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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| A. K. ANDERSON,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>MIGUEL A. CARDONA, Secretary of Education; SAN BERNARDINO COMMUNITY COLLEGE DISTRICT; STEVEN GORDON, Director, Department of Motor Vehicles; DOES, 1-10, inclusive,<br><br>Defendants-Appellees. | No. 22-55328<br><br>D.C. No.<br>5:20-cv-01824-VAP-SP<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief District Judge, Presiding

Submitted July 8, 2024**
San Francisco, California

Before: O'SCANNLAIN, FERNANDEZ, and SILVERMAN, Circuit Judges

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

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

A. K. Anderson appeals pro se from the district court's dismissal without leave to amend of his federal and state law claims against San Bernardino Community College District ("SBCCD"), Miguel Cardona as Secretary of Education, Steven Gordon as director of the Department of Motor Vehicles, and Doe defendants. We have jurisdiction under 28 U.S.C. § 1291. We review the dismissals de novo and the denial of leave to amend for abuse of discretion. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 962–63 (9th Cir. 2016).

The district court dismissed Anderson's Administrative Procedure Act[1] ("APA") claims against SBCCD and Cardona on sovereign immunity grounds. Although Anderson appears to appeal dismissal of his APA claims, he does not challenge the district court's immunity rulings, and therefore waives the issue. *See Padgett v. Wright*, 587 F.3d 983, 985 & n.2 (9th Cir. 2009) (per curiam). To the extent Anderson appeals the district court's denial of leave to amend the APA claims, the district court did not abuse its discretion because amendment would have been futile. *See Ebner*, 838 F.3d at 968.

The district court did not err by dismissing Anderson's federal civil rights claims against Gordon and Doe defendants under 42 U.S.C. §§ 1983 and 1985(3).

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[1] Administrative Procedure Act, ch. 324, § 1, 60 Stat. 237, 237 (1946) (codified as amended in scattered sections of 5 U.S.C.).

Anderson's suit against Gordon in his official capacity is effectively a suit against the State of California,[2] which has sovereign immunity from § 1983 and § 1985 claims.[3] Dismissal was therefore proper, and the district court did not abuse its discretion by concluding that amendment would have been futile. *See Ebner*, 838 F.3d at 968.

The district court also properly dismissed Anderson's remaining 42 U.S.C. §§ 1983 and 1985(3) claims for failure to state a claim. Anderson alleged no lack of process for a procedural due process claim under § 1983. *Cf. Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000). Nor did he allege a substantive due process claim because the complaint alleges suspension was prompted by a legitimate reason,[4] his diagnosis with a seizure disorder.[5] Finally, Anderson's conclusory allegations that defendants acted in furtherance of a conspiracy in

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[2] *See Hafer v. Melo*, 502 U.S. 21, 25, 112 S. Ct. 358, 361, 116 L. Ed. 2d 301 (1991).

[3] *See Pittman v. Or. Emp. Dep't*, 509 F.3d 1065, 1071 (9th Cir. 2007); *Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988); *see also Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009).

[4] *See Halverson v. Skagit County*, 42 F.3d 1257, 1262 (9th Cir. 1994).

[5] *See* Cal. Veh. Code § 12806(c); *Anderson v. Davidson*, 243 Cal. Rptr. 3d 536, 544–45 (Ct. App. 2019).

violation of § 1985(3) are insufficient[6] and Anderson does not allege that any conspiracy was motivated by racial or class-based animus.[7] Because Anderson contends he does not need to remedy the defects in his complaint,[8] and because his several prior proceedings concerning the same events[9] demonstrate that he cannot, the district court did not abuse its discretion by denying leave to amend Anderson's § 1983 and § 1985(3) claims. Amendment would have been futile. *See Ebner*, 838 F.3d at 968.

Finally, the district court did not err by dismissing Anderson's state civil rights claims against Gordon and Doe defendants. Anderson failed to state a claim under both sections 51.7(b)(1) and 52.1(b) of the California Civil Code, respectively, because he did not allege any threats or acts of violence due to his

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[6] *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

[7] *See Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992).

[8] *See Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

[9] The district court properly took judicial notice of Anderson's prior cases concerning the events at issue here, and we may do the same. *See Avilez v. Garland*, 69 F.4th 525, 527 n.3 (9th Cir. 2023); *Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007).

race,[10] or that any defendant threatened, intimidated, or coerced him.[11] The district court did not abuse its discretion by dismissing the claims without leave to amend because Anderson does not argue he can plead any threats, intimidation, or coercion by any defendant and his prior proceedings implicating the same events do not indicate that he can. As such, amendment would be futile. *See Ebner*, 838 F.3d at 963.

**AFFIRMED.**

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[10] *See Gabrielle A. v. County of Orange*, 217 Cal. Rptr. 3d 275, 294 (Ct. App. 2017); *Austin B. v. Escondido Union Sch. Dist.*, 57 Cal. Rptr. 3d 454, 470 (Ct. App. 2007).

[11] *See Gabrielle A.*, 217 Cal. Rptr. 3d at 294; *Austin B.*, 57 Cal. Rptr. 3d at 472.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| A.K. ANDERSON,<br>Plaintiff,<br>v.<br>MIGUEL CARDONA, et. al.,<br>Defendants. | Case No. 5:20-cv-01824-VAP (SP)<br>**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE** |

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

## I.

## INTRODUCTION

On September 1, 2020, plaintiff Abdullah. K. Anderson, proceeding pro se and in forma pauperis, filed a civil rights complaint alleging violations of the Administrative Procedures Act ("APA"), 42 U.S.C. §§ 1983 and 1985(3), and

California Civil Code §§ 51.7 and 52.1 against: the United States Secretary of Education (who was then Betsy DeVos and is now Miguel Cardona) (the "Secretary")[1]; the San Bernardino Community College District (the "District"); and the Director of the California Department of Motor Vehicles ("DMV") Steven Gordon. Plaintiff generally alleges his civil rights were violated when he was subjected to discrimination as a student at San Bernardino Valley College. Plaintiff also contends the DMV deliberately misspelled plaintiff's name and address on his driver's license, and then improperly suspended his license.

On March 29, 2021, defendant Secretary filed a motion to dismiss (docket no. 28), arguing for dismissal of plaintiff's complaint on immunity grounds. Plaintiff opposed defendant Secretary's motion on April 7, 2021. Defendant Secretary filed a reply on April 21, 2021.

On March 30, 2021, defendant District filed a motion to dismiss (docket no. 29) and then an amended motion to dismiss (docket no. 32), based on immunity, untimeliness, and failure to state a claim. Although plaintiff did not specifically oppose the District's motion, the District filed a reply on April 23, 2021, apparently replying to plaintiff's opposition to the Secretary's motion.

After initially filing a motion to dismiss on March 22, 2021 (docket no. 25), on March 30, 2021, defendant Gordon filed an amended motion to dismiss plaintiff's complaint or in the alternative to strike portions on the complaint (docket no. 31). Defendant argues the claims against him are barred by immunity and collateral estoppel, and also that plaintiff fails to state a claim. In support of the motion, defendant Gordon filed a request for judicial notice of a California Court of Appeal decision, which upheld the suspension of plaintiff's driver's

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[1] Under Fed. R. Civ. P. 25(d), Miguel Cardona, as successor to Phil Rosenfelt, who succeeded Mick Zais and Betsy DeVos, in his official capacity as United States Secretary of Education, is automatically substituted as the named party.

license. Plaintiff opposed defendant Gordon's motion on April 28, 2021. Defendant Gordon filed a reply on May 11, 2021.

Reviewing the facts as set forth in the complaint and liberally construing the allegations, the court finds defendants are immune from suit, the complaint fails to state a claim, and many of the claims are barred by collateral estoppel. It is therefore recommended that defendants' motions to dismiss plaintiff's complaint be granted. Further, because this is at least plaintiff's third attempt to raise largely the same claims, plaintiff should not be granted leave to amend.

## II.

## THE COMPLAINT'S ALLEGATIONS

Plaintiff is a Black American who attended San Bernardino Valley College in spring 2004, during which time he was discriminated against in federal aid disbursement. Compl. ¶¶ 8, 18. Plaintiff's college transcript shows he withdrew from classes in spring 2005, began employment as a machinist between August 2005 and August 2006, and was not attending San Bernardino Valley College during this period. Compl. ¶ 8. These transcript errors prevented plaintiff from earning a technical degree in machine technology in 2015. Plaintiff also was deprived of $5,978 in federal aid from 2014 to 2017. *Id.*

On or before June 1, 2006, the DMV issued plaintiff an incorrect driver's license, misspelling his name and address, and stating the wrong license number, which resulted in the disruption of his employment and education prospects, and misdirection of bank deposits. Compl. ¶¶ 9-10. Defendant District had access to plaintiff's driver's license months before it was issued. Compl. ¶ 9. On June 6, 2006, plaintiff was taken to the hospital after an argument with his wife, who falsely claimed he had seizures. Compl. ¶¶ 21, 29. At the hospital, plaintiff was incorrectly diagnosed with "seizure disorder." Compl. ¶ 21. Defendant Gordon used the hospital's misdiagnosis and the spelling errors in plaintiff's license to

deprive him of his driver's license from June 6, 2006 until May 10, 2019. Compl. ¶¶ 20-21, 28.

On March 29, 2019, plaintiff filed a complaint with the Department of Education, Office of Civil Rights ("OCR") requesting them to investigate his claims that his driver's license information was misappropriated and is incorrect, he was denied student aid payments, and his college transcript does not show he earned enough credits to graduate. Compl. ¶ 7. On April 19, 2019, OCR declined to investigate plaintiff's complaint, and denied his subsequent appeal on July 1, 2019. Compl. ¶¶ 11-12. Plaintiff seeks an order compelling the Department of Education to investigate his claims. Compl. ¶¶ 13-15.

Plaintiff filed two writ petitions in California Superior Court and numerous appeals, and received his driver's license on May 10, 2019. Compl. ¶ 29. On October 11, 2019, he filed a claim with the State of California for the DMV's deprivation of his license from June 6, 2006 to May 10, 2019; the claim was denied on December 4, 2019. Compl. ¶¶ 51-52.

Plaintiff here asserts one claim against defendants Secretary of Education and District, for violation of the APA. Plaintiff asserts four claims against defendant Gordon, for violations of his civil rights under the 42 U.S.C. §§ 1983 and 1985(3), and for violations of California Civil Code §§ 51.7 and 52.1. He seeks compensatory and punitive damages, as well as costs and attorney's fees.

## III.

## LEGAL STANDARD

Under the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal for failure to state a claim "can be based on the lack of a cognizable

legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Affirmative defenses may also be asserted in a motion to dismiss if "the defense raises no disputed issues of fact." *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984). "Where the 'allegations in the complaint suffice to establish' the defense," dismissal may be warranted. *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting *Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007)); *see Goddard v. Google Inc.*, 640 F. Supp. 2d 1193, 1199 n.5 (N.D. Cal. 2009).

"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, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This plausibility standard does not amount to a probability requirement, "but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

"When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679. But "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). The complaint must both "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . [and] must plausibly suggest an entitlement to relief, such that it is not unfair to

require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

On a motion to dismiss, a court may take judicial notice of "matters of public record." *See Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), overruled on other grounds, *Astoria Fed. Sav. and Loan Ass'n v. Solimino*, 501 U.S. 104, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991). Moreover, "courts routinely take judicial notice of documents filed in other courts . . . to establish the fact of such litigation and related filings." *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). But the effect of taking judicial notice of documents filed in other courts is limited. "On a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court's opinion, it may do so not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (internal quotation marks and citation omitted).

Where a plaintiff appears pro se in a civil rights case, the court must construe the pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal construction is "particularly important in civil rights cases." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). But in giving liberal interpretation to a pro se civil rights complaint, courts may not "supply essential elements of claims that were not initially pled" (*Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982), and "need not accept as true 'allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading.'" *Roy v. Cty. of Los Angeles*, 114 F. Supp. 3d 1030, 1035 (C.D. Cal. 2015) (citing 5C Wright & Miller, Federal Practice & Procedure § 1363 (3d ed. 2004)); *see Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007).

## IV.

## DISCUSSION

### A. Plaintiff's APA Claim Against Defendants Secretary and District

#### 1. Defendant Secretary Did Not Waive Sovereign Immunity

Plaintiff brings this case against defendant Cardona "as Secretary of Education" – that is, in his official capacity. An "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); *see also Brandon v. Holt*, 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." *Kentucky*, 473 U.S. at 166. Thus, a "suit against a [federal official] defendant in his or her official capacity would merely be another way of pleading an action against the United States." *Consejo de Desarrollo Economica de Mexicali, A.C. v. U.S.*, 482 F.3d 1157, 1173 (9th Cir. 2007) (citing *Nurse v. U.S.*, 226 F.3d 996, 1004 (9th Cir. 2000)).

Accordingly, plaintiff's APA claim against defendant Secretary in his official capacity here is a claim against the United States. This claim is barred by the doctrine of sovereign immunity. It is well settled that the federal government or its agencies may be sued only to the extent the traditional immunity of the sovereign has been waived. *See Federal Deposit Insurance Corp. v. Meyer*, 510 U.S. 471, 475, 114 S. Ct. 996, 1000, 127 L. Ed. 2d 308 (1994).

Generally, the APA waives the federal government's immunity from a suit "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority." 5 U.S.C. § 702. That waiver would appear to cover plaintiff's suit because it challenges defendant Secretary's decision not to

investigate his claims, and seeks non-monetary relief, namely that defendant investigate plaintiff's claims.[2] Nonetheless, the APA does not waive the government's immunity in this case, for two separate reasons.

First, the provisions of the APA do not apply where "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The Supreme Court has recognized "that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985). Consequently, the Ninth Circuit has found an agency's "decisions not to enforce are presumptively unreviewable under 5 U.S.C. § 701(a)(2)." *City & Cnty. of San Francisco v. U.S. Dep't of Transp.*, 796 F.3d 993, 1004 (9th Cir. 2015). This is what plaintiff challenges here: the decision by the Department of Education's OCR not to investigate his claims against San Bernardino Valley College. Indeed, in a case in which OCR decided not to take action on a complaint filed by a teacher against the New York City Board of Examiners, the Second Circuit followed *Heckler* to find that pursuant to § 701(a)(2), judicial review of OCR's discretionary disposition of the complaint is not available. *Marlow v. U.S. Dep't of Educ.*, 820 F.2d 581, 582-83 (2d Cir. 1987). Likewise, plaintiff's challenge to OCR's decision here is unreviewable under the APA.

Second, there are two prerequisites to bringing suit under the APA: final agency action and no other adequate remedies in a court. 5 U.S.C. § 704. If these prerequisites are not met, the APA does not waive a defendant's sovereign immunity. *Id.* The parties did not provide sufficient evidence for the court to determine whether final agency action was taken. But as to the second requirement, plaintiff has an adequate remedy, namely a direct cause of action

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[2] Whether plaintiff also seeks damages with his APA claim is unclear.

against San Bernardino Valley College or the District. *See* 5 U.S.C. § 704; *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 750-51 (D.C. Cir. 1990) (finding plaintiff's APA claim against Secretary of Education precluded because plaintiff's remedy is to sue the college directly); *see also Cannon v. Univ. of Chicago*, 441 U.S. 677, 689, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979) (finding statutory right to sue university for discrimination). As discussed below, such action would need to be brought in state court, and in fact was.

In sum, defendant Secretary's sovereign immunity has not been waived under the APA here, and therefore he may not be sued.

**2. Defendant District Is Immune Under the Eleventh Amendment**

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "It is well established that agencies of the state are immune under the Eleventh Amendment from private damages or suits for injunctive relief brought in federal court." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1040 (9th Cir. 2003). State sovereign immunity does not extend to county and municipal governments, unless state law treats them as arms of the state. *Savage*, 343 F.3d at 1040-41. California school districts are arms of the state and enjoy Eleventh Amendment immunity. *Sato v. Orange Cty. Dep't of Educ.*, 861 F.3d 923, 934 (9th Cir. 2017). As such, the District is immune from suit in this federal court.

Moreover, plaintiff's sole claim against defendant District is for violation of the APA. But the APA applies only to federal agencies and not state agencies. 5 U.S.C. § 551 et seq. Thus, plaintiff may not bring an APA claim against the District.

**B. Plaintiff's Federal Civil Rights Claims Against Defendant Gordon**

**1. Defendant Gordon Is Immune Under the Eleventh Amendment**

Plaintiff brings multiple claims against defendant Gordon seeking monetary relief for deliberately misspelling his name and address, and for suspending his license. *See* Compl. ¶ 34. But as with defendant Cardona, plaintiff does not allege that defendant Gordon had any personal involvement. Instead, plaintiff brings this case against defendant Gordon "as Director, Department of Motor Vehicles" – that is, in his official capacity. Indeed, plaintiff agrees he is suing Gordon only in his official capacity. *See* docket. no. 39, P. Opp. Gordon Mtn. at 2. Again, it is well-established that an "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. at 166. Defendant Gordon is an employee of the DMV, or ultimately the State of California. It follows that the entity that is the real party in interest is the State of California. Consequently, plaintiff's civil rights claims against defendant Gordon are barred by the doctrine of sovereign immunity under the Eleventh Amendment.

The entity waives its sovereign immunity when it does so unequivocally, or Congress abrogates it. *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 250 (9th Cir. 1992); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). California has not waived its Eleventh Amendment immunity with respect to 42 U.S.C. § 1983 claims. *Brown v. Calif. Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir.2009); *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). Furthermore, Congress did not abrogate state sovereign immunity against suits under 42 U.S.C. §§ 1983 and 1985. *Quern v. Jordan*, 440 U.S. 332, 341-42, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979); *Ellis v. Univ. of Kan. Med. Ctr.*, 163 F.3d 1186, 1196 (10th Cir. 1998). Accordingly, plaintiff's claims seeking monetary relief from defendant Gordon in his official capacity are barred by the Eleventh Amendment. *See Mitchell v. Washington*, 818

F.3d 436, 442 (9th Cir.2016).

**2. Defendant Gordon Also Is Not a "Person" Within the Meaning of 42 U.S.C. §§ 1983 and 1985**

Neither the state nor its officials acting in their official capacity are "persons" within the meaning of 42 U.S.C. §§ 1983, 1985 because official-capacity defendants assume "the identity of the government that employs them". *Hafer v. Melo*, 502 U.S. 21, 21, 112 S. Ct. 358, 359, 116 L. Ed. 2d 301 (1991) (internal quotation marks omitted) (citing *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989)). Since defendant Gordon (whom plaintiff sues only in his official capacity as the director of the DMV) is not a "person" for purposes of 42 U.S.C. §§ 1983 and 1985, he may not be sued under these statutes in his official capacity.

**3. Plaintiff Fails to State a § 1983 Claim**

Plaintiff brings this suit as a civil rights action under 42 U.S.C. § 1983, and asserts various civil rights violations against defendant Gordon. Even if Gordon were not immune from suit, plaintiff fails to state a claim.

Plaintiff alleges that "in depriving Plaintiff of his driver's license" defendants violated his Fifth Amendment due process rights, and his rights under the Fourteenth Amendment Equal Protection Clause. Compl. ¶¶30, 32. The Fifth Amendment applies to actions of the federal government, while the Fourteenth Amendment applies to actions of the state. *Rank v. Nimmo*, 677 F.2d 692, 701 (9th Cir. 1982); U.S. Const. amend. XVI, § 1. Although the Supreme Court has interpreted the two clauses identically, because plaintiff's claims arise solely out of state action, those claims – if they can be pled at all – are properly asserted under the Fourteenth Amendment.

In any event, plaintiff fails to allege any facts to suggest that his substantive or procedural due process rights were violated. Plaintiff's due process claim is that

he was deprived of his driver's license for almost thirteen years due to his misdiagnosis as a disabled person with a seizure disorder. To state a procedural due process claim, plaintiff must allege: "'(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) lack of process.'" *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000) (quoting *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993)). Even assuming a driver's license is a matter of liberty as plaintiff alleges, plaintiff does not allege any facts to suggest a lack of process. Instead, he simply registers his disagreement with his diagnosis.

The protection from governmental action provided by substantive due process has most often been reserved for the vindication of fundamental rights, such as matters relating to marriage, family, procreation, and bodily integrity. *See Albright v. Oliver*, 510 U.S. 266, 272, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994). A driver's license is not among these. Where a plaintiff relies on substantive due process to challenge governmental action that does not impinge on fundamental rights, "'we do not require that the government's action actually advance its stated purposes, but merely look to see whether the government *could* have had a legitimate reason for acting as it did.'" *Halverson v. Skagit County*, 42 F.3d 1257, 1262 (9th Cir. 1994) (citation omitted). Here, plaintiff alleges the government deprived him of a driver's license based on a diagnosis that he suffered from a seizure disorder. While plaintiff disputes the diagnosis, certainly a supported determination that plaintiff had a seizure disorder was a legitimate reason to deny him a driver's license.

Indeed, the California Court of Appeal upheld plaintiff's challenges to the suspension of his driver's license.[3] The state court found substantial evidence

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[3] Defendant Gordon filed a motion for judicial notice of a California Court of Appeal decision in *Anderson v. Davidson*, 32 Cal. App. 5th 136, 243 Cal. Rptr. 3d

supported an administrative finding that plaintiff suffered from a seizure disorder, warranting the suspension of his license. *See Anderson v. Davidson*, 32 Cal. App. 5th 136, 144, 146, 243 Cal. Rptr. 3d 536 (2019).

Plaintiff also alleges no facts to support an equal protection claim, namely that his license was suspended because of his race. *See Washington v. Davis*, 426 U.S. 229, 230, 96 S. Ct. 2040, 2043, 48 L. Ed. 2d 597 (1976) ("The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race."). Plaintiff alleges he is Black, but alleges nothing to suggest racial discrimination played any role in anything he complains of in the complaint. In short, plaintiff fails to state a § 1983 claim.

**4. Plaintiff Fails to State a § 1985(3) Claim**

To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege the following: (1) a conspiracy, (2) to deprive any person or class of persons of the equal protection of the laws, (3) an act done by one of the conspirators in furtherance of the conspiracy, and (4) a personal injury, property damage, or deprivation of any right or privilege of a citizen of the United States. *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S. Ct. 1790, 1798, 29 L. Ed. 2d 338 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). "The language requiring intent to deprive of equal protection . . . means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin*, 403 U.S. at 102; *Sever*, 978 F.2d at 1536. "[E]ither that the courts have designated the class in question a suspect or

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536 (2019), *as modified on denial of reh'g* (Mar. 5, 2019), *review denied* (May 1, 2019). Docket No. 30. The court grants defendant's motion. *See Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (taking judicial notice of a California Court of Appeal opinion and the trial court's record for ruling on issue preclusion); *see also Manufactured Home Cmtys. Inc. v. City of San Jose*, 420 F.3d 1022, 1037 (9th Cir. 2005) (taking judicial notice of a state court decision in examining claims litigated in state court).

quasi-suspect classification requiring more exacting scrutiny or that Congress has indicated through legislation that the class required special protection." *Sever*, 978 F.2d at 1536 (internal quotation marks omitted).

Here, plaintiff alleges that defendant Gordon and "some of the other [d]efendants" conspired "to deprive [p]laintiff of his constitutionally protected rights," and such actions were "done with evil motive or intent, or with reckless or callous indifference." Compl. ¶¶ 40, 45. Plaintiff alleges no facts plausibly suggesting that defendant Gordon or any of the defendants acted because of any class-based discriminatory animus. In addition, a conclusory allegation of conspiracy is insufficient to support a § 1985(3) claim. *See Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (upholding dismissal of Section a § 1985(3) claim where complaint "failed to allege evidence of a conspiracy and an act in furtherance of that conspiracy, which are required elements of a § 1985(3) action"). Plaintiff fails to allege any specific facts from which a conspiracy may be inferred.

**5. Plaintiff's Claims Related to the Suspension of His Driver's License Are Barred by Collateral Estoppel**

Collateral estoppel prohibits relitigation of the same "question, issue, or fact when four conditions are met: (1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012). Additionally, a suit is collaterally estopped if, in the prior proceeding, the parties were in privity and the court issued "a final judgment on the merits." *Reyn's Pasta Bella. LLC v. Visa USA. Inc.*, 442 F.3d 741, 746 (9th Cir. 2006) ("[T]he party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding."); *Reyn's Pasta Bella. LLC v. Visa USA. Inc.*, 442 F.3d 741, 746 (9th Cir. 2006).

Here, plaintiff's claims against defendant Gordon are based on the suspension of his driver's license. In a prior case brought by plaintiff against the then-acting director of the DMV, the California Court of Appeal found substantial evidence supported an administrative finding that plaintiff suffered from a seizure disorder, warranting the suspension of his license on the basis that he suffered from a disorder characterized by lapses of consciousness. *Anderson*, 32 Cal. App. 5th at 146. Plaintiff's writ resulted in a final judgment on the merits, and plaintiff had a full and fair opportunity to litigate the issues. Accordingly, any claims against the DMV challenging the basis for the suspension of plaintiff's driver's license are barred due to the California Court of Appeal's prior judgment on these same issues.

**C. Plaintiff Fails to State a Claim Under California Civil Code § 51.7**

The Ralph Civil Rights Act (California Civil Code § 51.7) guarantees all persons within California "the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any [listed] characteristic . . . or because another person perceives them to have one or more of those characteristics." Cal. Civ. Code § 51.7(b)(1). Race is among the protected characteristics. Cal. Civ. Code § 51(e)(6). To state a Ralph Act claim, a plaintiff must allege four elements: (1) the defendant committed or threatened violent acts against plaintiff; (2) the defendant was motivated by their perception of plaintiff's political affiliation or protected characteristic, including race; (3) plaintiff was harmed; and (4) the defendant's conduct was a substantial factor in causing plaintiff's harm. *Campbell v. Feld Ent., Inc.*, 75 F. Supp. 3d 1193, 1205 (N.D. Cal. 2014).

Plaintiff here alleges defendant acted against him because he is African American, but alleges no facts to support this assertion. Moreover, he does not allege any facts to suggest that any defendant (or anyone) threatened or committed

any acts of violence against him, or that he feared any acts of violence. Accordingly, plaintiff fails to state a Ralph Act claim.

**D. Plaintiff Fails to State a Claim Under California Civil Code § 52.1**

The Tom Bane Civil Rights Act (California Civil Code § 52.1) provides a cause of action for violations of a plaintiff's state or federal civil rights where such violations are committed by "'threats, intimidation, or coercion.'" *Reese v. County of Sacramento*, 888 F.3d 1030, 1040 (9th Cir. 2018) (citation omitted). The elements of a Bane Act claim are: (1) defendant violated or attempted to violate plaintiff's constitutional or statutory right by threatening or committing violent acts; (2) plaintiff reasonably believed that if he exercised his constitutional right, defendant would commit violence against him or his property; (3) defendant injured plaintiff or his property to prevent him from exercising his constitutional right or to retaliate against him for having exercised his constitutional right; (4) plaintiff was harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm. *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 882, 57 Cal. Rptr. 3d 454, 471 (2007).

For the same reasons discussed above, plaintiff does not plausibly allege that any defendant interfered or attempted to interfere with the enjoyment of his federal constitutional rights under the Fifth or Fourteenth Amendments. Further, plaintiff does not allege, at all, that any defendant violated or attempted to violate plaintiff's constitutional rights by "threats, intimidation, or coercion." Nor does plaintiff allege that any defendant injured his person or property to prevent him from exercising his rights or in retaliation for exercising those rights. Accordingly, plaintiff fails to state a Bane Act claim.

**E. Plaintiff Should Not Be Granted Leave to Amend**

Generally, the court must give a pro se litigant leave to amend his complaint "unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quotation marks and citations omitted ). Before a pro se civil rights complaint may be dismissed, the court must provide the plaintiff with a statement of the complaint's deficiencies. *Karim-Panahi*, 839 F.2d at 623-24. But where amendment of a pro se litigant's complaint would be futile, denial of leave to amend is appropriate. *See James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000) (finding court may deny leave to amend if deficiencies cannot be overcome by amendment).

Plaintiff here has not requested leave to amend, and further leave to amend should not be granted, either against any of the named plaintiffs or to permit plaintiff to name any of the unspecified Doe defendants. Amendment of the complaint cannot alter the immunity enjoyed by the named defendants here. Moreover, plaintiff has previously brought factually similar actions in federal and state courts. In addition to the state case discussed above, plaintiff also filed a previous federal action against, inter alia, the DMV and the District, alleging substantially the same claims alleged here, and others. *See Anderson v. Anthem Blue Cross, et al.*, case no. 5:18-cv-01468-JGB (KES).[4] That case was dismissed as frivolous at the in forma pauperis stage, and the Ninth Circuit affirmed the dismissal. *Anderson v. Anthem Blue Cross*, 776 Fed. Appx. 465 (9th Cir. 2019). The present action is plaintiff's third attempt at bringing a lawsuit based on the same general set of facts. It is thus clear that plaintiff has stated his best case in the complaint and further amendment would be futile. Accordingly, leave to amend

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[4] The court takes judicial notice of the filings in *Anderson v. Anthem Blue Cross, et al.*, Case No. SACV 18-1468-JGB (KES). *See* Fed. R. Evid. 201(c)(1).

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

A.K. ANDERSON,

Plaintiff,

v.

MIGUEL CARDONA, et al.,

Defendants.

Case No. 5:20-cv-01824-VAP (SP)

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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

IT IS THEREFORE ORDERED that defendants' motions to dismiss (docket nos. 25, 28, 29, 31, 32) are granted, and Judgment will be entered dismissing the Complaint and this action with prejudice and without leave to amend.

DATED: February 25, 2022

Virginia A. Phillips

HONORABLE VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

JS-6

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

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| A.K. ANDERSON,<br>Plaintiff,<br>v.<br>MIGUEL CARDONA, et al.,<br>Defendants. | Case No. 5:20-cv-01824-VAP (SP)<br><br>**JUDGMENT** |

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

IT IS HEREBY ADJUDGED that the Complaint and this action are dismissed with prejudice.

Dated: February 25, 2022

Virginia A. Phillips

HONORABLE VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

FILED

SEP 18 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
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| A. K. ANDERSON,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>MIGUEL A. CARDONA, Secretary of Education; SAN BERNARDINO COMMUNITY COLLEGE DISTRICT; STEVEN GORDON, Director, Department of Motor Vehicles; DOES, 1-10, inclusive,<br><br>Defendants-Appellees. | No. 22-55328<br><br>D.C. No.<br>5:20-cv-01824-VAP-SP<br>Central District of California,<br>Riverside<br><br>ORDER |

Before: O'SCANNLAIN, FERNANDEZ, and SILVERMAN, Circuit Judges.

The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing en banc is DENIED.

UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT, §1

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

UNITED STATES CODE
42 U.S.C., §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

UNITED STATES CODE
42 U.S.C., §1985(3)

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