APP-1a

District Court Electronic Order
dated March 22, 2022
Docket Entry #229

	220 (p.2594)	Opinion of USCA in accordance with USCA judgment re 191 (p.2404) Notice of Appeal filed by Trent S Griffin, Sr. (svc) (Entered: 07/26/2017)
07/26/2017	221 (p.2604)	JUDGMENT/MANDATE of USCA as to 191 (p.2404) Notice of Appeal filed by Trent S Griffin, Sr. It is ordered and adjudged that the judgment of the District Court isaffirmed. Issued as Mandate: 7/26/2017. (svc) (Entered: 07/26/2017)
01/14/2020	222 (p.2606)	Received letter from USCA5 re: SUPREME COURT ORDER received denying petition for writ of certiorari (svc) (Entered: 01/17/2020)
12/13/2021	223 (p.2608)	MOTION for Relief from the Final Judgment filed by Trent S Griffin, Sr. (ygl) (Entered: 12/14/2021)
12/13/2021	224 (p.2614)	AFFIDAVIT by Trent S Griffin, Sr. (ygl) (Entered: 12/14/2021)
12/13/2021	225 (p.2623)	Brief/Memorandum in Support filed by Trent S Griffin, Sr re 223 (p.2608) MOTION for Relief from the Final Judgment. (ygl) (Entered: 12/14/2021)
12/13/2021	226 (p.2658)	Appendix in Support filed by Trent S Griffin, Sr re 223 (p.2608) MOTION for Relief from the Final Judgment. (Attachments: # 1 (p.31) Additional Page(s) 001-104, # 2 (p.33) Additional Page(s) 105-178, # 3 (p.35) Additional Page(s) 179-261, # 4 (p.117) Additional Page(s) 262-346, # 5 (p.119) Additional Page(s) 347-370) (axm) (Entered: 12/15/2021)
12/30/2021	227 (p.3043)	MOTION to Withdraw as Attorney *and Designation of New Counsel* filed by American Zurich Insurance Company (Grabouski, Laura) (Entered: 12/30/2021)
12/30/2021	228	ELECTRONIC ORDER denying 227 (p.3043) Motion to Withdraw as Attorney without prejudice to refile. Movant must confer with opposing counsel/plaintiff and file a motion that contains a certificate of conference that complies with this Court's local rules. (Ordered by Judge Ed Kinkeade on 12/30/2021) (chmb) (Entered: 12/30/2021)
03/22/2022	229	ELECTRONIC ORDER - Before the Court is Plaintiff's Motion for Relief from the Final Judgment (the "Motion") (Doc. No. 223). Having carefully considered the Motion, the appendix, and the applicable law, the Court DENIES the Motion. (Ordered by Judge Ed Kinkeade on 3/22/2022) (chmb) (Entered: 03/22/2022)
03/28/2022	230 (p.3045)	NOTICE OF APPEAL as to 229 Order to the Fifth Circuit by Trent S Griffin, Sr. Filing fee $505, receipt number DS137294. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (axm) (Entered: 03/28/2022)
03/29/2022		Confirmation of receipt of payment from Trent Griffin in the amount of $505.00. Transaction posted on 3/28/2022. Receipt number DS137294 processed by mb. (ali) Lifted restriction on 3/29/2022 (ali). (Entered: 03/29/2022)
03/30/2022		USCA Case Number 22-10304 in USCA5 for 230 (p.3045) Notice of Appeal filed

APP-2a - 3a

Court of Appeals Opinion
dated February 23, 2023

United States Court of Appeals for the Fifth Circuit

No. 22-10507

IN RE TRENT STEVEN GRIFFIN, SR.,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-2470

UNPUBLISHED ORDER

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Trent Steven Griffin, Sr., has filed in this court a pro se petition for a writ of mandamus. In his petition, Griffin challenges the March 20, 2015 order of the district court granting motions to strike, amend, and set aside default and denying a motion for default judgment and several other motions; the February 24, 2016 orders and judgment of the district court dismissing his claims with prejudice; and the March 22, 2022 order of the district court denying his motion for relief from judgment. He seeks an order from this court vacating those orders and preventing their enforcement.

"Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has

no other adequate means to obtain the requested relief and that he has a "clear and indisputable" right to the writ. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* "Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus." *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

As Griffin acknowledges, he challenged the orders and judgment he now seeks to challenge in two separate direct appeals; this court affirmed the original judgment of the district court and dismissed Griffin's appeal from the denial of his motion for relief from judgment as frivolous. *See Griffin v. American Zurich Ins. Co.*, No. 22-10304, at 2 (5th Cir. June 27, 2022) (unpublished); *Griffin v. American Zurich Ins. Co.*, 697 F. App'x 793, 798 (5th Cir. 2017). As Griffin could, and did, raise his claims on direct appeal, mandamus relief is not warranted. *See Campanioni*, 962 F.2d at 464.

The petition for a writ of mandamus is DENIED.

A True Copy
Certified order issued Feb 23, 2023

Jyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

APP-3a$_2$ - 4a

Court of Appeals Dismissal
dated June 27, 2022

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED
June 27, 2022

Lyle W. Cayce
Clerk

No. 22-10304

TRENT S. GRIFFIN, SR.,

Plaintiff—Appellant,

versus

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*; ROD BORDELON, *in his individual capacity*; RICK PERRY, *in his individual capacity*; CASSIE BROWN, *Texas Workers' Compensation Commissioner*; GREG ABBOTT, *Governor of the State of Texas*; JAIME MASTERS; STEPHEN MCKENNA, *Child Support Officer*; MARY F. IVERSON, *Authorized Agent*; WELLS FARGO BANK, N.A.; ANDREW COLE, *Designated Doctor*; NICOLE BUSH, *Market Scheduler*; VALERIE RIVERA, *Ombudsman*; THOMAS HIGHT, *Hearing Officer*; TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; WARREN KENNETH PAXTON, JR., TEXAS ATTORNEY GENERAL; RYANN BRANNAN,

Defendants—Appellees.

No. 22-10304

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

Before CLEMENT, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellees' motions to dismiss the appeal as frivolous are GRANTED.

IT IS FURTHER ORDERED that Appellee's motion for sanctions against Appellant Trent Griffin is DENIED.

IT IS FURTHER ORDERED that Appellee's motion to strike Appellant's brief is DENIED.

IT IS FURTHER ORDERED that Appellee' motion to strike Appellant's record excerpts is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to strike Appellees' motions to dismiss the appeal as frivolous is DENIED.

Certified as a true copy and issued as the mandate on Jul 19, 2022

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

APP.5a

District Court Order
dated November 13, 2014

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

TRENT S. GRIFFIN, SR.	§	
	§	
Plaintiff,	§	
v.	§	3:14-CV-02470
	§	
AMERICAN ZURICH INSURANCE COMPANY, et. al.,	§	
	§	
	§	
Defendant.	§	

ORDER

Now before the Court is Defendants' pending Motion to Dismiss, filed October 17, 2014. Doc. 48. Plaintiff has not filed a timely Response to Defendants' Motion. If Plaintiff does not file a Response within ten (10) days of the date of this Order, the Court will determine the Motion without a Response from Plaintiff.

IT IS SO ORDERED.

Signed this 13th day of November, 2014.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

APP.6a-18a

District Court Order
dated March 20, 2015

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

TRENT S. GRIFFIN, SR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**No. 14-CV-2470-P**
	§	
AMERICAN ZURICH INSURANCE , COMPANY, et al.,	§	
	§	
	§	
Defendants.	§	

ORDER

The Court has under consideration seventeen motions filed in this action. (*See* Docs. 11, 12, 18, 30, 31, 32, 34, 35, 48, 78, 81, 82, 88, 103, 110, 111, and 114.) Each motion is ripe and ready for ruling. For the reasons stated herein, the Court **GRANTS** the motions to strike (Docs. 31, 32,78, and 88) and motion to set aside default (Doc. 35); **GRANTS** Plaintiff leave to file an amended complaint; **FINDS MOOT** the motions to dismiss (Docs. 11, 12, 18, and 48) and motion for preliminary injunctive relief (Doc. 103); and **DENIES** the motion for default judgment (Doc. 30), motions to join (Docs. 34, 81, and 82),[1] motion for sanctions (Doc. 110), motion to compel Rule 26(f) conference (Doc. 111), and motion for cause to show no abuse of litigation process (Doc. 114).

I. BACKGROUND

On July 10, 2014, Plaintiff commenced this action pro se by filing an eighty-page complaint asserting eight listed claims[2] for relief against twenty-five defendants, including four "John Doe"

[1]Although filed as motions, Docs. 34, 81, and 82 are simply notices that certain parties join in and adopt other filed motions to strike. To the extent these filings are considered as separate motions, the Court denies them as unnecessary.

[2]Although Plaintiff lists eight claims, he appears to identify various claims throughout his lengthy complaint.

defendants.[3] (*See* Doc. 3.) He sues Walgreens Company ("Walgreens") and ten of its employees or officers (collectively referred to as "Walgreen Defendants") for various claims, including retaliation, harassment, and discrimination arising out of his employment there. He sues the workers' compensation insurer for Walgreens (American Zurich Insurance Company ("American Zurich")); the Texas Department of Insurance, Division of Workers' Compensation; the State of Texas, and various state officers and commissioners for claims arising from a pursued workers' compensation claim. He also sues two child support officers and the Commissioner of Family and Protective Services for claims related to child support. In addition, he asserts claims against Wells Fargo Bank, N.A. ("Wells Fargo") that relate to a lien issued for unpaid child support.

On July 30, 2014, Wells Fargo responded to the original complaint with a motion to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted against it. (*See* Doc. 11.) In the alternative, Wells Fargo moved to compel arbitration and to stay or dismiss this case because the issues are subject to a binding arbitration agreement. (*See id.*) On August 4, 2014, the State Defendants[4] likewise moved to dismiss the action against them for lack of jurisdiction and for failure to state a claim upon which relief can be granted. (*See* Doc. 12.) Pursuant to N.D. Tex. L.R. 5.1(d), the Court excused Plaintiff from the electronic filing requirements on August 15, 2014. (*See* Electronic Order, D.E. 16.) Three days later, the Walgreen Defendants filed a motion to dismiss the action against them and served it on Plaintiff by mailing a copy to him. (*See* Doc. 18; Certificate

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[3]Plaintiff does not list the State of Texas as a separate defendant, but his complaint reveals that he brings claims against the State of Texas either directly or by suing state officers in their official capacity.

[4]The motion identifies the "State Defendants" as "the State of Texas, Governor Rick Perry; Attorney General Greg Abbott; the Texas Department of Insurance – Division of Workers' Compensation; Rod Bordelon, Commissioner of Workers' Compensation; John Specia, Commissioner for the Department of Family and Protective Services; Stephen McKenna and Mary Iverson, employees of the Office of the Attorney General."

of Service, attached to Doc. 18.)

After those three motions (Docs. 11, 12, and 18) became ripe, Plaintiff filed an amended complaint without leave of Court on September 24, 2014. (*See* Doc. 26.) This 63-page amended complaint incorporates the original complaint by reference and asserts twenty-eight claims for relief against twenty-five defendants, including four newly named defendants that replace the four Doe defendants. (*See id.*) Plaintiff also sought and obtained a Clerk's Entry of Default against American Zurich. (*See* Docs. 28-29.) He moved for default judgment on September 29, 2014. (*See* Doc. 30.)

The amended complaint resulted in motions to strike from the State Defendants (now including newly named Defendant Thomas Hight) and the Walgreen Defendants, and a request to join those motions by Wells Fargo. (*See* Docs. 31, 32, and 34.) And on October 6, 2014, American Zurich moved to set aside the default. (*See* Doc. 35.) The State Defendants thereafter moved for stay of discovery on grounds of qualified immunity and the Walgreen Defendants sought a similar stay pending resolution of their motions to dismiss and to strike. (*See* Docs. 42-43.) On October 17, 2014, American Zurich moved to dismiss the action for lack of jurisdiction and failure to state a claim. (*See* Doc. 48.) Five days later, it moved to stay discovery pending resolution of its motion to dismiss. (*See* Doc. 56.) In early November 2014, newly named Defendant Nicole Bush joined the motion to dismiss (Doc. 18) and motion to strike (Doc. 32) filed by the Walgreen Defendants. (*See* Docs. 64-65.) On November 13, 2014, the Court noted that Plaintiff had filed no timely response to the October 17, 2014 motion to dismiss (Doc. 48) and informed him that it would determine the motion without response if he did not file a response within ten days. (*See* Order, doc. 69.) On November 18, 2014, newly named Defendant Andrew Coles joined in the motion to dismiss (Doc. 12) and motion to strike (Doc. 31) filed by the State Defendants. (*See* Doc. 75.)

On November 20, 2014, Plaintiff filed another amended complaint, purportedly in response to American Zurich's motion to dismiss and this Court's order to file a response within ten days. (*See* Doc. 76.) This filing prompted another round of motions to strike or to join motions to strike. (*See* Docs. 78 (American Zurich); Doc. 81 (Wells Fargo); 82 (the Walgreen Defendants, now including Defendant Nicole Bush); 88 (State Defendants, now including Andrew Cole and Thomas Hight).)

On January 23, 2015, the Court resolved three outstanding motions, including Plaintiff's motion for partial summary judgment. (*See* Electronic Order, D.E. 97.) The Court denied that motion "as premature given (1) pending motions to stay discovery, motions to dismiss, and motions to strike and (2) a lack of a planning conference under Fed. R. Civ. P. 26(f) or a scheduling order in this case." (*See id.*) And it stated: "If this action survives the pending motions, Plaintiff may file a proper motion for summary judgment in accordance with a schedule to be set by the Court." (*See id.*) Following this Order, Plaintiff filed another motion for partial summary judgment (Doc. 98), which the Court denied for the same reasons. (*See* Electronic Order, D.E. 102.) The Court further added:

> The Court has not yet set a schedule for filing any motion for summary judgment. Until it does so following resolution of the currently pending motions, it will summarily deny any filed motion for summary judgment. The Court hereby warns Plaintiff that filing another premature motion for summary judgment or otherwise abusing the litigation process may subject him to sanctions up to and including monetary sanctions payable to the Court, filing restrictions, or other appropriate sanctions as warranted by the circumstances.

(*See id.*)

Plaintiff thereafter moved for a preliminary injunction (Doc. 103) against Wells Fargo and unspecified "State Defendants." He also sought (Doc. 106) and obtained a Clerk's Entry of Default

against Valerie Rivera (Doc. 108). The State Defendants then filed an advisory regarding the request for default (Doc. 109) and Wells Fargo moved for sanctions (Doc. 110). Plaintiff then filed a motion to compel Defendants to confer in accordance with Fed. R. Civ. P. 26(f) (Doc. 111) and a motion for cause to show no abuse of litigation process (Doc. 114).

On March 18, 2015, the Court granted a stay of discovery based upon the State Defendants' assertion of qualified immunity but denied the other motions for stay of discovery. (*See* Doc. 128.) In doing so, the Court recognized that "[t]he decision whether to allow discovery must . . . await assessment of whether Plaintiff's complaint is sufficient to overcome the assertion of qualified immunity or is otherwise adequate to warrant his obtaining limited discovery." (*See id.* at 4.) It thus found that a "stay of discovery is therefore appropriate pending determination of the State Defendants' motion to dismiss." (*See id.*)

II. MOTIONS TO STRIKE

To efficiently sort through the various motions, the Court must first determine the operative complaint. And that requires initial consideration of the motions to strike the amended complaints. Despite his arguments, Plaintiff has not properly filed either amended complaint. He contends that he filed the first amendment (Doc. 26) within twenty-one days of the August 18, 2014 motion to dismiss by the Walgreen Defendants (Doc. 18) because the Court had excused him from the electronic filing requirements and because he did not receive the motion until September 3, 2015. (*See* Doc. 41.) Although Fed. R. Civ. P. 15(a)(1)(B) provides a twenty-one day period to amend a complaint once as a matter of course, service of the motion to dismiss – and not receipt of it – commences that period. And under Fed. R. Civ. P. 5(b)(2)(C), when a party serves a motion by mailing it, "service is complete upon mailing." The Walgreen Defendants served their motion by

mail on August 18, 2014. The twenty-one day period thus commenced on that date.

Apparently recognizing that his first attempt to amend may be procedurally defective, Plaintiff uses the October 17, 2014 motion to dismiss of American Zurich (Doc. 48) as justification for his second attempted amendment under Fed. R. Civ. P. 15(a)(1)(B). (*See* Doc. 76.) Although he did not file his second amendment until November 20, 2014, he bootstraps it to the October 17, 2014 motion on the basis that the Court granted him ten days to respond to the motion on November 13. 2014. (*See* Doc. 91). However, that extension of time to respond had no impact on the twenty-one day period provided by Rule 15(a)(1)(B).

Because Plaintiff filed his two amended complaints outside the allotted twenty-one day period, he has not complied with the procedural requirements of Rule 15(a)(1)(B). Any other amendment before trial requires written consent from the defendants - which is also lacking here – or leave of court, which the courts freely grant when justice so requires. Defendants have not consented to the amendments and the Court has not granted leave to amend. Given the nature of the two filed amendments, justice does not require granting leave to file either of them. Although Defendants have asserted that the original complaint is deficient in numerous respects, Plaintiff does not appear to attempt to cure such deficiencies with either amendment.[5] He instead specifically incorporates the original complaint and adds to it. And although he saw the resulting motions to strike when he attempted to file his first amended complaint without leave of court, he filed the second amendment without seeking leave on a tenuous at best interpretation of the Court's order giving him

[5]As amended in 2009, Fed. R. Civ. P. 15(a)(1)(B) should "force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion" filed under Rule 12(b). Fed. R. Civ. P. 15 advisory committee notes (2009 amend.). In addition, a "responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim." *Id.*

an additional ten days to file a response. Under all of these facts and circumstances, the Court grants the various motions to strike (Docs. 31, 32, 78, and 88) the two amended complaints (Docs. 26 and 76). At this point, therefore, the original complaint technically controls this action.

III. MOTIONS TO DISMISS

The striking of the two amended complaints renders moot the motion to dismiss (Doc. 48) asserted against the first attempted amendment. That leaves three motions to dismiss (Docs. 11, 12, and 18) to consider. But Plaintiff clearly desires to amend his complaint. And as numerous defendants have mentioned, the initial complaint is not "a short and plain statement" of his claims as contemplated by Fed. R. Civ. P. 8(a)(2). The State Defendants have even moved to order Plaintiff to replead as an alternative to their first motion to strike. (*See* Doc. 31.) Moreover, were the Court to consider and grant any of the three remaining motions to dismiss, it would typically grant Plaintiff an opportunity to cure the deficiencies, *see Hale v. King*, 642 F.3d 492, 503 (5th Cir. 2011); *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 329 (5th Cir. 2002), which would allow Plaintiff an opportunity to amend. Such amendment would then present Defendants an opportunity to present a dispositive motion specifically tailored to that amended complaint.

Given the current state of this case, allowing Plaintiff an opportunity to amend prior to directly addressing the numerous issues raised in the various motions appears to be the best course of action. Many alleged defects of the original complaint stem from Plaintiff's failure to adequately connect his specific claims to acts or omissions of specific defendants. He all too often uses the generic "Defendants" when it is not clear that the claim actually applies to all defendants or to a mere subset of defendants. These pleading deficiencies are curable with effort by the pro se Plaintiff who has exhibited some understanding of legal principles and pleading requirements. Until Plaintiff has

had an opportunity to amend his complaint so as to connect his claims to specific facts and defendants, the Court declines to find an alleged defect incurable. The cure may be complete omission of a claim or defendant, but those are matters for Plaintiff to decide for now. Plaintiff is undoubtedly willing to amend his complaint.

For these reasons, the Court will grant Plaintiff leave to amend his complaint within the parameters set forth later in this Order. Granting that leave renders the three remaining motions to dismiss (Docs. 11, 12, and 18) moot, including the alternate motions within the first motion to dismiss (Doc. 11).

IV. OTHER MOTIONS

Plaintiff has also filed a motion for default judgment against American Zurich, a motion for preliminary injunctive relief regarding Wells Fargo and unspecified State Defendants, a motion to compel all Defendants to confer under Fed. R. Civ. P. 26(f), and a motion to show cause that he has not been abusing the litigation process. (*See* Docs. 30, 103, 111, 114.) American Zurich has moved to set aside the default entered against it. (*See* Doc. 35.) And Wells Fargo has moved for sanctions. (*See* Doc. 110.)

Because the Court has granted Plaintiff leave to file an amended complaint, his motion for preliminary injunctive relief is moot. At this point, there is no certainty as to which claims Plaintiff will assert against which defendants.

Plaintiff seeks to compel a conference under Fed. R. Civ. P. 26(f)(1). In general, the requirements for issuing a scheduling order under Fed. R. Civ. P. 16(b) contemplate a Rule 26(f) conference relatively early in the litigation process. But the local rules of this Court specifically exempt "cases involving pro se plaintiffs" from the scheduling and planning requirements of Rule 16(b). *See* N.D.

Tex. L.R. 16.1(f). And the State Defendants have sought and obtained a stay of discovery in this case pending resolution of their qualified immunity defense. In these circumstances, there is no reason to require a Rule 26(f) conference. Accordingly, the Court denies the motion to compel conference (Doc. 111).

Through his motion to show cause (Doc. 114), Plaintiff seeks clarification of the Court's admonition regarding sanctions (*see* D.E. 102). He therein explains that he had not received the Court's first order denying his motion for partial summary judgment (D.E. 97) prior to filing his second motion for partial summary judgment. The Court has no reason to doubt that explanation. But the Court included the admonishment in its order simply to make Plaintiff aware of the possibility of sanctions if he continues abusing the litigation process by continually filing motions before receiving rulings on related pending motions plus whatever other abusive practices he may engage in. There is no reason to clarify that order or admonition. Accordingly, the Court denies the motion to show cause.

Plaintiff also seeks entry of a default judgment against American Zurich. That entity conversely seeks to set aside the Clerk's Entry of Default. Whether to enter default judgment is within the sound discretion of the court. *Lewis v. Lynn*, 236 F.3d 766, 767 (5th Cir. 2001). A "party is not entitled to a default judgment as a matter of right, even where the defendant is technically in default." *Id.* (citation omitted). And the courts "may set aside an entry of default for good cause." Fed. R. Civ. P. 55(c). Courts liberally interpret this good cause requirement and consider various factors including (1) willfulness, (2) prejudice to the adversary, and (3) presentation of a meritorious claim. *Effjohn Int'l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003).

Considering these factors, the Court finds that American Zurich has shown good cause to set

aside the default. The failure to act does not appear willful. Because the Court has granted Plaintiff leave to amend his complaint, the Court sees no prejudice from setting aside the default. And given the forthcoming amendment, it remains uncertain whether Plaintiff has a meritorious claim against American Zurich. American Zurich clearly intends to defend this action. Accordingly, the Court grants the motion to set aside the default (Doc. 35), sets aside the Clerk's Entry of Default (Doc. 29), and denies the motion for default judgment (Doc. 30.) On its own motion, the Court also finds good cause to set aside the Clerk's Entry of Default regarding Valerie Rivera (Doc. 108). Based upon an uncontested advisory to the Court (Doc. 109), Plaintiff has not properly served Defendant Rivera. Furthermore, the Court has struck the amended complaint purportedly served on her.

Wells Fargo seeks sanctions for Plaintiff's persistence in requesting to confer about discovery. It characterizes Plaintiff's multiple requests as "otherwise abusing the litigation process" as set out in the prior order (D.E. 102) admonishing Plaintiff about the possibility of sanctions. The conduct of the pro se Plaintiff does not warrant sanctions at this time. The Court thus denies this motion.

V. ADDITIONAL MATTERS

Given the circumstances of this case, the Court has granted Plaintiff leave to amend his complaint. He shall file an amended complaint within twenty-one days of the date of this Order. The amendment should specifically tie each claim to sufficient facts and connect each claim with the defendant or defendants it is asserted against. In drafting his amended complaint, Plaintiff should heed the advisory committee notes to Fed. R. Civ. P. 15(a)(1)(B) that he consider carefully the wisdom of amending to meet the arguments in the various motions to dismiss. In other words, his amendment should attempt to cure deficiencies noted in the various motions to dismiss. He should

also carefully consider his representations under the guidance of Fed. R. Civ. P. 11(b). And although Fed. R. Civ. P. 10(c) permits a later pleading to adopt by reference statements made in an earlier pleading, Plaintiff's forthcoming amended complaint shall not adopt by reference any statements made in any prior pleading. Under the facts of this case, such incorporation would simply add unnecessary confusion and ambiguity to the amended complaint. The forthcoming amended complaint needs to present Plaintiff's best case. He will no longer be able to amend as a matter of course under Fed. R. Civ. P. 15(a)(1)(B).

Plaintiff, furthermore, should consider the requirements for properly joining defendants in the same civil action. *See* Fed. R. Civ. P. 20(a)(2). The original complaint seems to assert claims based upon at least three transactions, occurrences, or series of transactions or occurrences. The claims against Wells Fargo appear distinct from the other claims, except to the extent there is a sufficient relationship with other claims regarding child support asserted against employees/officers of the Department of Family and Protective Services. And the claims against the Walgreen Defendants appear distinct from the claims against the State Defendants. Rule 20(a)(2) provides necessary limits on joining diverse persons as defendants in the same action. A plaintiff does not properly join in a single civil action every person against whom he has a grievance. Instead, a plaintiff's right to relief must be "with respect to or arising out of the same transaction, occurrences, or series of transactions or occurrences" and a common question of law or fact must arise in the action. *See* Fed. R. Civ. P. 20(a)(2). Fed. R. Civ. P. 21 provides discretion for courts to "add or drop a party" at any time on terms that are just. And it may exercise that discretion on motion or on its own. Rule 21 also permits courts "to sever any claim against a party." If Plaintiff's amended complaint violates the joinder requirements, the Court may take sua sponte action to sever claims or drop parties. The Court

encourages Plaintiff to examine these matters to determine whether he should proceed against the distinct groups of defendants in separate actions.

The Court has already stayed discovery pending resolution of the qualified immunity defense through the State Defendants' motion to dismiss. By finding that motion moot under the circumstances, the Court has not yet resolved the qualified immunity issue. The Court has instead given Plaintiff twenty-one days to file an amended complaint. To facilitate progress in this action, furthermore, the Court sets the following additional deadlines:

1. Within twenty-one days of the filing of the amended complaint, the defendants shall file their answers to that complaint or file any motions under Fed. R. Civ. P. 12(b).

2. Plaintiff has twenty-one days to respond to any motion filed under Rule 12(b). The response brief shall not exceed twenty-five pages.

3. Each movant has fourteen days to file a reply to the non-movant's response brief. The reply brief shall not exceed ten pages.

Although the recent order addressing a stay of discovery provides sound reasons for the ultimate rulings of the Court, the only matters before the Magistrate Judge were the motions for stay of discovery. Upon review of all the matters in this case, including all of the rulings herein that were unknown to the Magistrate Judge, the Court finds good cause to completely stay discovery in this action until it has resolved any dispositive motions filed in accordance with this schedule. And until such resolution, the Court may summarily deny any motion filed outside this schedule unless the movant has first obtained leave of court.

VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motions to strike (Docs. 31, 32, 78, and 88) and motion to set aside default (Doc. 35); **FINDS MOOT** the motions to dismiss (Docs. 11, 12,

18, and 48) and motion for preliminary injunctive relief (Doc. 103); and **DENIES** the motion for default judgment (Doc. 30), motions to join (Docs. 34, 81, and 82), motion for sanctions (Doc. 110), motion to compel Rule 26(f) conference (Doc. 111), and motion to show cause (Doc. 114). Accordingly, the Court hereby orders the two amended complaints (Docs. 26 and 76) stricken from the record. In also sets aside the Clerk's Entries of Default (Docs. 29 and 108). In addition to ruling on these motions, the Court has set various deadlines, stayed discovery, and imposed restrictions as set forth in this Order.

SO ORDERED this 20th day of March, 2015.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

APP.19a-25a

District Court Order
dated February 24, 2016

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

APP.26a-34a

District Court Order
dated February 24, 2016

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

APP.35a-52a

District Court Order
dated February 24, 2016

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

APP.53a-63a

District Court Order
dated February 24, 2016

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