

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

**Steshenko v. Board of Trustees of Foothill-De Anza Community
College District**

Steshenko · No. 24-cv-06126-SVK · Decided September 5, 2025

OPINION

Steshenko v. Board of Trustees of Foothill-De Anza Community College District

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 GREGORY NICHOLAS STESHENKO, Case No. 24-cv-06126-SVK 8 Plaintiff,

ORDER ON DEFENDANTS' MOTION

9 v. TO DISMISS OR STRIKE FIRST

AMENDED COMPLAINT

10 BOARD OF TRUSTEES OF FOOTHILL-

DE ANZA COMMUNITY COLLEGE Re: Dkt. No. 36

11 DISTRICT, et al., 12 Defendants. 13 In the fall quarter of 2016, Plaintiff Gregory Steshenko, proceeding here pro se, enrolled in 14 the Medical Laboratory Technician ("MLT") program offered by the Foothill-De Anza 15 Community College District ("District"). Dkt. 35 (First Amended Complaint-"FAC") ¶ 47. 16 This case against the District, its Board of Trustees ("Board"), the individual trustees, and one 17 employee of the District is the latest in a series of cases filed by Plaintiff arising from his 18 unsuccessful attempts to complete the MLT program. All Parties have consented to the 19 jurisdiction of a magistrate judge. Dkt. 11, 13. On April 8, 2025, the Court granted-in-part and denied-in-part Defendants' motion to 20 dismiss the original complaint. Dkt. 24 (the "4/8/25 Order"). Although the Court dismissed some 21 of Plaintiff's claims against certain Defendants without leave to amend, the Court granted Plaintiff 22 leave to amend certain portions of the complaint to attempt to address the deficiencies identified in 23 the 4/8/25 Order. Id. Plaintiff thereafter filed the FAC. Dkt. 35. 24 Now before the Court is Defendants' motion to dismiss and strike the FAC. Dkt. 36. 25 This matter is suitable for determination without a hearing. Civ. L.R. 7-1(b). For the reasons that 26 follow, Defendants' motion to dismiss is GRANTED and Defendants' motion to strike is 27 DENIED AS MOOT.

I. BACKGROUND

1 The factual background of this case is discussed at length in the 4/8/25 Order. In that 2 order, the Court dismissed some of Plaintiff's claims against certain defendants without leave to 3 amend,

but the Court granted Plaintiff leave to amend certain portions of the complaint in an effort to address the deficiencies identified by the Court. The 4/8/25 Order contained the following chart summarizing the Court's rulings:

1. Interference with Dismissed without Dismissed without Official-capacity

9 plaintiff's civil leave to amend LTA – sovereign claims for damages rights to petition (“LTA”) – sovereign immunity and retrospective 10 government/seek immunity relief: dismissed redress of without LTA – 11 grievances sovereign immunity 12 afforded by Privileges & Official-capacity 13 Immunities claims for prospective Clause; 1st relief: dismissed 14 Amendment; 14th with LTA Amendment Equal - Failure to state a 15 Protection; and claim 16 CA Const. Art. 1 § 3(a) Individual-capacity 17 claims: dismissed with LTA 18 - Failure to state a claim 19 20 2. Retaliation for Dismissed with LTA Dismissed with LTA Dismissed without filing an age - Failure to state - Failure to state LTA – no individual 21 discrimination a claim a claim liability under ADEA, complaint (under ADA, or FEHA; no 22 Age private right of action Discrimination in for violation of CCR 23 Employment Act 24 (ADEA), Age Discrim. Act of 25 1975; FEHA; 2

CCR 11021)

26 3. Violation of Right Dismissed without Dismissed without Official-capacity to Due Process LTA – sovereign LTA – sovereign claims for damages 27 (14th Am. and Cal. immunity immunity and retrospective without LTA – 1 sovereign immunity 2 Official-capacity 3 claims for prospective relief: dismissed 4 with LTA - Failure to state a 5 claim 6 Individual-capacity 7 claims: dismissed with LTA 8 - Failure to state a claim 9 10 4. Breach of Dismissed cause of Dismissed cause of obligations arising action and request action and request action and request 11 from operation of for punitive for punitive for punitive law (Cal. Civ. damages with LTA damages with LTA damages with LTA 12 Code § 1428) - Failure to state - Failure to state - Failure to state a claim a claim a claim 13 14 5. Breach of contract Dismissed cause of Dismissed cause of Dismissed cause of action and request action and request action and request 15 for punitive for punitive for punitive damages with LTA damages with LTA damages with LTA 16 4/8/25 Order at 26-27. 17 Following the 4/8/25 Order, Plaintiff filed the FAC. Dkt. 35. The FAC contains causes of 18 action for: (1) interference with Plaintiff's civil rights to petition the government and seek redress 19 of grievances in court; (2) retaliation for filing an age discrimination complaint; (3) violation of 20 right to due process; (4) breach of obligations arising from operation of law; and (5) breach of 21 contract. Id. 22 Defendants now move to dismiss or strike the FAC, and Plaintiff opposes Defendants' 23 motion. Dkt. 36 (Motion), 38-39 (Opp.), 40-41 (Reply). 24

II. LEGAL STANDARD FOR MOTION TO DISMISS

25 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint 26 if it fails to state a claim upon which relief can be granted. In ruling on a motion to dismiss, courts

27 1 matters of which the court may take judicial notice.” *Metzler Inv. GmbH v. Corinthian Colls.,*
2 Inc., 540 F.3d 1049, 1061 (9th Cir. 2008). In deciding whether the plaintiff has stated a claim,
the 3 court must presume the plaintiff’s allegations are true and draw all reasonable inferences in
the 4 plaintiff’s favor. *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
is 5 not required to accept as true “allegations that are merely conclusory, unwarranted deductions
of 6 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
7 2008). 8 To survive a motion to dismiss, the plaintiff must allege “enough facts to state a claim
to 9 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 10
This “facial plausibility” standard requires the plaintiff to allege facts that add up to “more than a
11 sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).
12 If a motion to dismiss is granted, the court must grant leave to amend unless it is clear that 13
the complaint’s deficiencies cannot be cured by amendment. *Lucas v. Dep’t. of Corr.*, 66 F.3d 14
245, 248 (9th Cir. 1995).

15 III. ANALYSIS

16 Defendants’ present motion to dismiss challenges all five causes of action in the FAC.

17 Dkt. 36. The Court will address the first three causes of action, which arise under federal law,
18 before turning to the fourth and fifth causes of action, which are state law claims. 19 A. Federal
Claims: First, Second, and Third Causes of Action 20 1. First Cause of Action: Interference with
Civil Rights to Petition the Government and Seek Redress of Grievances 21 Plaintiff’s first cause
of action claims that Defendants violated 42 U.S.C. § 1983 by 22 retaliating against him for filing
state court lawsuits. See FAC ¶¶ 85-89. In the 4/8/25 Order, 23 the Court held that the District and
Board are entitled to sovereign immunity on the first cause of 24 action, and that sovereign
immunity also bars the first cause of action as to the individual 25 defendants to the extent they
were sued for claims for damages or retrospective relief in their 26 official capacities. 4/8/25
Order at 7-11. Accordingly, the Court dismissed the first cause of 27 action and gave Plaintiff
leave to amend that cause of action only to the extent he was suing the 1 individual defendants in
their individual capacities or for prospective injunctive relief in their 2 official capacities. *Id.* at
18. 3 To state a claim for First Amendment retaliation, a plaintiff must plausibly allege that 4 (1)
he was engaged in a constitutionally protected activity, (2) defendants’ actions would chill a 5
person of ordinary firmness from continuing to engage in the protected activity, and (3) the 6
protected activity was a substantial or motivating factor in the defendant’s conduct. *Capp v. Cnty.*
7 of San Diego, 940 F.3d 1046, 1053 (9th Cir. 2019); see also 4/8/25 Order at 15. In the 4/8/25 8
Order, the Court held that although Plaintiff had adequately alleged that he engaged in the 9
protected activity of initiating state court litigation against Defendants, the original complaint 10
failed to adequately allege an adverse action by Defendants or the required causal nexus between
11 the adverse action by Defendants and Plaintiff’s protected conduct. 4/8/25 Order at 14-18. The
12 Court gave Plaintiff leave to amend the first cause of action to attempt to address these 13
deficiencies as to the individual defendants (again, only to the extent he sues them in their 14

individual capacities or for prospective injunctive relief in their official capacities). Id. at 18. 15 In moving to dismiss the first cause of action in the FAC, Defendants concede that Plaintiff 16 was engaged in constitutionally-protected activity when he sued them in state court, but 17 Defendants argue that the FAC still does not contain the necessary factual allegations regarding 18 adverse action or a causal nexus. Dkt. 36 at 8-11. In his opposition, Plaintiff confirms that the 19 first cause of action in the FAC seeks to claim that “defendant denied him enrollment into the 20 required for graduation courses, to which he is entitled, as a retaliation for his prior lawsuit 21 alleging breach of defendant’s obligations and age discrimination.” Dkt. 38 at 14. Plaintiff argues 22 that the FAC is sufficient, pointing to allegations that he says establish that (1) “[s]ince the 23 completion of the prerequisites in 2017, Plaintiff has been entitled to enroll into the Practicum 24 courses,” (2) the trustees have authority over the District that is delegated to the District’s 25 employees, (3) a student cannot enroll into the Practicum courses without an assignment by the 26 MLT Program Director to a “clinical affiliate site,” and (4) it was necessary to formally request 27 from the trustees and the newly appointed MLT Program Director permission to enroll, which 1 FAC cited therein. Plaintiff argues that “the totality of circumstances allows to make [sic] a 2 reasonable inference that defendants retaliated to plaintiff for his protected activity, which is filing 3 a lawsuit against the District.” Dkt. 38 at 17. 4 The FAC is much longer than original complaint. However, much of the new material in 5 the FAC relates to Plaintiff’s disagreement with the 4/8/25 Order. See, e.g., FAC ¶ 1 (“Preamble” 6 asserting that the 4/8/25 Order contained “clearly erroneous substantive rulings”); id. ¶¶ 59, 66, 7 69, 73, 75, 81, 107, 114, 117, 121, 123, 129, 139, 165, 172, 175, 179, 181, 187, 190, 192, 215, 8 222, 225, 229, 231, 237, 264, 271, 274, 278, 281, 287, 301 (taking issue with various portions of 9 4/8/25 Order).¹ In the FAC, Plaintiff explains that “[t]o preserve the record on appeal, plaintiff 10 will restate in FAC the legal theories already rejected by” the Court. Id. ¶ 1. Accordingly, 11 Plaintiff expressly demarcates much of the new material in the FAC as “For the appellate 12 purposes only.” Id. at pp. 6, 27, 43, 59, 72, 88 (emphasis in original). 13 Aside from the new material directed at objecting to the 4/8/25 order and attempting to 14 preserve issues for appeal, the FAC contains few if any new factual allegations and fails to correct 15 the deficiencies in the first cause of action that the Court identified in the 4/8/25 Order: the 16 absence of sufficient allegations of an adverse action and a causal nexus between the adverse 17 action and Plaintiff’s protected activities. See 4/8/25 Order at 15-18. As to the adverse action 18 element, the premise of the FAC is that (1) Plaintiff had a right to enroll in the practicum classes 19 that were a requirement of the MLT program; (2) the Catalog and other information provided to 20 Plaintiff indicated that the permission of the MLT Program Director was required to enroll in the 21 practicum classes; (3) he emailed the MLT Program Director to request enrollment; and (4) she 22 1 The FAC repeatedly mischaracterizes the 4/8/25 Order as having made determinative findings on 23 various issues. As just one example, paragraph 59 of the FAC states that the Court claimed in the order “that (1) plaintiff cannot enroll into the courses by sending a demand letter to defendant 24 (at 16:8-16); (2) defendants have no duty to

respond to plaintiff's letter or to allow him to enroll (at 16:17-28)." The 4/8/25 made no such claims or findings. The cited portions of the 4/8/25 order instead concluded that "there are no facts in the complaint suggesting that a student may enroll in De Anza MLT courses simply by sending an email such as the one Plaintiff sent" and 26 that "[t]he complaint provides no factual basis to support the inference upon which Plaintiff relies: that the recipients of Plaintiff's March 20, 2024 email had a duty to respond to the email." 27 4/8/25 order at 16:9-11, 16:24-25 (emphasis added). In other words, the Court found only that 1 did not respond, thereby precluding him from enrolling. See generally FAC ¶¶ 65-83. On the 2 second issue (regarding whose permission was necessary to enroll), the Catalog excerpts attached 3 to the Complaint, along with Plaintiff's allegations about what he was told about how to enroll, are 4 sufficient for pleading purposes to make plausible his allegation that the MLT Program Director's 5 permission to enroll was required. See FAC ¶¶ 59, 82; see also Ex. 1 to FAC at PDF p. 141 6 (information re HTEC 180 – HTEC 184). Nevertheless, there are problems with the other aspects 7 of Plaintiff's attempt to plead adverse action. First, Plaintiff has not addressed the deficiencies 8 identified in the 4/8/25 Order: there are no facts in the FAC suggesting that emailing the MLT 9 Program Director and/or trustees was an appropriate method to seek enrollment in the practicum 10 courses. Plaintiff does not offer any factual support for the notion that a student may register for a 11 community college practicum course simply by sending an email to the MLT Program Director 12 and/or the college trustees. Second, there are no facts in the FAC that would transform 13 Defendants' inaction (failure to respond to an email) into an adverse action (refusal to enroll 14 Plaintiff). In his opposition to the motion to dismiss, Plaintiff admits that "[a] mere failure to 15 respond is not by itself an adverse action." Dkt. 38 at 15 n.4. However, he argues that "when it 16 results in a denial of plaintiff's legal entitlement, it becomes a materially adverse act." Id. 17 (citations omitted). This brings us to the third problem with Plaintiff's attempt to plead adverse 18 action: Plaintiff's position that he had a right to enroll in the practicum classes, which is based on 19 his interpretation of various California regulations (see FAC ¶¶ 65-80), is a legal conclusion that 20 the Court is not required to accept as true. See *Lacano Investments, LLC v. Balash*, 765 F.3d 21 1068, 1071 (9th Cir. 2014) ("While we do accept all of the factual allegations in the complaint as 22 true ... we do not accept legal conclusions in the complaint as true, even if case in the form of 23 factual allegations" (emphasis in original; internal quotation marks and citation omitted)). 24 Under the circumstances of this case, the failure of the recipients to respond to Plaintiff's email 25 does not plausibly constitute an "adverse action" for purposes of stating a claim for First 26 Amendment retaliation. 27 Even if Plaintiff had adequately pleaded facts showing an adverse action by Defendants, 1 substantial or motivating factor in the Defendants' conduct. Plaintiff argues that an inference can 2 satisfy this element. Dkt. 38 at 17. The "substantial or motivating factor" element may be proven 3 by indirect evidence such as timing evidence. See *Watison v. Carter*, 668 F.3d 1108, 1114 (9th 4 Cir. 2012) ("Because direct evidence of retaliatory intent rarely can be pleaded in a complaint,

5 allegation of a chronology of events from which retaliation can be inferred is sufficient to survive 6 dismissal”). As discussed in the 4/8/25 Order, however, the 7.5-month lapse of time between the 7 appeals court ruling in one of the state court cases and Plaintiff’s email requesting enrollment is 8 longer than time gaps that have been found to be too long to give rise to a plausible inference of 9 causation. See 4/8/25 Order at 17. 10 The FAC attempts to bolster the facts upon which an inference of causation could rest by 11 claiming not only that there is a proximity in time between Plaintiffs’ state court lawsuits and 12 denial of his enrollment, but also that Defendants’ denial of Plaintiff’s enrollment was “clearly 13 unlawful” and that Defendants treated individuals who did not engage in Plaintiff’s protected 14 activities more favorably. FAC ¶ 87. These assertions are conclusions, unsupported by adequate 15 factual allegations in the FAC. As discussed earlier in this section, Plaintiff’s contention that he 16 had a right to enroll is a legal conclusion. On the issue of disparate treatment, Plaintiff does not 17 offer any facts of “similarly situated” students being treated differently by Defendants. 18 Notably, the facts that are alleged by Plaintiff establish that his inability to enroll in the 19 practicum classes predated his state court litigation and in fact prompted that litigation. See, e.g., 20 FAC ¶¶ 47-54 There simply are no factual allegations to support the theory that Plaintiff’s 21 lawsuits were a substantial or motivating factor in Plaintiff’s continued and more recent inability 22 to enroll in the practicum courses. An equally if not more plausible inference is that Defendants 23 concluded Plaintiff was not entitled to enroll—a conclusion that finds support in Plaintiff’s 24 unsuccessful state court litigation against Defendants. See *Capp*, 940 F.3d at 1055 (noting that 25 although allegations of a chronology of events from which retaliation can be inferred may be 26 sufficient, Supreme Court has “admoni[shed] that an allegation is not plausible where there is an 27 ‘obvious alternative explanation’ for alleged misconduct” (quoting *Iqbal*, 556 U.S. at 682)). 1 absurd results in this case. Even though Plaintiff lost the state court litigation in which he 2 challenged his inability to enroll in the practicum classes, he would be permitted to pursue a claim 3 that Defendants retaliated against him for bringing the unsuccessful state court case by continuing 4 to refuse to enroll him in the classes, thereby seeking to force Defendants to enroll him in the 5 classes. Simply put, Plaintiff cannot obtain through a First Amendment retaliation claim here 6 what he could not obtain directly through the First Amendment activity (initiating unsuccessful 7 state court litigation) itself. 8 For these reasons, Plaintiff has failed to plead all necessary elements of a claim that 9 Defendants retaliated against him for exercising his First Amendment rights. Accordingly, 10 Defendants’ motion to dismiss the first cause of action is GRANTED. 11

2. Second Cause of Action: Retaliation for Filing an Age Discrimination Complaint 12 Plaintiff’s second cause of action in the original complaint alleged retaliation for his filing 13 of an age discrimination claim in violation of the Age Discrimination in Employment Act 14 (29 U.S.C. § 621 et seq. - the “ADEA”); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 15 et seq. – the “ADA”); Cal. Gov’t C. § 12940(h) (“FEHA”); and 2 Cal. C. Regs. § 11021. See 16 Dkt. 1 ¶¶ 66-69. In the 4/8/25 Order, the Court dismissed the second cause of action without leave 17 to amend as to the

individual defendants because individuals cannot be held liable for retaliation 18 under the ADEA, the ADA, or FEHA, and because Plaintiff did not establish the existence of a 19 private right of action under the cited FEHA regulation. 4/8/25 Order at 18-19. The Court also 20 dismissed the second cause of action as to the District and Board because it failed to state claim; 21 specifically, the Court held that Plaintiff “has not pleaded facts to support a plausible case that 22 Defendants took adverse action against him as a result of his complaints about age 23 discrimination.” Id. at 19-20. The Court gave Plaintiff leave to amend the second cause of action 24 only as to the District and Board if he was able to address this deficiency. Therefore, under the 25 4/8/25 Order, Plaintiff’s second cause of action for retaliation was dismissed without leave to 26 amend as to the individual defendants, but Plaintiff had an opportunity to try to amend that cause 27 of action as to the District and Board. 1 The FAC states in a paragraph labeled “[f]or the appellate purposes only” that the second 2 cause of action is alleged against all defendants. FAC ¶ 144. However, the following three 3 paragraphs address only the liability of the individual defendants. Id. ¶¶ 145-147. Plaintiff asserts 4 that “[a]s the individual defendants are not sued here under the anti-retaliatory provisions of 5 ADEA, the Age Discrimination Act of 1975, FEHA and 2 CCR § 11074, this claim under 6 42 U.S.C. § 1983 does not contradict [the Court’s] dismissal with prejudice of the claims against 7 individual defendants.” Id. ¶ 146. Given this statement and the fact that Plaintiff begins the 8 second cause of action with almost verbatim repetition of Plaintiff’s allegations in the first cause 9 of action as to why he claims Defendants were obligated to enroll him in the practicum courses 10 (compare FAC ¶¶ 47-83 and id. ¶¶ 96-131), it appears that Plaintiff no longer seeks to assert a 11 claim for retaliation in violation of ADEA, ADA, FEHA, or the cited FEHA regulation. Plaintiff 12 explains in his opposition to the motion to dismiss that “[t]he chief difference between the first 13 and the second causes of action [in the FAC] is the nature of plaintiff’s actions for which he was 14 retaliated.” Dkt. 38 at 17. This is consistent with the fact that the first cause of action in the FAC 15 identifies the protected activity as filing a lawsuit (FAC ¶ 85) and the second cause of action 16 identifies the protected activity as complaining about age discrimination (id. ¶ 133). 17 Even if the Court were otherwise inclined to grant Plaintiff leave to further amend the 18 second cause of action to clarify which Defendants are sued and on what basis, the second cause 19 of action nevertheless remains defective for the additional reasons identified in the 4/8/25 Order: 20 it does not contain facts to support a plausible case that Defendants took adverse action against 21 him as a result of his complaints about age discrimination. See 4/8/25 Order at 19-20. Plaintiff 22 alleges that causation may be inferred from: (1) Defendants’ “clearly unlawful” denial of 23 Plaintiff’s enrollment, which they were “obligated to permit ... as a matter of law”; 24 (2) Defendants’ denial of Plaintiff’s enrollment at a time when one of Plaintiff’s state court 25 lawsuits was recently terminated and the other was still pending; and (3) denial of Plaintiff’s 26 entitlement to enroll while allowing the enrollment “to other students who did not complain about 27 defendants.” FAC ¶¶ 140-143. These allegations do not plausibly establish or create an inference 1 inability to enroll in the practicum courses. For the

reasons explained in connection with 2 Plaintiff's first cause of action in section III.A.1 above, the FAC does not contain facts that 3 plausibly establish his right to enroll in the practicum courses or that Defendants took adverse 4 action against him. Moreover, Plaintiff continues to rely on a "proximity of time" argument 5 despite the Court's explanation in the 4/8/25 Order that "the mere fact that the [alleged adverse 6 actions] took place after [plaintiff's protected activity] is not sufficient by itself to give rise to an 7 inference of a causal link." 4/8/25 Order at 17. In addition, Plaintiff's allegation of disparate 8 treatment is conclusory and lacks any factual support. See FAC ¶ 143. 9 For these reasons, the second cause of action in the FAC fails to state a claim, and 10 Defendants' motion to dismiss the second cause of action is GRANTED. 11 3. Third Cause of Action: Violation of Right to Due Process under the Fourteenth Amendment and California Constitution 12 In the 4/8/25 Order, the Court identified the elements of a procedural due process claim 13 and found that the original complaint did not "allege sufficient facts to state a plausible case that 14 Defendants' alleged non-response to Plaintiff's email resulted in deprivation of Plaintiff's right to 15 a public education without due process." 4/8/25 Order at 21-22. The Court dismissed Plaintiff's 16 third cause of action for violation of his due process rights under the Fourteenth Amendment and 17 the California Constitution without leave to amend as to the District and Board and also as to the 18 individual defendants to the extent they are sued for damages and other retrospective in their 19 official capacity. *Id.* at 7-11, 20, 22. The Court gave Plaintiff leave to amend the third cause of 20 action as to the individual defendants to the extent they are sued in their individual capacity and/or 21 for prospective injunctive relief in their official capacity. *Id.* at 22. 22 Plaintiff's due process claim in the FAC fails to address the deficiencies identified in the 23 4/8/25 Order. As discussed in section III.A.1 above with respect to Plaintiff's first cause of action, 24 the allegations of the FAC are not sufficient to state a plausible case that Plaintiff was legally 25 entitled to enroll in the practicum classes or that Defendants were required to enroll him in 26 response to his email. 27 Accordingly, the third cause of action fails to state a claim for violation of Plaintiff's due 1 process rights, and Defendants' motion to dismiss the third cause of action is GRANTED. 2 4. Conclusion on Federal Claims: First, Second, and Third Causes of Action 3 For the reasons discussed above, the Court grants Defendants' motion to dismiss the First, 4 Second, and Third causes of action in the FAC. "[A] district court need not grant leave to amend 5 where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces 6 an undue delay in litigation; or (4) is futile." *Sonner*, 971 F.3d at 845 (quoting 7 *AmerisourceBergen Corp. v. Dialysis W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)). Here, after 8 carefully considering the relevant factors, the Court dismisses the first, second, and third causes of 9 action in the FAC WITHOUT LEAVE TO AMEND. Plaintiff has not been able to plead viable 10 theories, even with the benefit of the guidance provided by Defendants' motions to dismiss and 11 the Court's detailed 4/8/25 Order. Instead, Plaintiff used the previous opportunity to amend his 12 complaint in large part to simply rehash certain arguments already rejected by the Court and to 13 express his disagreement with the Court's 4/8/25 Order. In

opposition to the current motion to dismiss, Plaintiff has not articulated how the defects in the FAC can be cured by further amendment. Having dismissed the first, second, and third causes of action without leave to amend for failure to state a claim, the Court need not reach Defendants' additional arguments that those causes of action fail to state facts supporting a claim for punitive damages and that the claims are barred by the statute of limitations. The Court also need not reach Defendants' arguments as to why the Court should strike certain portions of the FAC. B. State Claims: Fourth and Fifth Causes of Action Having dismissed each of Plaintiff's federal claims without leave to amend, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining claims (i.e., the fourth cause of action for breach of obligations arising under operation of law pursuant to various California statutes and regulations and the fifth cause of action for breach of contract), which arise under state law. See U.S.C. § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim [brought under supplemental jurisdiction] if ... the district court has dismissed all claims over which it has original jurisdiction").

IV. CONCLUSION

Accordingly, the motion to dismiss the FAC is GRANTED. The federal claims (First, Second, and Third Causes of Action) are DISMISSED WITHOUT LEAVE TO AMEND, and the Court DECLINES to exercise supplemental jurisdiction over the state law claims (Fourth and Fifth Causes of Action). Defendants' motion to strike portions of the FAC is DENIED AS MOOT. SO ORDERED. Dated: September 5, 2025 Sess yal

SUSAN VAN KEULEN

United States Magistrate Judge