

APPENDIX

**APPENDIX A — MEMORANDUM OF THE
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT, FILED OCTOBER 03,
2017**

**NOT FOR PUBLICATION
MEMORANDUM OF THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT, FILED OCTOBER 03, 2017**

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 15-5568

D.C. 2:14-cv-09054-ODW-SH

BRIAN ALEXIS, AKA Blagoy Petrov Alexiev
Plaintiff-Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION, The
United States, official capacity; et al.
Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California.
Otis D. Wright II, District Judge Presiding

Submitted, September 27, 2017 **
October 03, 2017, Filed

Before: SILVERMAN, TALLMAN, and N.R. SMITH,
Circuit Judges.

MEMORANDUM*

Brian Alexis, AKA Blagoy Petrov Alexiev , appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims arising from defendants' alleged failure to investigate and prosecute an attempted murder.

* 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).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of statute of limitations. *Ventura Mobilehome Cmtys. Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1050 (9th Cir.2004) We affirm.

The district court properly dismissed Alexis' action as time – barred because the statute of limitations defense for his claims appears on the face of his complaint. *See Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980) (district court may dismiss a claim “[i]f the running of the statute is apparent on the face of his complaint “and the assertions of the complaint do not permit a showing that the statute was tolled); *see also Sharkey v. O'Neal*, 778 F.3d 767, 773 (9th Cir.2015)(California's three- year statute of limitations for actions based upon liabilities created by statutes applies to claims under Title II of the Americans with Disabilities Act); *Canatella v/ Van De Camp*, 486 F.3d 1128, 1132-33 (9th Cir.2007)(stating that California 's two – year statute of limitation for personal injury actions applies to § 1983 claim, and

claim “ accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action” (citation and internal quotation marks omitted); *Van Strum v. Lawn*, 940 F. 2d 406, 410 (9 th Cir. 1991) (forum state’s statutes of limitation for personal injury action applies to *Buvs* claim).

AFFIRMED

**APPENDIX B — JUDGEMENT OF THE
UNITED STATES DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA – WESTERN
DIVISION, FILED APRIL 10, 2015**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA –
WESTERN DIVISION

Case No. CV 14-9054-ODW (SH)

BRIAN ALEXIS AKA BLAGOY PETROV,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,
Defendants.

JUDGEMENT

Pursuant to the Order of the court adopting the conclusions
and recommendations of the United States Magistrate Judge,
IT IS ADJUDGED that the action is dismissed as to the FBI
without leave to amend.

Dated: April 10, 2015

/s/ Otis D. Wright

OTIS D. WRIGHT, II

UNITED STATES DISTRICT JUDGE

**APPENDIX C- Order of United States Central
District Court of California, Filed April 10, 2015
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA –
WESTERN DIVISION
Case No. CV 14-9054-ODW (SH)**

BRIAN ALEXIS AKA BLAGOY PETROV,
Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, et
al. Defendants.

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

Pursuant to 28 U.S.C. Section 636(b)(C) (statute/28-usc-636-jurisdiction –powers- and –temporary-assignment), the court has reviewed the Complaint and other papers along with the attached Report and Recommendation of the United States Magistrate Judge, and has made a *de novo* determination of the Report and Recommendation.* 2

IT IS THEREFORE ORDERED that a Judgment be entered (1) approving and accepting the Report and Recommendation, (2) granting Defendant FBI's Motion to Dismiss, and; (3) dismissing Plaintiff's claims against the FBI without leave to amend.

IT IS FURTHER ORDERED that Clerk shall serve forthwith a copy of this Order and the Judgment of this date on the Plaintiff and counsel for Defendant.

DATED: April 10, 2015 /s/ Otis D. Wright

OTIS D. WRIGHT, II

UNITED STATES DISTRICT JUDGE

**APPENDIX D —REPORT AND RECOMMENDATION
OF UNITED STATES DISTRICT COURT CENTRAL
DISTRICT COURT OF CALIFORNIA, FILED
MARCH, 26 2015**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 14-9054-ODW (SH)

BRIAN ALEXIS AKA BLAGOY PETROV,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This report and recommendation is submitted to the Honorable Otis D. Wright, II, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California. For reasons states below, Defendant Federal Bureau of Investigation's Motion to Dismiss should be granted, and the action should be dismissed.

BACKGROUND

Pro se Plaintiff Brian Alexis aka Blagoy Petrov Alexiev, filed his original Complaint ("Cpt") on

November 24, 2014. Plaintiff asserts ten claims against the Federal Bureau of Investigation ("FBI"), the City of Santa Monica , and the County of Los Angeles arising from the alleged failure to investigate or prosecute the attempted murder by his ex-wife and daughter using radioactive poison weapons of mass destruction from 2005 through approximately 2012. [Cpt.¶¶ 20-79.]Plaintiff asserts violation of his Fourteenth Amendment rights, refusal to investigate, abuse of process, conspiracy, neglecting to prevent terrorism, intentional infliction of emotional distress, and disability discrimination. Plaintiff sues: the FBI, City of Santa Monica, and County of Los Angeles. [Cpt.¶¶ 17-19.] Plaintiff seeks compensatory and punitive damages of \$180,000,000 each against FBI, compensatory and punitive damages of \$30,000,000 each against the City of Santa Monica, and compensatory and punitive damages of \$ 90,000,000 each against the county of Los Angeles, as well as attorneys' fees and costs. [Cpt. 25.] On February 24, 2015, defendant Federal Bureau of Investigation ("FBI") filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12 (B)(6) ("FBI MTD"). On March 9, 2015 Plaintiff filed Opposition to Motion to Dismiss ("Pl. Dec."). On March 16, 2015, the FBI filed a reply.

DISCUSSION

A. MOTION TO DISMISS STANDARD

Defendant FBI's Motion to Dismiss, asserted under Fed. R. Civ.P. 12(b) (6) tests the legal sufficiency of a statement of claim for relief. "In deciding such a motion, all material allegations of the complaint are

accepted as true, as well as all as all reasonable inferences to be drawn from them.” Navarro v. Block, 250 F.3d 729, 732(9th Cir.2001). “A Rule 12(b)(6) dismissal may be based on either a ‘lack of cognizable legal theory’ or ‘the absence of sufficient facts alleged under a cognizable theory.’” Johnson v. Riverside Healthcare System, 534 F.3d 1116, 1121 (9th Cir. 2008)(quoting Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699(9th Cir. 1990)). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir.1984)(citing 2A Moore’s Federal Practice ¶ 12.08). Under Fed. R. Civ. P. 8 (a)(2), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” The Supreme Court has explained the pleading requirement of Rule 8 (a)(2) and the requirements for surviving a Rule 12 (b)(6) motion to dismiss in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct.1937, 173 L. Ed. 2d 868 (2009)(“Iqbal”), Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081(2007)(per curiam), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)(“Twombly”); see also Moss v. U.S. Secret Service, 572 F.3d 962 (9th Cir. 2009)

The pleading standard of Rule 8 does not require “detailed factual allegation.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555); see also Erickson, 551 U.S. at 93; Moss, 572 F.3d at 968. However, a complaint does not meet the pleading standard if it contains merely “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Iqbal, 556 U.S. at 678

(quoting Twombly), 550 U.S. at 555) Instead, to comply with the requirements of Rule 8 (a)(2) and survive a motion to dismiss under Rule 12 (b)(6),” a complaint must contain sufficient factual matter, accepted as true, to ‘ state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (citing Twombly 550 U.S. at 556). This plausibility standard is not a probability Requirement, but does not ask for more than mere possibility; if complaint pleads facts “ merely consistent with” a theory of liability, it falls short of “ the line between possibility and plausibility.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).

The Supreme Court has set out a two – pronged approach for reviewing possible failure to state claim. Iqbal, 556 U.S. at 678-79; see also Moss, 572 F 3d at 969. First , the reviewing court may indentify those statements in a complaint that are actually conclusions, even if presented as factual allegations. Iqbal, 556 U.S. at 678-79. Such conclusory statements (unlike proper factual allegations) are not entitled to a presumption of truth. Id. In this context, it is conclusory nature of the statements (rather than any fanciful or nonsensical nature) “ that disentitles them to the presumption of truth.” Id. at 679. Second, the reviewing court presumes the truth of any remaining “ well-pleaded factual allegations.” and determines whether those factual allegations and reasonable inferences from them plausibly support a claim for relief. Id. at 679; see also Moss, 572 F. 3d at 969.

If the court finds that a complaint should be dismissed for failure to state a claim, the court has discretion to dismissed with or without leave to

amend. Lopez, 203 F. 3d at 1126-30. Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States. 70 F. 3d 1103, 1106 (9 th Cir.1995). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F. 3d at 1107-11; see also Moss, 572 F. 3d at 972.

B. ALEGATIONS OF THE COMPLAINT

Plaintiff alleges the following facts. In August and November of 2005, Plaintiff's ex wife, Anna M. Alexis, send him emails threatening to poison him and allegedly admitting that she had killed Nickolay Kurochkin. [Cpt. ¶¶ 40-44.]

Tests conducted by Bulgarian doctors at the Bulgarian Military Academy as well as by U.S. doctors, found that Plaintiff's body was intoxicated with toxic and radioactive elements, including uranium, gadolinium, thorium, antimony, cadmium, lead, arsenic, mercury, and heavy metals. [Cpt. ¶¶ 20-31.] On February, 2008 doctors at the Bulgarian University Hospital concluded that Plaintiff's health could not be returned to normal levels, and that development of cancer was expected, along with a shortened life expectancy.[Cpt. ¶ 32]. In 2011, doctors at UCLA Department of Surgery found two meningioma tumors in Plaintiff's head. [Cpt. ¶33.] In 2012, Erol Kosar. M.D. implanted a pacemaker in Plaintiff's heart, and diagnosed diabetes, hypertension, and history of uranium placement. [Cpt. ¶34.]

Plaintiff was granted disability by a Social Security Administrative Judge in 2010, finding that Plaintiff had been disabled since 2005. [Cpt. ¶¶ 37-38.] Plaintiff has never worked at any uranium mining or enrichment plant of nuclear facility in either the U.S. or Bulgaria. [Cpt. ¶ 39.]

1. **FBI:**

In July, 2006, Plaintiff visited the FBI field office in Los Angeles and reported attempted murder by his ex- wife, but no action was taken. [Cpt. ¶ 45] From 2008 to 2010, Plaintiff made several visits to FBI field office in Los Angeles and wrote several letters to FBI Headquarters in Washington, D.C., including providing them with documents to prove his allegations. No action was taken. [Cpt. ¶¶ 46-50.] In August, 2010, two FBI agents appeared at Plaintiff's residence in Torrance, California carrying the set of documents that he had provided to FBI. The agents informed Plaintiff that the FBI would not arrest Anna M. Alexis, and would not investigate attempted murder. [Cpt. ¶ 51] Plaintiff mailed documents to the FBI three more times in 2010, and called the FBI field office in May 2011, and still no action was taken. [Cpt. ¶¶ 52-53.]

2. **Santa Monica Police Department:**

On November 30, 2005, two officers from Santa Monica Police Department ("SMPD") denied Plaintiff access to his home and garage at 1250 Chelsea Ave. in Santa Monica. Plaintiff was attempting to retrieve a Pharmabul, Inc.

(Plaintiff's biotechnology business) computer, obtain all Pharmabul, Inc. files , his shoes for radioactive

testing, and his original life insurance policy. [Cpt.¶54.] In July, 2006, Plaintiff visited the SMPD and made a police report regarding the attempted murder by Anna M. Alexis. Plaintiff provided the police with documents as well. [Cpt. ¶ 55.] On August 4, 2006, Anna M. Alexis sent a hit man after Plaintiff and his main witness, Emiliya Encheva Ksturkova, who attempted to kill them on the 405 freeway. [Cpt.¶ 57.]

In May, 2008, Plaintiff again visited the SMPD, requesting police records for the case # 06-73277, which upon viewing, he realized were forged by the SMPD. [Cpt.¶61.] In 2006 and 2008, Plaintiff filed multiple complaints and requests to the SMPD and the City of Santa Monica to investigate his case. [Cpt. ¶¶ 63-72] SMPD covered up the attempted murder by poisoning by altering the police report to read that Plaintiff had been poisoned by venom and plants. Plaintiff was unable to obtain assistance from Los Angeles County District Attorney's office, victim service , because SMPD covered up the facts of the attempted murder and financial fraud.[Cpt.¶¶ 73-74.]

3. Los Angeles County District Attorney:

On August 13, 2006, and several times in 2008, Plaintiff requested that Los Angeles County District Attorney – Justice System Integrity Division ("JSID") investigate the cover up by SMPD regarding the attempted murder case. The JSID took no action. Plaintiff alleges that the JSID is involved with the SMPD cover up. On Approximately November 18,

2008, the District Attorney's Office declined any criminal charges in the attempted murder case. [Cpt. ¶¶ 76-79.]

C. STATUTE OF LIMITATIONS

The FBI moves to dismiss on the ground that Plaintiff's action is time – barred the application statute of limitations. [FBI MTD 4.] Plaintiff brings claims under 42 U.S.C. § 1983 and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq* (ADA), Actions brought pursuant to 42 U.S.C. § 1983 are governed by the forum state's statute of limitations applies. See Cal. Code Civ. P. § 335.1; Jones, 393 F 3d at 927.

The ADA does not contain its own statute of limitation, so the court applies the “statute of limitation of the analogous state law.” Pickern v. Holiday Quality Foods Inc., 293 F. 3d 1133, 1137 n. 2 (9 th Cir. 2002). The Ninth Circuit has not yet decided which California statute is applicable, but most district courts have applied the state's limitation period for personal injuries actions. Id. As stated above, the general residual statute of limitations for personal injuries actions is the two-year period set forth in California Code of Civil Procedure § 335.1. With regards to the FBI alleges actions in 2006, and at the latest, in August of 2010. [See Cpt.¶¶ 45-53.] Accordingly, his claims are time-barred of not filed by September 2012. Plaintiff filed the instant Complaint on November 24, 2014, more than two years after the statute if limitations had expired. Therefore, Plaintiff's claims against the FBI are subject to dismissal as time – barred.

RECOMMENDATION

Accordingly, the Magistrate Judge recommends that the court issue an order. (1) accepting this Report and Recommendation; (2) granting Defendant FBI's Motion to Dismiss, and; and (3) dismissing all claims against FBI without leave to amend. All other defendants have prevailed in their separate Motions to Dismiss; therefore entry of Judgment is appropriate.

DATED: March 26, 2015

/s/ Stephen J. Hillman

STEPHEN J. HILLMAN

United States Magistrate Judge

**APPENDIX E- Order of the United States
District Court Central District of California,
filed February 20, 2015**

UNITED STATES DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA – WESTERN DIVISION

Case No. CV 14-9054-ODW (SH)

BRIAN ALEXIS AKA BLAGOY PETROV,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, *et al.*,

Defendants.

**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE; AS TO CITY OF SANTA
MONICA, COUNTY OF LOS ANGELES AND
JUSTICE SYSTEM INTEGRITY DIVISION**

Pursuant to 28 U.S.C. Section 636 (b)(1)(C), the court has reviewed the Complaint and other papers along with the attached Report and Recommendation of the United States Magistrate Judge, and has made a de novo determination of the Report and Recommendation.

IT IS THEREFORE ORDERED that the Court accepts the Report and Recommendation, (2) grants

Defendants' Motions to Dismiss, and ; (3) dismisses Plaintiff's claims against the City of Santa Monica, the County of Los Angeles, and the Justice System Integrity Division without leave to amend.

IT IS FURTHER ORDERED that the Clerk shall serve forthwith a copy of this order on the Plaintiff and counsel for Defendants.

DATED: February 20, 2015

/s/ Otis D. Wright

OTIS D. WRIGHT, II

UNITED STATES DISTRICT JUDGE

**APPENDIX F- REPORT AND RECOMMENDATION
OF UNITED STATES DISTRICT COURT CENTRAL
DISTRICT COURT OF CALIFORNIA, FILED
JANUARY 20, 2015**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN
DIVISION

Case No. CV 14-9054-ODW (SH)

BRIAN ALEXIS AKA BLAGOY PETROV,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This report and recommendation is submitted to the Honorable Otis D. Wright, III, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California. For reasons states below, Defendants' Motions to Dismiss should be granted, and the action should be dismissed as to moving defendants.

BACKGROUND

Pro se Plaintiff Brian Alexis aka Blagoy Petrov Alexiev, filed his original Complaint ("Cpt") on November 24, 2014. Plaintiff asserts ten claims against the Federal Bureau of Investigation ("FBI"), the City of Santa Monica, and the County of Los

Angeles arising from the alleged failure to investigate or prosecute the attempted murder by his ex-wife and daughter using radioactive poison weapons of mass destruction from 2005 through approximately 2012. [Cpt.¶¶ 20-79.] Plaintiff asserts violation of his Fourteenth Amendment rights, refusal to investigate, abuse of process, conspiracy, neglecting to prevent terrorism, intentional infliction of emotional distress, and disability discrimination. Plaintiff sues: the FBI, City of Santa Monica, and County of Los Angeles. [Cpt.¶¶ 17-19.] Plaintiff seeks compensatory and punitive damages of \$180,000,000 each against FBI, compensatory and punitive damages of \$30,000,000 each against the City of Santa Monica, and compensatory and punitive damages of \$ 90,000,000 each against the county of Los Angeles, as well as attorneys' fees and costs. [Cpt. 25.] On December 19, 2014, defendant City of Santa Monica filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) ("City MTD"). On December 20, 2014, defendant County of Las Angeles filed motion to dismiss ("County MTD") pursuant to Fed. R. Civ. P.12 (b)(6). On December 29, 2014, defendant Justice System Integrity Division ("JSID") filed a motion to dismiss ("JSID MTD") pursuant to Fed. R. Civ. P. 12(b) (6). On January 2, 2015, Plaintiff filed an Opposition ("Opp."), and a Declaration in Support of Opposition to Motion to Dismiss ("Pl.Dec."). JSID filed a Reply in January 16, 2015.

DISCUSSION

MOTION TO DISMISS STANDARD

Defendants' Motion to Dismiss, asserted under Fed. R. Civ.P. 12(b) (6) tests the legal sufficiency of a statement of claim for relief. "In deciding such a

motion, all material allegations of the complaint are accepted as true, as well as all as all reasonable inferences to be drawn from them.” Navarro v. Block, 250 F.3d 729, 732(9 th Cir.2001). “ A Rule 12(b)(6) dismissal may be based on either a ‘lack of cognizable legal theory ‘or ‘the absence of sufficient facts alleged under a cognizable theory.” Johnson v. Riverside Healthcare System, 534 F.3d 1116, 1121 (9th Cir. 2008)(quoting Balistreri v. Pacifica Police Dep’t, 901 F. 2d 696, 699(9 th Cir. 1990). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir.1984)(citing 2A Moore’s Federal Practice ¶ 12.08). Under Fed. R. Civ. P. 8 (a)(2), a complaint must contain a “ short and plain statement of the claim showing that the pleader is entitled to relief.” The Supreme Court has explained the pleading requirement of Rule 8 (a)(2) and the requirements for surviving a Rule 12 (b)(6) motion to dismiss in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct.1937, 173 L. Ed. 2d 868 (2009)(“Iqbal”), Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081(2007)(per curiam), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed. 2d 929 (2007)(“Twombly”); see also Moss v. U.S. Secret Service, 572 F. 3d 962 (9 th Cir. 2009)

The pleading standard of Rule 8 does not require “detailed factual allegation.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555); see also Erickson, 551 U.S. at 93; Moss, 572 F. 3d at 968. However, a complaint does not meet the pleading standard is it contains merely “labels and conclusions” or “a formulaic recitation of the

elements of a cause of action.” Iqbal, 556 U.S. at 678 (quoting Twombly), 550 U.S. at 555) Instead, to comply with the requirements of Rule 8 (a)(2) and survive a motion to dismiss under Rule 12 (b)(6),” a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (citing Twombly 550 U.S. at 556). This plausibility standard is not a probability Requirement, but does not ask for more than mere possibility; if complaint pleads facts “merely consistent with” a theory of liability, it falls short of “ the line between possibility and plausibility.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).

The Supreme Court has set out a two – pronged approach for reviewing possible failure to state claim. Iqbal, 556 U.S. at 678-79; see also Moss, 572 F 3d at 969. First , the reviewing court may indentify those statements in a complaint that are actually conclusions, even if presented as factual allegations. Iqbal, 556 U.S. at 678-79. Such conclusory statements (unlike proper factual allegations) are not entitled to a presumption of truth. Id. In this context, it is conclusory nature of the statements (rather than any fanciful or nonsensical nature) “ that disentitles them to the presumption of truth.” Id. at 679. Second, the reviewing court presumes the truth of any remaining “ well-pleaded factual allegations.” and determines whether those factual allegations and reasonable inferences from them plausibly support a claim for relief. Id. at 679; see also Moss, 572 F. 3d at 969.

If the court finds that a complaint should be dismissed for failure to state a claim, the court has

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

ALEGATIONS OF THE COMPLAINT

Plaintiff alleges the following facts. In August and November of 2005, Plaintiff's ex wife, Anna M. Alexis, send him emails threatening to poison him and allegedly admitting that she had killed Nickolay Kurochkin.[Cpt.¶¶ 40-44.]

Tests conducted by Bulgarian doctors at the Bulgarian Military Academy as well as by U.S. doctors, found that Plaintiff's body was intoxicated with toxic and radioactive elements, including uranium, gadolinium, thorium, antimony, cadmium, lead, arsenic, mercury, and heavy metals.

[Cpt. ¶¶ 20-31.] On February, 2008 doctors at the Bulgarian University Hospital concluded that Plaintiff's health could not be returned to normal levels, and that development of cancer was expected, along with a shortened life expectancy.[Cpt.¶ 32]. In 2011, doctors at UCLA Department of Surgery found two meningioma tumors in Plaintiff's head. [Cpt.¶33.] In 2012, Erol Kosar. M.D. implanted a pacemaker in Plaintiff's heart, and diagnosed diabetes, hypertension, and history of uranium placement. [Cpt.¶34.]

Plaintiff was granted disability by a Social Security Administrative Judge in 2010, finding that Plaintiff had been disabled since 2005. [Cpt. ¶¶ 37-38.] Plaintiff has never worked at any uranium mining or enrichment plant of nuclear facility in either the U.S. or Bulgaria. [Cpt. ¶ 39.]

FBI:

In July, 2006, Plaintiff visited the FBI field office in Los Angeles and reported attempted murder by his ex- wife, but no action was taken. [Cpt. ¶ 45] From 2008 to 2010, Plaintiff made several visits to FBI field office in Los Angeles and wrote several letters to FBI Headquarters in Washington, D.C., including providing them with documents to prove his allegations. No action was taken. [Cpt. ¶¶ 46-50.] In August, 2010, two FBI agents appeared at Plaintiff's residence in Torrance, California carrying the set of documents that he had provided to FBI. The agents informed Plaintiff that the FBI would not arrest Anna M. Alexis, and would not investigate attempted murder. [Cpt. ¶ 51] Plaintiff mailed documents to the FBI three more times in 2010, and called the FBI field office in May 2011, and still no action was taken. [Cpt. ¶¶ 52-53.]

Santa Monica Police Department:

On November 30, 2005, two officers from Santa Monica Police Department ("SMPD") denied Plaintiff access to his home and garage at 1250 Chelsea Ave. in Santa Monica. Plaintiff was attempting to retrieve a Pharmabul, Inc. (Plaintiff's biotechnology business) computer, obtain all Pharmabul, Inc. files , his shoes for radioactive testing, and his original life insurance

policy. [Cpt.¶54.] In July, 2006, Plaintiff visited the SMPD and made a police report regarding the attempted murder by Anna M. Alexis. Plaintiff provided the police with documents as well. [Cpt. ¶ 55.] On August 4, 2006, Anna M. Alexis sent a hit man after Plaintiff and his main witness, Emiliya Encheva Ksturkova, who attempted to kill them on the 405 freeway. [Cpt.¶ 57.]

In May, 2008, Plaintiff again visited the SMPD, requesting police records for the case # 06-73277, which upon viewing, he realized were forged by the SMPD. [Cpt.¶61.] In 2006 and 2008, Plaintiff filed multiple complaints and requests to the SMPD and the City of Santa Monica to investigate his case. [Cpt. ¶¶ 63-72] SMPD covered up the attempted murder by poisoning by altering the police report to read that Plaintiff had been poisoned by venom and plants. Plaintiff was unable to obtain assistance from Los Angeles County District Attorney's office, victim service , because SMPD covered up the facts of the attempted murder and financial fraud.[Cpt.¶¶ 73-74.]

Los Angeles County District Attorney:

On August 13, 2006, and several times in 2008, Plaintiff requested that Los Angeles County District Attorney – Justice System Integrity Division ("JSID") investigate the cover up by SMPD regarding the attempted murder case. The JSID took no action. Plaintiff alleges that the JSID is involved with the SMPD cover up. On Approximately November 18, 2008, the District Attorney's Office declined any

criminal charges in the attempted murder case. [Cpt. ¶¶ 76-79.]

STATUTE OF LIMITATIONS

In their motions to dismiss, the City of Santa Monica, the County of Los Angeles, and the JSID each move to dismiss on the ground that Plaintiff's action is time –barred under the application statute of limitations. [City MTD 4-5; County MTD 8-9; JSID MTD 11-12.]

Plaintiff brings claims under 42 U.S.C. § 1983 and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq* (ADA). Actions brought pursuant to 42 U.S.C. § 1983 are governed by the forum state's statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 265, 105, S. Ct. 1938, 85 L. Ed. 2d 254 (1985); Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004) In California, a statute of limitations applies. See Cal. Code Civ. P. § 335.1; Jones, 393 F 3d at 927.

The ADA does not contain its own statute of limitation, so the court applies the “statute of limitation of the analogous state law.” Pickern v. Holiday Quality Foods Inc., 293 F. 3d 1133, 1137 n. 2 (9th Cir. 2002). The Ninth Circuit has not yet decided which California statute is applicable, but most district courts have applied the state's limitation period for personal injuries actions. Id. As stated above, the general residual statute of limitations for personal injuries actions is the two-year period set forth in California Code of Civil Procedure § 335.1.

With regards to the City of Santa Monica, Plaintiff alleges actions in 2005, and at the latest, in August of 2008. [See Cpt.¶¶ 54, 72-73.] Accordingly, his claims are time- barred if not filed by August of 2010. Plaintiff filed the instant Complaint on November 24, 2014, more than four years after the statute of limitations had expired. Therefore, Plaintiff's claims against the City of Santa Monica are subject to dismissal as time – barred. As to the Los Angeles County District Attorney's Office and JSID, Plaintiff alleges actions in 2006, and at latest , in November, 2008 when the County declined to prosecute the attempted murder case. Because Plaintiff would have had to file his federal claims by November, 2010 and he did not file until 2014 , his claims against the County and JSID are also time –barred. Plaintiff's claims against the City of Santa Monica , the County of Los Angeles and JSID are subject to dismissal in their entirety as time – barred.

RECOMMENDATION

Accordingly, the Magistrate Judge recommends that the court issue an order. (1) accepting this Report and Recommendation; (2) granting Defendants Motions to Dismiss, and; and (3) dismissing all claims against the City of Santa Monica, the County of Los Angeles, and the JSID without leave to amend.

DATED: January 20, 2015

/s/ Stephen J. Hillman
STEPHEN J. HILLMAN
United States Magistrate Judge

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