIEL KRISTOF LAK, Esquire,

Appellant,

v.

STATE OF CALIFORNIA, et al.,

Appellees.

July 17, 2018
Appeal from the United States District Court for the Central District of California
(No. 8:18-cv-00160-PSG-KK).

Before: Honorable Kenly Kiya Kato, United States Magistrate Judge.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANIEL KRISTOF LAK, Plaintiff, v. STATE OF CALIFORNIA, ET AL., Defendants.	Case No. SACV 18-160-PSG (KK) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to United States District Judge Philip S. Gutierrez, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.

SUMMARY OF RECOMMENDATION

Plaintiff Daniel Kristof Lak ("Plaintiff"), proceeding pro se, filed a Complaint alleging a violation of 42 U.S.C. § 1983 as well as various federal and state laws against defendants State of California, State of California Department of Child Support Services, State Disbursement Unit (the "State Defendants") and defendants County of Orange, Department of Child Support Services County of Orange, and Steven Eldred, director of the Department of Child Support Services County of Orange, in his individual and official capacities (the "County

II A.

Defendants") (collectively "Defendants"). Plaintiff's claims arise out of the same allegations that formed the basis of Plaintiff's prior complaint and first amended complaint in related case SACV 17-1527-PSG (KK). The County Defendants have filed a Motion to Dismiss and a Motion to Strike Punitive Damages and the State Defendants have filed a Motion to Dismiss. As discussed below, the Court recommends (1) granting Defendants' Motions to Dismiss; (2) denying the County Defendants' Motion to Strike as moot; (3) dismissing Plaintiff's federal law claims with prejudice; and (4) dismissing Plaintiff's state law claims without prejudice.

II.

PROCEDURAL HISTORY

A. RELATED CASE SACV 17-1527-PSG (KK)

On September 5, 2017, Plaintiff, proceeding pro se and in forma pauperis, filed a complaint in related case SACV 17-1527-PSG (KK) against defendants California Department of Child Support Services ("DCSS"), Department of Child Support Services County of Orange ("DCSS Orange"), Steven Eldred in his individual and official capacities, and Does 1 through 20. SACV 17-1527-PSG (KK), ECF Docket No. ("Dkt.") 1.[1] The complaint set forth fourteen causes of action, including civil rights claims, violations of Title IV-Part D of the Social Security Act that enforces child support payments, mail fraud, a Racketeer Influenced and Corrupt Organizations Act ("RICO") claim, and state tort claims. Id. After screening the complaint, the Court dismissed it with leave to amend for failure to state a claim and failure to comply with Federal Rule of Civil Procedure 8. Id. at Dkt. 9.

On November 3, 2017, Plaintiff filed a First Amended Complaint ("FAC") against Defendants, and Does 1 through 20. Id. at Dkt. 10. The FAC added

[1] The Court takes judicial notice of Plaintiff's prior proceedings in this Court. See In re Korean Air Lines Co., 642 F.3d 685, 689 n.1 (9th Cir. 2011).

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defendants State of California and State Disbursement Unit, and omitted the mail fraud claim, but was otherwise largely identical to the original complaint. Id.

On December 21, 2017, after screening the FAC, the Court dismissed the FAC with leave to amend for failure to state a claim and failure to comply with Federal Rule of Civil Procedure 8. Id. at Dkt. 11.

On January 11, 2018, Plaintiff filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a) and the action was closed. Id. at Dkt. 12.

B. THE INSTANT COMPLAINT

On January 29, 2018, Plaintiff, proceeding pro se but no longer in forma pauperis, filed the instant Complaint against Defendants and Does 1 through 20.[2] Dkt. 1. The instant Complaint sets forth the same thirteen causes of action as the FAC in case number SACV 17-1527-PSG (KK) against each defendant. Id. Specifically, the Complaint alleges

(1) violation of due process pursuant 42 U.S.C. § 1983 ("Section 1983") for failure to provide notice and opportunity to respond before suspending Plaintiff's California driver's license and California State Bar license, id. at 13-16, 54-58, 75-80, 96-100, 117-21, 138-43, 159-64, 180-85, 201-06;

(2) racial discrimination pursuant 42 U.S.C. § 2000d (Title VI of the Civil Rights Act of 1964) based on Plaintiff's status as a "Caucasian male", id. at 16-17, 59-60, 80-81, 101-02, 122-23, 143-44, 164-65, 185-86, 206-07;

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[2] Plaintiff, once again, names Doe defendants in the Complaint. However, even as to Doe defendants, a plaintiff must allege sufficient facts to state a claim to survive dismissal on the pleadings. See Wilson v. Fla. Dep't of Revenue, No. 14-CV-04726-JCS, 2015 WL 136557, at *11 (N.D. Cal. Jan. 8, 2015) (recognizing plaintiffs should generally be permitted to pursue discovery to identify Doe defendants but dismissing Doe defendants for failure to state a claim because they were only named in the caption, and the court had "no clue why the John Does are being named as defendants" (citing Lopez v. Bank of Am., 2011 WL 1134671, at *3 (E.D. Cal. Mar. 28, 2011))). Plaintiff again fails to allege any wrongful actions for any specific Doe defendant. Therefore, all claims against Doe defendants are subject to dismissal.

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(3-5) violations of 42 U.S.C. § 629a(a)(2)(B), 42 U.S.C. § 666(a)(7)(B), and 42 U.S.C. § 666(a)(10) under Title IV-Part D of the Social Security Act that enforces child support payments, id. at 17-19, 60-65, 81-86, 102-07, 123-28, 144-49, 165-70, 186-91, 207-12;

(6) violation of RICO pursuant to 18 U.S.C. §§ 1961-1968 based on placing "fraudulent correspondence" in the mail over a period of seven years, id. at 19, 65-67, 86-88, 107-09, 128-30, 149-51, 170-73, 191-94, 212-15;

(7) fraud under section 3294 of the California Civil Code, id. at 20, 67-68, 88-89, 109-10, 130-131, 151-52, 173-74, 194-95, 215-16;

(8) defamation under section 44(a) of the California Civil Code, id. at 20, 69, 90, 111, 132, 153, 174-75, 195-96, 216-17;

(9) intentional infliction of emotional distress, id. at 20-21, 70, 91, 112, 133, 154, 175, 196, 217;

(10) malicious prosecution, id. at 21, 70-71, 91-92, 112-13, 133-34, 154-55, 175-76, 196-97, 217-18;

(11) intentional interference with contractual relations, id. at 21-23, 71-72, 92-93, 113-14, 134-35, 155-56, 176-77, 197-98, 218-19;

(12) negligent interference with prospective economic relations, id. at 23-24, 72-73, 93-94, 114-15, 135-36, 156-57, 178, 199, 220; and

(13) negligence, id. at 24-25, 73-74, 94-95, 115-16, 136-37, 157-58, 178-79, 199-200, 220-21.

Id.

C. MOTIONS TO DISMISS

On March 26, 2018, the County Defendants filed a Motion to Dismiss and a Motion to Strike Punitive Damages. Dkt. 13, MTS; Dkt. 14, County MTD. In the Motion to Dismiss, the County Defendants argue the Complaint fails to state a claim under federal law. Dkt. 14.

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On April 2, 2018, the State Defendants filed a Motion to Dismiss arguing the State Defendants are immune from suit in federal court under the Eleventh Amendment and the Complaint fails to comply with the pleading requirements of Federal Rule of Civil Procedure 8. Dkt. 17.

On April 16, 2018, Plaintiff filed an opposition to the County Defendants' Motion to Dismiss. Dkt. 20. On April 20, 2018, Plaintiff filed an opposition to the County Defendants' Motion to Strike. Dkt. 25.

On April 23, 2018, the County Defendants filed a reply in support of their Motion to Dismiss. Dkt. 26. On April 30, 2018, the County Defendants filed a reply in support of their Motion to Strike. Dkt. 27.

On April 30, 2018, Plaintiff filed an opposition to the State Defendants' Motion to Dismiss. Dkt. 28. On May 7, 2018, the State Defendants filed a reply in support of their Motion to Dismiss. Dkt. 29.

The matters thus stand submitted.

III.

ALLEGATIONS IN THE COMPLAINT

The allegations in the Complaint arise out of Defendants' allegedly wrongful efforts to collect Plaintiff's child and spousal support obligations. According to the Complaint, beginning in May 2010, defendant DCSS Orange was substituted as payee of Plaintiff's child and spousal support obligations. Dkt. 1 at 25. Plaintiff alleges Defendants wrongfully levied on Plaintiff's bank account, resulting in Plaintiff's bank reporting "excessive NSF activity" to the California State Bar. Id. at 25-27. After Plaintiff's child and spousal support obligations were modified by the Orange County Superior Court on April 29, 2011, Defendants wrongfully continued collecting the prior amount resulting in reports to credit reporting agencies and the California State Bar that Plaintiff was delinquent on his support obligations. Id. at 27-28.

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On May 31, 2012, Plaintiff filed a motion to modify his support obligations in Orange County Superior Court. Plaintiff alleges that in retaliation for filing his motion to modify his support obligations, Defendants filed an "automatic and baseless opposition" and, without notice to Plaintiff or opportunity to be heard, "ordered the California Department of Motor Vehicles ('DMV') and the California State Bar to suspend Plaintiff's driver's and state bar licenses." Id. at 29. Plaintiff alleges the same retaliation occurred again when Plaintiff filed a second and third motion to modify his support obligations on May 13, 2013 and May 7, 2014. Id. at 33-36.

Plaintiff then alleges beginning in November 2015, Defendants began wrongfully withholding erroneous amounts from Plaintiff's Social Security Disability Income. Id. at 40-42.

Plaintiff claims he filed a fourth motion to reduce his support obligations which was approved effective December 1, 2015. Id. at 42. Despite this modification, Plaintiff alleges Defendants continued to "wrongfully and intentionally" withhold erroneous amounts from Plaintiff's Social Security Disability Income and report Plaintiff as delinquent to credit reporting agencies, the California State Bar, and the DMV. Id. at 43-46.

In addition, Plaintiff alleges he has been denied the benefits of Defendants' programs and activities due to Plaintiff's Caucasian race. Id. at 51.

Plaintiff seeks actual, compensatory, and punitive damages, as well as (a) appointment of a Special Master and issuance of a protective order preventing Defendants from harassing Plaintiff with "unjustified collection activity" and making defamatory statements regarding Plaintiff's "alleged support delinquency status . . . without a finding of substantial justification, after trial or hearing, before the aforementioned Special Master"; and (b) issuance of orders directing Defendant to retract and correct and previously made defamatory statements and subjecting Defendants to a "full and comprehensive audit . . . of Defendant's

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policies, procedures, and practices regarding the collection, modification, and implementation of all child and spousal support cases within the past 10 years." Id. at 222-23.

IV.

STANDARD OF REVIEW

In determining whether a complaint fails to state a claim for screening purposes, the Court applies the same pleading standard from Rule 8 of the Federal Rules of Civil Procedure ("Rule 8") as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

A complaint may be dismissed for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007). In considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need not include detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. The complaint "must contain sufficient allegations of underlying facts to give fair notice and to enable the

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opposing party to defend itself effectively." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

"A document filed pro se is 'to be liberally construed,' and a 'pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir. 2008). However, liberal construction should only be afforded to "a plaintiff's factual allegations," Neitzke v. Williams, 490 U.S. 319, 330 n.9, 109 S. Ct. 1827, 104 L. Ed. 2d 339 (1989), and the Court need not accept as true "unreasonable inferences or assume the truth of legal conclusions cast in the form of factual allegations," Ileto v. Glock Inc., 349 F.3d 1191, 1200 (9th Cir. 2003).

If the court finds the complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009).

V.

DISCUSSION

A. THE ELEVENTH AMENDMENT BARS ALL CLAIMS AGAINST THE STATE DEFENDANTS

1. Applicable Law

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state." Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)). This

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jurisdictional bar includes "suits naming state agencies and departments as defendants," and it applies whether plaintiffs "seek damages or injunctive relief." Howlett By & Through Howlett v. Rose, 496 U.S. 356, 365, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990); Pennhurst State Sch., 465 U.S. at 102. As to state claims, for sovereign immunity purposes, it is irrelevant whether plaintiff's state law claims to relief are "prospective or retroactive." Id.

2. Analysis

Here, Plaintiff again attempts to sue the State Defendants in federal court. Plaintiff argues the State Defendants have consented to suit under Title IV-D of the Social Security Act. Dkt. 28 at 19. However, as the Court explained in prior orders, the State Defendants are entitled to sovereign immunity under the Eleventh Amendment. See Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir. 1999) ("State of California has not waived its Eleventh Amendment immunity . . . in federal court."); see also Greenlaw v. Cty. of Santa Clara, 125 Fed App'x 809, 810 (9th Cir. 2005)[3] ("[T]he California Department of Child Support Services . . . [is] a state agency entitled to sovereign immunity under the Eleventh Amendment." (citing In re Pegasus Gold Corp., 394 F.3d 1189, 1191 (9th Cir. 2005))); Consumer Advocates Rights Enf't Soc'y, Inc. (Cares, Inc.) v. California, No. C05-01026 WHA, 2005 WL 3454140, at *3 n.5 (N.D. Cal. Dec. 16, 2005) ("The State disbursement unit shall be operated . . . directly by the State agency . . . ."). Thus, the Eleventh Amendment bars Plaintiff from bringing any claims against the State Defendants.

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[3] The Court may cite to unpublished Ninth Circuit opinions issued on or after January 1, 2007. U.S. Ct. App. 9th Cir. R. 36-3(b); Fed. R. App. P. 32.1(a).

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B. PLAINTIFF FAILS TO STATE A CLAIM AGAINST THE COUNTY DEFENDANTS

1. Plaintiff Again Fails to State a Claim for Violation of Due Process Under 42 U.S.C. § 1983

a. Applicable Law

A Fourteenth Amendment procedural due process claim has two elements: a plaintiff must plausibly allege: "(1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." Hufford v. McEnaney, 249 F.3d 1142, 1150 (9th Cir. 2001) (citation omitted). Most licenses, including driver's licenses and State Bar licenses, are constitutionally protected property and cannot be taken away without procedural due process required by the Fourteenth Amendment. See Bell v. Burson, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed.2d 90 (1971); Dixon v. Love, 431 U.S. 105, 112, 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977) ("[T]he Due Process Clause applies to the deprivation of a driver's license by the State[.]"); Gallo v. U.S. Dist. Court For Dist. of Arizona, 349 F.3d 1169, 1179 (9th Cir. 2003) (noting a "professional license, once conferred, constitutes an entitlement subject to constitutional protection" and applying procedural due process analysis to revocation of California State Bar license).

The essence of procedural due process is that "individuals whose property interests are at stake are entitled to 'notice and an opportunity to be heard.'" Dusenbery v. United States, 534 U.S. 161, 167, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002) (quoting United States v. James Daniel Good Real Prop., 510 U.S. 43, 48, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993)). It is well-established that because due process is a flexible concept, "[p]recisely what procedures the Due Process Clause requires in any given case is a function of context." Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist., 149 F.3d 971, 983 (9th Cir. 1998); see also Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); Franceschi v.

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Yee, 887 F.3d 927, 935 (9th Cir. 2018). To determine what process is due, the court must balance the risk of an erroneous deprivation, the government's interest in providing specific procedures, and the strength of the individual's interest. See Erickson v. U.S., 67 F.3d 858, 863 (9th Cir. 1995); see also Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976) (employing balancing test to determine process due).

b. Analysis

Here, Plaintiff again claims a violation of Section 1983 based on allegations his driver's license and State Bar license were suspended without procedural due process. Plaintiff claims he only received notice of the suspensions a few days before his licenses were suspended and post-deprivation remedies are inadequate because Defendants ignore all orders of the California Superior Court. Dkt. 1 at 13-16, 55-56. However, as the Court explained in prior orders, Plaintiff fails to allege Defendants denied him adequate procedural protections.

First, the suspension of Plaintiff's licenses were implemented by the State of California – not by the County Defendants. Therefore, Plaintiff's due process claim against the County Defendants fails.[4] Fockaert v. Cty. of Humboldt, No. C-98-2662-PJH, 1999 WL 30537, at *4 (N.D. Cal. Jan. 15, 1999) (finding Plaintiff failed to name proper defendant for alleged violation of procedural due process arising from suspension of driver's license and contractor's license).

Second, Section 17520 of the California Family Code establishes a pre-deprivation notice and hearing procedure for enforcing child support orders through the suspension of licenses issued by the State, including drivers' licenses and State Bar licenses. Fam. C. § 17520. This pre-deprivation procedure satisfies the requirements of the Constitution, as set forth in Mathews v. Eldridge, because

[4] In addition, as set forth in Section V.A., the Eleventh Amendment bars Plaintiff from bringing any claims against the State Defendants in federal court. If Plaintiff wishes to sue the State Defendants, he must proceed in state court. See U.S. Const. amend. XI.

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it provides for notice and an opportunity to respond before the termination of a government-created property interest. See, e.g., Raditch v. U.S., 929 F.2d 478, 480 (9th Cir. 1991); Fockaert v. Cty. of Humboldt, No. C-98-2662-PJH, 1999 WL 30537, at *4 (N.D. Cal. Jan. 15, 1999) (dismissing complaint with prejudice for failure to state procedural due process claim against county defendants alleging failure to provide adequate notice and opportunity to be heard before revoking driver's license and contractor's license).

Moreover, to the extent Plaintiff is alleging he has not had notice and an opportunity to be heard regarding the withholding of incorrect amounts of money for his support obligations, there are established procedures that provide sufficient post-deprivation remedies. See Cal. Fam. Code § 17526(c) ("Any party to an action involving child support enforcement services of the local child support agency may request a judicial determination of arrearages."); Banks v. Cty. of Alameda, Case No. 14-CV-00482-WHO, 2014 WL 1651941, at *3–4 (N.D. Cal. Apr. 23, 2014) (dismissing due process claim because California Family Code Section 17526(c) provided adequate post-deprivation remedy for county's allegedly improper determination of child support arrearage).

Finally, to the extent Plaintiff claims the established procedures were not followed, a failure to comply with such a procedure alone does not establish a due process violation. See Noonan, 992 F.2d at 989; Buckley, 36 F. Supp. 2d at 1222 ("A defendant's negligent or intentional failure to follow proper procedures does not constitute a constitutional deprivation."). Accordingly, Plaintiff's due process claim under Section 1983 against the County Defendants must be dismissed.

2. Plaintiff Again Fails to State a Civil Rights Claim Under 42 U.S.C. § 2000d

a. Applicable Law

Title VI of the Civil Rights Act of 1964 provides "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from

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participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. To state a claim for damages under 42 U.S.C. § 2000d, plaintiff must allege that (1) the entity involved is engaging in racial discrimination; and (2) the entity involved is receiving federal financial assistance." Fobbs v. Holy Cross Health Sys. Corp., 29 F.3d 1439, 1447 (9th Cir. 1994), overruled on other grounds by Daviton v. Columbia/HCA Healthcare Corp., 241 F.3d 1131 (9th Cir. 2001).

b. Analysis

Here, Plaintiff again fails to state a claim for a violation of Title VI, 42 U.S.C. § 2000d. Plaintiff alleges "Plaintiff is a Caucasian male and has been denied the benefits of, and has been subjected to discrimination under, Defendant's programs and activities based on Plaintiff's race." Dkt. 1 at 17. However, as the Court explained in prior orders, Plaintiff fails to allege any facts showing the denial of benefits and discrimination was based on Plaintiff's race (i.e. any facts suggesting Defendants acted with any discriminatory animus or were "engaging in racial discrimination") as required to state a claim. See Fobbs, 29 F.3d at 1447; see also Joseph v. Boise State Univ., 667 F. App'x 241 (9th Cir. 2016) (affirming dismissal because plaintiff failed to allege facts sufficient to show any defendant discriminated against her on the basis of her race or national origin, or retaliated against her); Fleming v. City of Oceanside, No. 10CV1090-LAB BLM, 2010 WL 5148469, at *2 (S.D. Cal. Dec. 14, 2010) ("[O]nly facts . . . that he is white and that he was not promoted . . . . do not 'raise a right to relief above the speculative level.'" (quoting Twombly, 550 U.S. at 555)). Therefore, Plaintiff fails to state a claim under 42 U.S.C. § 2000d. Accordingly, Plaintiff's claim under 42 U.S.C. § 2000d must be dismissed.

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3. Plaintiff Again Fails to State a Claim Under Title IV-D of the Federal Social Security Act

a. Applicable Law

In determining a right to file a civil claim, "[t]he central inquiry remains whether Congress intended to create, either expressly or by implication, a private cause of action." Touche Ross & Co. v. Redington, 442 U.S. 560, 575, 99 S. Ct. 2479, 61 L. Ed. 2d 82 (1979). The Supreme Court established the following three factors to determine whether a particular statute gives rise to a federal right: (1) "Congress must have intended that the provision in question benefit the plaintiff"; (2) "the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence"; and (3) "the statute must unambiguously impose a binding obligation on the States." Id. at 340-41.

Pursuant to Section 17520(b) of the California Family Code, DCSS maintains a list of persons included in a case being enforced under Title IV-D of the federal Social Security Act, 42 U.S.C. § 651 et seq. Cal. Fam. Code § 17520(b); see also 42 U.S.C. § 651 et seq. "Title IV-D [42 U.S.C. §§ 651-669b] contains no private remedy—either judicial or administrative—through which aggrieved persons can seek redress." Blessing v. Freestone, 520 U.S. 329, 331, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997). "Title IV-D does not give individuals a federal right to force a state agency [charged with providing child support services] to comply with Title IV-D." Id. at 332. "[T]he requirement that a State operate its child support program in 'substantial compliance' with Title IV-D was not intended to benefit individual children and custodial parents [but rather children in the state as a whole], and therefore, it does not constitute a federal right." Id. at 333; see also id. at 343-44 ("[T]he standard . . . . must look to the aggregate services provided by the State, not to whether the needs of any particular person have been satisfied. . . . [and] [a]s such, it does not give rise to individual rights.").

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b. Analysis

Here, Plaintiff again alleges three claims under the federal requirements of statutorily prescribed procedures under Title IV-D to improve the effectiveness of child support enforcement, specifically 42 U.S.C. § 629a(a)(2)(B), 42 U.S.C. § 666(a)(7)(B), and 42 U.S.C. § 666(a)(10). Dkt. 1 at 17-19. However, as the Court explained in prior orders, there is no private cause of action authorized by 42 U.S.C. § 629a(a)(2)(B), 42 U.S.C. § 666(a)(7)(B), or 42 U.S.C. § 666(a)(10).[5] See Blessing, 520 U.S. at 331-32, 343 ("Title IV-D was not intended to benefit individual children and custodial parents, and therefore it does not constitute a federal right."); see also Cares, Inc., 2005 WL 3454140, at *3 ("Accordingly, Title IV-D does not provide plaintiffs with enforceable personal rights."). Therefore, Plaintiff fails to state private causes of action under Title IV. Accordingly, the claims under Title IV-D must be dismissed.

4. Plaintiff Again Fails to State a RICO Claim

a. Applicable Law

The Racketeer Influenced and Corrupt Organizations Act ("RICO") "provides a private cause of action for '[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.'" Hemi Grp., LLC v. City of N.Y., 559 U.S. 1, 6, 130 S. Ct. 983, 987, 175 L. Ed. 2d 943 (2010) (quoting 18 U.S.C. § 1964(c)). To state a RICO claim pursuant to 18 U.S.C. § 1964(c), plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern

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[5] Plaintiff argues in his Opposition to the State Defendant's Motion to Dismiss that the Supreme Court in Blessing did not "foreclose the possibility that some provisions of Title IV-D give rise to individual rights." Dkt. 28 at 19-20; see Blessing, 520 U.S. at 345. However, Plaintiff does not cite to any authority supporting a private cause of action under Title IV-D. In fact, the statutory purpose found in 42 U.S.C. § 601 explicitly states that the Title IV-D provisions shall not be interpreted to provide entitlement to "any individual or family." 42 U.S.C. § 601(b).

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(4) of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985); Miller v. Yokohama Tire Corp., 358 F.3d 616, 620 (9th Cir. 2004).

"'Racketeering activity' is defined in 18 U.S.C. § 1961(1)(B) as including any act 'indictable' under certain enumerated federal criminal statutes, including 18 U.S.C. § 1341, which makes mail fraud a criminal offense . . . ." Yokohama, 358 F.3d at 620 (quoting Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1399 (9th Cir. 1986)); see also Anza, 547 U.S. at 453 ("Mail fraud . . . [is a] form[] of 'racketeering activity' for purposes of RICO." (citing 18 U.S.C. § 1961(1)(B)). Federal Rule of Civil Procedure 9(b) requires a pleader of fraud to detail with "particularity" the time, place, and manner of each act of fraud, plus the role of each defendant in each scheme. Fed. R. Civ. P. 9(b); Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405 (9th Cir. 1991). The particularity requirements of Rule 9(b) apply to RICO claims alleging the predicate act of mail fraud. Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392-93 (9th Cir. 1988).

To satisfy the racketeering activity element, "the plaintiff is required to show that a RICO predicate offense 'not only was a "but for" cause of his injury, but was the proximate cause as well.'" Hemi Grp., 559 U.S. at 9 (quoting Holmes v. Secs. Inv'r Protect. Corp., 503 U.S. 258, 268, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992)); see also Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 453, 126 S. Ct. 1991, 1994, 164 L. Ed. 2d 720 (2006). Proximate cause requires "'some direct relation between the injury asserted and the injurious conduct alleged.' A link that is 'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient." Hemi Grp., 559 U.S. at 9 (citation omitted).

b. Analysis

Here, Plaintiff again alleges RICO violations under 18 U.S.C. §§ 1961-1968 against Defendants. Dkt. 1 at 19. However, as explained by the Court in prior

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orders, Plaintiff fails to state a RICO claim because he has not sufficiently alleged the predicate offense of mail fraud.

First, while mail fraud is included in the enumerated federal criminal statutes for racketeering activity, Plaintiff has not alleged sufficient facts to support a claim of mail fraud. Plaintiff again fails to state with particularity the role of each defendant in the alleged mail fraud. See Moore v. Kayport Package Express, Inc., 885 F.2d 531, 541 (9th Cir. 1989) (affirming dismissal for failure to state with particularity the alleged mail fraud). Plaintiff, thus, fails to state the "time, place, and specific context" of each defendant's allegedly fraudulent conduct as required to properly plead a RICO claim. Alan Neuman Prods., Inc., 862 F.2d at 1392-93 (recognizing the particularity requirements of Federal Rule of Civil Procedure 9(b) are applicable to RICO claims).

Second, Plaintiff again fails to allege facts sufficient to show causation because the alleged mail fraud is not the "but for" cause nor the proximate cause of Plaintiff's alleged injuries. See Hemi Grp., 559 U.S. at 9 ("Finding the link between the fraud alleged and injury suffered to be 'attenuated,' [the Supreme Court] rejected [the] claim." (quoting Anza, 547 U.S. 459)). Specifically, any alleged mail fraud was not the "but for" cause of the alleged deprivation of Plaintiff's driver's license and State Bar license.

Therefore, Plaintiff fails to sufficiently allege the predicate offense for the "racketeering activity" element of a RICO claim. See Rae v. Union Bank, 725 F.2d 478, 480-81 (9th Cir. 1984) (affirming Rule 12(b) dismissal of RICO where plaintiff failed to meet one element). Accordingly, Plaintiff's RICO claim must be dismissed.

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C. PLAINTIFF AGAIN FAILS TO COMPLY WITH THE PLEADING REQUIREMENTS OF RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE

1. Applicable Law

Under Federal Rule of Civil Procedure 8 ("Rule 8"), a complaint must contain a "short and plain statement of the claim showing the pleader is entitled to relief," and "[e]ach allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(a), (d). "[T]he 'short and plain statement' must provide the defendant with 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 346, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005).

A complaint may be dismissed for violating Rule 8 even if "a few possible claims" can be identified and the complaint is not "wholly without merit." McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996) (stating Rule 8's requirements apply "to good claims as well as bad"); see also Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 2011) (discussing cases Ninth Circuit affirmed Rule 8 dismissals); Hearns v. San Bernardino Police Dep't, 530 F.3d 1124, 1130-31 (9th Cir. 2008) (same).

As the Supreme Court has held, Rule 8(a) "requires a 'showing,' rather than a blanket assertion, of entitlement to relief." See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 n.3, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Plaintiff's complaint must contain enough facts to "state a claim to relief that is plausible on its face," allowing "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

2. Analysis

Here, Plaintiff has again failed to provide each defendant fair notice as to how it is liable for any claim. See Starr, 652 F.3d at 1216 ("[T]he allegations . . . must give fair notice and . . . enable the opposing party to defend itself

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effectively."). Rather than presenting facts linking a particular defendant to a specific claim, Plaintiff merely repeats each claim against each defendant verbatim. See, e.g., Dkt. 1 at 13-16, 54-58, 75-80, 96-100, 117-21, 138-43, 159-64, 180-85, 201-06 (Plaintiff's Claim No. 1: Civil Rights Claim Pursuant to 42 U.S.C. § 1983 repeated against each defendant verbatim). Plaintiff's 223-page Complaint does not contain facts that "plausibl[y]" state and "reasonabl[y] infer[]" each defendant is liable. See Iqbal, 556 U.S. at 676. Absent *specific* allegations identifying what actions *each* defendant took against Plaintiff and how such action violated Plaintiff's rights, the Complaint fails to provide Defendants with fair notice of Plaintiff's claims or the grounds upon which they rest. See Starr, 652 F.3d at 1216.

Accordingly, the Complaint again fails to comply with Rule 8 and is subject to dismissal.

D. THE COMPLAINT SHOULD BE DISMISSED WITHOUT LEAVE TO AMEND

As discussed in Section V.A.-B., Plaintiff fails to state a federal claim against any defendant. Plaintiff's Complaint fails to remedy any of the deficiencies identified by the Court in its prior orders dismissing Plaintiff's original complaint and FAC in case SACV 17-1527-PSG (KK). See SACV 17-1527-PSG (KK), Dkts. 9, 11. Thus, despite having two opportunities to amend his complaint, Plaintiff has again failed to allege a valid federal claim against Defendants. Accordingly, the Court recommends dismissing the Complaint without leave to amend. See Fid. Fin. Corp. v. Fed. Home Loan Bank of San Francisco, 792 F.2d 1432, 1438 (9th Cir. 1986) ("The district court's discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint.").

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E. THE COURT DECLINES TO EXERCISE SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S STATE LAW CLAIMS

The Court has original jurisdiction solely over Plaintiff's federal law claims, which should be dismissed for the reasons set forth above. "Where a district court 'dismiss[es] every claim over which it had original jurisdiction,' it retains pure[] discretion[]' in deciding whether to exercise supplemental jurisdiction over the remaining claims." Lacey v. Maricopa Cty., 649 F.3d 1118, 1137 (9th Cir. 2011) (alterations in original); see also 28 U.S.C. § 1367(c). Thus, because Plaintiff's federal law claims should be dismissed, the Court should decline to exercise supplemental jurisdiction over Plaintiff's state law claims. Accordingly, Plaintiff's state law claims should be dismissed for lack of jurisdiction.

VI.

RECOMMENDATION

Accordingly, it is recommended the District Court issue an order: (1) accepting this Report and Recommendation; (2) granting Defendants' Motions to Dismiss; (3) dismissing Plaintiff's federal claims with prejudice for failure to state a claim and without leave to amend; and (4) dismissing Plaintiff's state law claims without prejudice.

Dated: July 17, 2018

Kenly Kato

HONORABLE KENLY KIYA KATO
United States Magistrate Judge