No. 13-57138/No. 13-57181

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In The

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

****

JEHAN ZEB MIR, M.D.,

Plaintiff/Appellant/Cross-Appellee,

v.

SAN ANTONIO COMMUNITY HOSPITAL, et al.,

Defendants/Appellees/Cross-Appellant.

****

Appeal from the United States District Court
For the Central District of California
Hon. George H. Wu, District Judge, Case No. 12-01791

SUPPLEMENTAL EXCERPTS OF RECORD
Volume 1 of 2

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date December 4, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

PROCEEDINGS (IN CHAMBERS): RULING ON PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DISMISS [114]

Plaintiff *in pro per* Jehan Zeb Mir, M.D. ("Plaintiff") initially moved for reconsideration of this Court's September 9, 2013 Order dismissing his case without leave to amend ("the September Order"), along with "reconsideration" of whether Defendant's attorneys should be sanctioned under Fed. R. Civ. P. 11 in connection with their filing of certain Requests for Judicial Notice. *See* Docket Nos. 115, 113. Then, three days after having filed his motion, Plaintiff filed an "Addendum" in which he asked that the Court also reconsider its June 3, 2013 Order denying Plaintiff leave to add certain defendants to this case ("the June Order"). *See* Docket Nos. 117, 91. San Antonio Community Hospital ("Defendant") has filed an opposition. *See* Docket No. 118. The Court will deny Plaintiff's motion in its entirety. Because the Court finds that no oral argument is necessary to resolve the present motion, the hearing on this matter is taken off calendar and the motion is decided on the papers. *See* L.R. 7-15.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date December 4, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Whether viewed as a pre-judgment motion for reconsideration[1] or a motion pursuant to Fed. R. Civ. P. 59(e) or 60(b), Plaintiff has not established a basis for this Court's reconsideration of the September Order. He has not identified newly discovered evidence, an intervening change in controlling law, or demonstrated that the Court committed clear error in any respect. *See* Schwarzer, Tashima, et al., California Practice Guide: Federal Civil Procedure Before Trial ("Schwarzer & Tashima") (2012) § 12:158, at 12-60.2 – 60.3. Nor has he demonstrated that the Court's decision(s) were "manifestly unjust." *See id.* § 12:160, at 12-61. He similarly falls short of any of the avenues for such relief under this Court's Local Rules. *See* C.D. Cal. L.R. 7-18.[2] Instead, he simply reargues points he has already made. *See* Schwarzer & Tashima § 12:158.2, at 12-60.3.

The Court has already explained, in detail, its views concerning application of the relevant statutes of limitation to Plaintiff's case. Specifically, there is a distinction between the collateral estoppel effects of judicial exhaustion, on the one hand, and the accrual of claims, on the other. The Court agrees that statutes of limitation are tolled during the *pendency* of an attempted pursuit of judicial exhaustion, but not during the *interim period* between the close of administrative proceedings and the *initiation* of judicial exhaustion efforts. *See also* Docket No. 77, pg. 3 of 6 & n.1.

[1] From the docket, there does not appear to have been a Judgment entered in this case, though the September Order did grant Defendant's motion to dismiss without leave to amend. *See* Schwarzer, Tashima, et al., California Practice Guide: Federal Civil Procedure Before Trial (2012) § 9:314.1, at 9-113 ("An order granting a motion to dismiss 'with prejudice' is a 'final' judgment for purposes of appellate review."); *see also id.* § 9:283, at 9-103 ("If a Rule 12(b)(6) motion to dismiss for failure to state a claim is granted, the court may either grant leave to amend…or order dismissal of the action.").

[2] Local Rule 7-18 provides as follows:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

C.D. Cal. L.R. 7-18.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date December 4, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Indeed, though this discussion is unnecessary to the instant result because of Plaintiff's failure to present an adequate basis for reconsideration, *Myers v. County of Orange*, 6 Cal.App.3d 626 (1970), should make this plain. There, the court ruled that a one-year claim period was *tolled* "for the time that plaintiff was endeavoring to obtain a hearing before the appeal board, including the time consumed by the application for mandate." *Id.* at 634. The California Court of Appeal reached this conclusion in response to the plaintiff's argument in that case that her claims had "not *accrue[d]* until after the judgment denying her petition for mandate became final." *Id.* at 633 (emphasis added). *Tolling* is not necessary unless a claim already *has* accrued and the limitations period is otherwise ticking. *Cf. Morales v. City of Los Angeles*, 214 F.3d 1151, 1155 (9th Cir. 2000).

Outside of the statute of limitations issue, the Court's dismissal was largely predicated[3] upon Plaintiff's failure to satisfy the requirements of *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), in connection with his pleading of the necessary elements of his claims. Nothing Plaintiff now avers in the instant motion – which, again, simply repeats his earlier arguments – suggests any reason to deviate from that earlier conclusion. Because he was unable to plausibly support his assertions with factual allegations, the possibility that he could do so in connection with a "state action" requirement was immaterial to the Court's ultimate dismissal.

As to the June Order,[4] while Plaintiff accurately observes that the Court did not set forth the reasons for its ruling at that time, the Court ruled as it did because Plaintiff had not demonstrated a sufficient basis for adding – as defendants in this case – the lawyers for Defendant in this case. Nothing Plaintiff has alleged or even asserted, factually, in any of his briefs, indicates that he had any hope of surviving a

[3] To the extent the Court does not specifically mention any of the other reasons why it dismissed Plaintiff's action which Plaintiff attempts to counter by way of the instant motion, Plaintiff has simply repeated his already-rejected arguments. There is no need to address them again here. To the extent Plaintiff raises *new* arguments, a motion for reconsideration is not the place for new arguments that could have been raised in connection with the initial consideration of the underlying motions/orders.

[4] Defendant argues that the Court should ignore Plaintiff's "Addendum" to his motion in which he raises the June Order. Defendant is correct that Plaintiff improperly raised the June Order as part of this motion. Because he would fail in his attempt to have the Court reconsider it in any event, however, the Court will resolve the issue.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date December 4, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Twombly/ Iqbal challenge as to the proposed new defendants. The futility of his requested amendment was only confirmed by his continued failure thereafter to allege anything, factually, suggesting any wrongdoing by Defendant in connection with Plaintiff's writ proceedings. Moreover, as with the September Order, Plaintiff has not identified a proper basis for this Court to reconsider its June Order in any event.

Finally, with respect to Plaintiff's request that the Court "reconsider" granting Rule 11 sanctions against Defendant's attorneys, Plaintiff never moved for such relief to begin with (though Defendant did, and was denied). As such, there can be no reconsideration in that regard. Even if there could, the Court would not grant Plaintiff's motion in that respect.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	EDCV 12-1791-GW(SPx)	Date	September 9, 2013
Title	*Jehan Zeb Mir v. San Antonio Community Hospital, et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Wil Wilcox	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Jehan Zeb Mir, pro se	Jessica Thomas

PROCEEDINGS: **DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT [96];**

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S AMENDED MOTION FOR SANCTIONS AND/OR FEES PURSUANT TO F.R.C.P. RULE 11, 28 U.S.C. § 1927, AND THE COURT'S INHERENT POWERS [102]

Court hears oral argument. The Tentative circulated and attached hereto, is adopted as the Court's final ruling. Defendants' motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND. Defendants' motion for sanctions and/or fees is DENIED.

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Mir v. San Antonio Cmty. Hosp., et al., Case No. ED-CV-12-1791 GW (SPx)
Tentative Rulings on: (1) Motion to Dismiss Plaintiff's Second Amended Complaint, and (2) Motion for Sanctions and/or Fees Pursuant to F.R.C.P. Rule 11, 28 U.S.C. § 1927, and the Court's Inherent Powers

As the result of a ruling issued on May 6, 2013, *see* Docket No. 77, at p. 4-5, which itself built upon an earlier April 15, 2013, tentative ruling, *see* Docket No. 69, at p. 2-16 of 25,[1] this Court dismissed without leave to amend all claims raised by plaintiff Jehan Zeb Mir, M.D. ("Plaintiff") against defendant San Antonio Community Hospital ("Defendant") other than Plaintiff's claims for Racketeer Influenced and Corrupt Organizations Act ("RICO") violations, 42 U.S.C. §§ 1985-1986 violations, and intentional infliction of emotional distress, which the Court dismissed with leave to amend. On June 13, 2013, Plaintiff filed a Second Amended Complaint ("SAC") in which he realleged those claims. *See* Docket No. 93. Defendant has now moved to dismiss and, separately, for sanctions against Plaintiff pursuant to Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, and the Court's inherent power.

It is first worth summarizing the Court's previous dismiss-with-leave-to-amend ruling as to the claims remaining in the case.

RICO

As to those aspects of Plaintiff's RICO claim which were not time-barred, the Court previously dismissed the claim because Plaintiff had not plausibly pled it with the support of factual allegations and because any alleged obstruction of justice in connection with state court judges was not a predicate act under RICO.

42 U.S.C. §§ 1985-1986 Conspiracy

The Court previously dismissed this claim because, even assuming Plaintiff could bolster his writ-based conspiracy allegations, Plaintiff had insufficiently pled any connection between Defendant's actions taken against him and his race.

Intentional Infliction of Emotional Distress

The Court previously ruled that Plaintiff's intentional infliction of emotional distress claim would have to depend on Plaintiff's theory that Defendant had corruptly influenced one or more of the state court judges who considered some aspect of Plaintiff's writ proceedings.

[1] The Court's discussion of the Rule 12(b)(6) standard set forth in Docket No. 69 is incorporated herein.

Otherwise, the claim would be time-barred, would be subject to collateral estoppel, and/or would not rise to the level of outrageous conduct that is necessary for such a claim.

Assessment of the SAC

With these previous rulings in mind, the Court has reviewed the 90-page, 410-paragraph SAC. Despite the amended pleading's length, Plaintiff has not cured the *Twombly/Iqbal*[2] problem at the heart of his case and that was one of the already-noted deficiencies relating to each of the three remaining claims. *See Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (setting forth elements of civil RICO claim: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiffs' 'business or property'"); *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983) (setting forth elements of 42 U.S.C. § 1985(3) claim: 1) a conspiracy, 2) for the purpose of depriving a person of equal privileges or immunities under the laws, 3) an act in furtherance of the conspiracy, and 4) a deprivation of a right or privilege of citizenship, or injury to the person or his property); *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 909 (9th Cir. 1993) (recognizing requirement for class-based animus for any claim under section 1985(2)); *Burns v. Cnty. of King*, 883 F.2d 819, 821 (9th Cir. 1989) (requiring race-based nexus for section 1985 claim); *Delta Savs. Bank v. United States*, 265 F.3d 1017, 1024 (9th Cir. 2001) (indicating that section 1986 claim liability is predicated upon section 1985 violation); *Hughes v. Pair*, 46 Cal.4th 1035, 1050-51 (2009) (requiring, as element of intentional infliction claim, outrageous conduct that must be "so extreme as to exceed all bounds of that usually tolerated in a civilized community") (omitting internal quotation marks).

Plaintiff has no facts, only supposition, *see* SAC at 3:16-20, ¶¶ 165, 231, 287, 303, 313-28, 331-43, 353, 355, 378-79, 402, to support his conclusion that Defendant conspired with others for – or were part of a RICO enterprise designed for – the purpose of improperly denying an outcome favorable to Plaintiff on his writ proceedings, the only possible RICO-related injury that could give rise to a timely RICO claim[3] and the only possible non-time-barred[4] conduct that

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[2] *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

[3] Plaintiff also asserts that one of the predicate acts consisted of mail fraud in the form of Defendant's service upon Plaintiff and the concerned courts of Defendant's "oppositions" to Plaintiff's writ petition-related filings. *See* SAC ¶¶ 290, 350. But Plaintiff has not explained in the slightest what was *fraudulent* about Defendant's "oppositions." If Defendant's submissions were *wrong* on the law or the facts, *see, e.g., id.* ¶ 349, Plaintiff had the opportunity to point that out by way of the normal adversarial litigation process, *see, e.g., id.* ¶¶ 337-39. Nor has he explained what was *fraudulent* about any mailing activities relating to Plaintiff's inability to secure employment in Pennsylvania. *See id.* ¶ 311. In addition, opposing the writ petition would not have violated the Hobbs Act, which prohibits

could rise to the necessary level of outrageousness for purposes of Plaintiff's intentional infliction claim. The same shortcomings are true with respect to Plaintiff's race-based allegations. *See id.* ¶ 157.[5]

To the extent there were any errors made in the state courts' processing of any vexatious litigant-related proceedings, Plaintiff had the opportunity to challenge those actions on appeal. *See id.* ¶¶ 334-42. But he lost. *See id.* ¶¶ 341-42. Moreover, even if it may be assumed that the state court system failed Plaintiff, there is nothing to suggest that Defendant had any role in that outcome other than by way of operating as an opposing party in litigation normally would. If Plaintiff's allegations suffice, every adverse decision, repackaged creatively enough, could be seen as a conspiracy or attempt to obstruct justice. In a post-*Twombly/Iqbal* world, this will not get Plaintiff past the pleadings.

Having now been given leave to amend, and having now demonstrated that he cannot do so sufficient to overcome, at a minimum, *Twombly/Iqbal*, the Court dismisses the remainder of Plaintiff's case without leave to amend. *See, e.g., World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 690 (9th Cir. 2010) ("The district court's discretion to deny leave to amend is particularly broad where a plaintiff previously has amended the complaint.").

Sanctions

Though ultimately unsuccessful, the Court does not find pro per Plaintiff's SAC sufficiently egregious to warrant sanctions. Defendant's motion requesting such sanctions is, therefore, denied.

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extortion leading to the physical acquisition of property and requires the use of actual or threatened force, violence or fear, or acts under color of official right. *See, e.g., United States v. McFall*, 558 F.3d 951, 956 & n.5 (9th Cir. 2009).

[4] Plaintiff has not alleged that he only *first* suffered severe emotional distress because of the outcome of the – according to him – rigged state court writ/vexatious litigant proceedings, but only that his emotional distress was "maximized" at that point. *See* SAC ¶ 404; *see also Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1008 (9th Cir. 2011); *Bibeau v. Pac. Nw. Research Found. Inc.*, 188 F.3d 1105, 1107-11 (9th Cir. 1999); *Kiseskey v. Carpenters' Trust for S. Cal.*, 144 Cal.App.3d 222, 232 (1983). And, again, to the extent that Plaintiff did suffer some separable emotional distress as a result of the writ proceedings themselves, he has not sufficiently, factually, alleged Defendant's role in that process in any form other than as a normal, run-of-the-mill litigation adversary.

[5] Plaintiff asserts that he "was called a 'Taliban' fighter for defending against false, malicious charges and a terrorist." SAC ¶ 157; *see also id.* ¶ 385 ("Plaintiff...was subjected to jokes, insults, slurs such as Taliban fighter, Muslim terrorist [for defending false, malicious charges] and good for nothing scum bag [just for being a Muslim getting a contract]."). He gives absolutely no indication of when such statements were made or by whom, leaving the Court with no ability whatsoever to determine whether the allegations would contribute towards a plausible claim under sections 1985 and 1986.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

THE HON. GEORGE H. WU, JUDGE PRESIDING

Jehan Zeb Mir, Plaintiff, vs. San Antonio Community Hospital, et al., Defendants.	)	No. EDCV 12-1791-GW(SPx)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, September 9, 2013; 9:15 A.M.

Motion Hearing

Wil S. Wilcox, CSR 9178
Official U.S. District Court Reporter
312 North Spring Street, # 432-A
Los Angeles, California 90012
Phone: (213) 290-2849

APPEARANCES OF COUNSEL:

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Los Angeles, CA 90067

LOS ANGELES, CA.; MONDAY, SEPTEMBER 9, 2013; 9:15 A.M.

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THE COURT: Let me call the matter of Mir vs. San Antonio Community Hospital.

MR. MIR: Good morning, Your Honor. Dr. Mir plaintiff pro se.

THE COURT: All right.

MS. THOMAS: Good morning. Jessica Thomas of McDermott, Will and Emery on behalf of defendant San Antonio Community Hospital.

THE COURT: All right. We are here for a motion to dismiss and for sanctions. I've issued a tentative on this. I presume that both sides have seen it?

MS. THOMAS: Yes, Your Honor.

THE COURT: Dr. Mir, did you see it?

MR. MIR: Yes, sir.

Good morning, Your Honor. I just wanted to make a couple of points here, Your Honor.

THE COURT: Sure.

MR. MIR: First of all, the court mentioned that it was not clear to the court how the fraud occurred in the pleadings which they sent to me as well as to the court. They made two misrepresentations, Your Honor, one of fact and one of law. The fact was that I had not filed any MC form MC-701 in support of application to file the

petition.

THE COURT: Well, let me stop you. It's my understanding that those things were matters which were the subject of the litigation and also that litigation resulted in an outcome and there was an opportunity to appeal, et cetera, et cetera. And so my question is, well, that's why they normally have an appellate process. If there are errors, either intentional or unintentional, those matters are the subject of the appeal.

MR. MIR: That's correct, Your Honor. There is no law in California. There is no law in California that one has to file that form. Now by making those representations to the court they misled the court. Even if you set aside the corrupt influence on the court itself, that's where the fraud occurred. And they bought it. The fact they were deceived.

If this is a deceive-ment it doesn't mean they have no liability in that. If they had not made these false representations, I would have been allowed to proceed with the writ petition and that did not happen and this is directly because of what they did.

THE COURT: Let me hear from the defense. What's your response to that?

MS. THOMAS: As a primary matter I would say that the form was filed with the court. So, whether he filed the

form or not was actually for the court to decide. It wasn't even based on our papers. It was a paper he filed with the court or didn't file with the court. It was more of an issue of timeliness. It wasn't that he never filed one. He just did not timely file one.

MR. MIR: Your Honor, it's not a question what the court decided. It's not a question. It was judicial error or abuse of discretion.

THE COURT: Let me just stop you. I don't understand how you can turn an abuse of judicial discretion into some sort of fraud claim or RICO claim?

MR. MIR: No, Your Honor. What I'm saying is that the court said that I did not file form MC-701 as they had pleaded to the court and that it seems to be some sort of law in California and both were incorrect. If they had not done that, I would have been allowed to file a writ petition and I would not be in this court today.

THE COURT: Even if what you are saying is correct, in other words even if the defendant or one of the defendants had somehow filed a false statement to that court that you failed to file a document in a timely fashion, that would have been the subject of an appeal, even if whatever initial court looked at it and said that the defendants were right is the subject of something that could be appealed. If you didn't appeal that, then it's a little late now to

attempt to make an argument that there was somehow some sort of fraud or some sort of RICO on the basis of an argument that's made in court.

MR. MIR: Your Honor, this is correct. The matter was appealed. They consistently misled the court at the state court level and then at the appellate court level and they perpetrated a fraud upon the court. There is such a thing, Your Honor, as fraud upon the court and that's exactly what happened. I don't know how many cases the court has.

THE COURT: Well, usually if there is a fraud upon the court, you don't go to another court and say these people committed a fraud upon the court unless it's the same court. In other words, you pretty much should go back to the same court and say there was a fraud committed on you and, for example, reopen the matter because of that fraud.

MS. THOMAS: Your Honor, I would also note that it was the court's own record. It wasn't an independent record. This was a form that was filed with the superior court by plaintiff.

THE COURT: All right.

I think what he's saying is that you guys made some sort of argument which was somehow an improper argument based on some document that was filed with the court. But even in that situation I don't understand either what the

supposed fraud would be -- because in other words if the defendants make an argument assuming that the defendants -- even if the defendants know that it's wrong, as to documents which have been filed with the court, I don't understand how following all of the completion of that litigation to appeal and whatever that you could have a situation where a party to that matter could somehow go to another court and say, well, there was a fraud committed in that court.

MR. MIR: Your Honor, they had an independent obligation under Business and Profession Code 606(A)(B) not to mislead the court by the artifice of fact and law. And that's exactly what they did there. That's how they prevented me from filing the writ petition. If they had not done that, I would not be in this court today and that's where the fraud comes in. They did succeed in their premise on their false premise that they prevented me from filing the petition.

THE COURT: Did they use the mails?

MR. MIR: Yes, of course, they mailed it to me. They mailed it to the court. And there was a wire fraud because the entire information was placed on the court's website.

MS. THOMAS: Your Honor, may I respond?

THE COURT: Sure.

MS. THOMAS: I think from a legal perspective,

first, there was no fraud there even if what he is saying is true, which it is not, that we made false representations of fact. It was at a court filing. It was a filing to which he was responding. We weren't in a superior position of knowledge.

This wouldn't be actionable legal fraud, so there would be no legal basis. But as a factual -- to put it in a factual context, what happened was instead of seeking the form he was supposed to as a vexatious litigant he filed a motion saying that the statute didn't apply to the case. So it didn't even meet the requirements. It wasn't whether he used the form or not. It was whether he met the requirements for a vexatious litigant to proceed.

THE COURT: All right. Anything else from either side?

MR. MIR: Yes, Your Honor. There is one more issue here. The court has mentioned that the court does not know when all these ethnic and racial slurs were made and by whom.

The names of Dr. Koudsi and Dr. Anabi and Dr. Alpiner and all of these physicians names and all of these slanders occurred during that period. And they are continuing up until now and they are going to continue into the future. That's where the problem comes in.

Now, also the court mentioned that under the Hobbs

Act what was the false and fraudulent act in preventing employment in Pennsylvania.

And, again, the argument is the same that their basis for termination from the hospital staff were false and fraudulent and that's what they are telling everyone else and by preventing filing a writ petition now they are using it as a matter of right to prevent me from getting employment. You know, even if this court has applied preclusive effect with the false and fraudulent decision.

THE COURT: Well, I've addressed that on pages two and three of the tentative ruling and also in footnote five.

Anything else?

MR. MIR: That's it, Your Honor.

MS. THOMAS: Your Honor, may I respond on our motion for sanctions?

THE COURT: Yes.

MS. THOMAS: I would just respectfully note that this is not plaintiff's first time making this exact same procedural move where he exhausts his remedies in state court, seeks appeal multiple times as he did in this matter as well, and then brings his case to federal court. Except for this time he's added the allegation that every single state court judge, including six of them and multiple justices of the court of appeal all conspired with the hospital in order to rule against him.

It just seems, especially in light of the court's first three tentative orders that you issued, which were over 30 pages of how these claims were deficient, and then plaintiff --

THE COURT: It took me 30 pages. If it was so obvious, it would have taken me three.

MS. THOMAS: Well, no, he's very creative in the cases and cites.

THE COURT: The answer is no. No sanctions. But nice try.

Anything else?

MS. THOMAS: No, Your Honor.

THE COURT: Okay. My tentative is my final.

MR. MIR: Thank you, Your Honor.

(At 9:25 a.m. proceedings were adjourned.)

--oOo--

CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: February 6, 2014

/s/ WIL S. WILCOX

U.S. COURT REPORTER

CSR NO. 9178

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/

/s [1] 11/16

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date June 3, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

PROCEEDINGS (IN CHAMBERS): COURT ORDER

Plaintiff's Motion to Add Defendant's counsel McDermott Will & Emery and its attorney's Thomas Ryan, Jessica Thomas and Jessica Mariani [#89], is DENIED without the need for a hearing. Plaintiff will be given until June 13, 2013 to file and serve a Second Amended Complaint. A failure to do so by said date will result in a dismissal of this action with prejudice.

_____ : _____

Initials of Preparer JG

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION - RIVERSIDE, CALIFORNIA

JEHAN ZEB MIR, M.D.,

Plaintiff,

v.

SAN ANTONIO COMMUNITY HOSPITAL, et al.

Defendants.

CASE NO. EDCV 12-01791-GW(SPx)

ORDER GRANTING DEFENDANTS' MOTION TO AMEND MINUTES OF MAY 6, 2013 AND DOCKET ENTRY NO. 77

Having read and considered the motion by Defendants San Antonio Community Hospital, Dr. Donald M. Alpiner, Dr. Nabil Koudsi, Dr. Jayprakash N. Shah, Dr. Chuang-Ti Hung, Dr. Samir Anabi, Dr. Carl L. Schultz, Dr. Naveen Gupta, Dr. Michael N. Wood, Dr. Wanda Bell Olsen, Dr. Tomi Lin Bortolazzo, Dr. Roger D. Duber, Dr. Lothar McMillian, Dr. Stanley R. Saul, Dr. Nedra Anne Vincent, Dr. Mahmoud A. Ibrahim and Dr. Mahmoud Sani (collectively, "Responding Defendants") to amend the Minutes of May 6, 2013, and related Docket Entry No. 77

IT IS HEREBY ORDERED THAT:

The Minutes of May 6, 2013 and Docket Entry No. 77 be amended to state as follows:

> Court hears oral argument. The Second Tentative circulated and attached hereto, is adopted as the Court's final ruling. Defendants' motion to dismiss are granted as follows: (1) all causes of action against the individual defendants are dismissed without leave to amend and with prejudice; (2) the first, third, fifth, sixth and eighth causes of action as to the Hospital are dismissed without leave to amend and with prejudice; and (3) the second, fourth, and seventh causes of action are dismissed, with leave to amend only as to the Hospital. Plaintiff will have two weeks from the date of this order to file a Second Amended Complaint.
>
> Plaintiff's request to consolidate hearings on Defendants' motion to dismiss with Defendant James Michael Lee, filed on April 30, 2013, is deemed MOOT.

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Further, Defendants' Application for Order to Shorten Time for Hearing on Responding Defendants' Motion to Amend Minutes of May 6, 2013 and Docket Entry 77, filed on May 14, 2013, is deemed MOOT.

Dated: May 16, 2013

GEORGE H. WU, U.S. District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

****AMENDED** CIVIL MINUTES - GENERAL**

Case No. EDCV 12-1791-GW(SPx) Date May 6, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	Wil Wilcox	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Jehan Zeb Mir, pro se	Jessica Thomas

PROCEEDINGS: **DEFENDANT DRS. ALPINER, KOUDSI, SHAH, HUNG, ANABI, SCHULTZ, GUPTA, WOOD, OLSEN, BORTOLAZZO, DUBER, MCMILLIAN AND SAUL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 02/28/13)**

DEFENDANTS DR. NEDRA ANNE VINCENT AND DR. MAHMOUD A. IBRAHIM'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/04/13)

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/05/13)

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/05/13)

Court hears oral argument. The Second Tentative circulated, is adopted as the Court's final ruling. Defendants' motions to dismiss are granted as follows: (1) all causes of action against the individual defendants are dismissed without leave to amend and with prejudice; (2) the first, third, fifth, sixth and eighth causes of action as to the Hospital are dismissed without leave to amend and with prejudice; and (3) the second, fourth, and seventh causes of action are dismissed, with leave to amend only as to the Hospital. Plaintiff will have two weeks from the date of this order to file a Second Amended Complaint.

Plaintiff's request to consolidate hearings on Defendants' motion to dismiss with Defendant James Michael Lee, filed on April 30, 2013, is deemed MOOT.

: 20

Initials of Preparer JG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date May 6, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	Wil Wilcox	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: Jehan Zeb Mir, pro se

Attorneys Present for Defendants: Jessica Thomas

PROCEEDINGS: **DEFENDANT DRS. ALPINER, KOUDSI, SHAH, HUNG, ANABI, SCHULTZ, GUPTA, WOOD, OLSEN, BORTOLAZZO, DUBER, MCMILLIAN AND SAUL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 02/28/13)**

DEFENDANTS DR. NEDRA ANNE VINCENT AND DR. MAHMOUD A. IBRAHIM'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/04/13)

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/05/13)

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/05/13)

Court hears oral argument. The Second Tentative circulated and attached hereto, is adopted as the Court's final ruling. The above-entitled motions are GRANTED WITH LEAVE TO AMEND as to the second, fourth and seventh causes of action. The above-entitled action is dismissed without prejudice as to the individual defendants. Plaintiff will have two weeks from the date of this order to file a Second Amended Complaint.

Plaintiff's request to consolidate hearings on Defendants' motion to dismiss with Defendant James Michael Lee, filed on April 30, 2013, is deemed MOOT.

: 20

Initials of Preparer JG

Mir v. San Antonio Cmty. Hosp., et al., Case No. CV-12-1791 GW (SPx)
Second Tentative Ruling on Motion to Dismiss Plaintiff's First Amended Complaint

Dr. Mahmoud Sani ("Sani") moves to dismiss the First Amended Complaint ("FAC") filed by plaintiff Jehan Zeb Mir, M.D. ("Plaintiff"), joining in and repeating the arguments advanced by two separate groups of individual defendants in earlier motions to dismiss. As with most of those other individual defendants, the only time Sani was identified by name in the FAC is in that portion of the FAC that sets forth the names and addresses of each defendant. *See* FAC ¶ 23.

On April 15, 2013, the Court heard oral argument in connection with the two earlier motions to dismiss filed by other individual defendants in this action (at the same time as it also heard oral argument on a motion to dismiss filed by defendant San Antonio Community Hospital ("SACH")). At that time, the Court issued a Tentative Ruling indicating that it was inclined to find that all of Plaintiff's claims against the individual defendants either were time-barred and/or (specifically with the malicious prosecution claim in mind) fatally defective with respect to a required element of the claim. *See* Docket No. 69, at 17-25 of 25. However, it ultimately continued those motions to today's date because Sani's motion was set for hearing at that time. *See id.*

The day after that April 15, 2013, hearing, Plaintiff filed his Opposition to Sani's motion. *See* Docket No. 71. That Opposition only confirms that the Court was correct in its tentative handling of the earlier motions brought by the individual defendants – all of the claims are time-barred insofar as the individual defendants are concerned, and Plaintiff has no basis to save them by way of equitable tolling and/or equitable estoppel principles. The Court's discussion in the April 15, 2013, Tentative Ruling is incorporated herein, to be read in conjunction with the following discussion.

Plaintiff has identified no *factual* allegation that could cure the fact that none of the individual defendants had any involvement in events post-dating the culmination of his administrative proceedings in 2005. Plaintiff asserts that Sani:

> act[ed] through Hospital Defendant in writ proceeding where he was one of the real parties in interest corrupted a judge and justice of the California courts to escape personal liability for his unconstitutional conduct i.e. if Plaintiff could not file writ petition, then he could make argument that

> Plaintiff did not succeed in overturning his baseless Decision suspending and termination from hospital staff thus not meeting the requirement of favorable termination.

[*sic*] Docket No. 71, at 2:9-14; *see also id.* at 7:1-2. Notwithstanding this conclusory assertion, Plaintiff provides no *factual* assertions supporting the allegation (or planned allegation) that either Sani or any other individual defendant was personally involved in opposing Plaintiff's writ proceedings. Plaintiff has still, therefore, failed to identify any factual basis supporting an application of any sort of tolling or estoppel insofar as the individual defendants are concerned, further cementing the Court's view that this action is time-barred in its entirety. *See Hatfield v. Halifax PLC*, 564 F.3d 1177, 1185 (9th Cir. 2009); *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1051 (9th Cir. 2008).

Contrary to his assertions, Plaintiff does not enjoy tolling from his administrative proceedings sufficient to render any of his claims against the individual defendants timely. Here, there was *nothing* – administrative or otherwise – pending for almost four years. He did not institute his *judicial* (not *administrative*) writ proceedings until just a few days short of four years after the completion of his administrative proceedings, by which time the statutes of limitation on all but his RICO claim had expired. He then waited approximately nine more months after the conclusion of the writ proceedings before filing this action, allowing the statute of limitations on the RICO claim (as pled against the individual defendants) to expire as well. Thus, even if Plaintiff should receive some form of tolling (though not a delayed *accrual*[1]) for the time in which his writ proceeding *was pending*, *see Myers v. Cnty. of Orange*, 6 Cal.App.3d 626, 633-36 (1970), it would not help him here.

Like equitable (or other forms of) tolling, Plaintiff has demonstrated no

[1] That a result in an administrative proceeding may have *collateral estoppel* effect in a later judicial action unless overturned by way of writ proceeding – and that such a successful writ proceeding is a *practical* requirement before bringing suit, given that possibility – does not lead to a conclusion that the *accrual* of one's claim based on the underlying acts is delayed until the writ proceeding is complete. *Westlake Community Hospital v. Superior Court (Kaiman)*, 17 Cal.3d 465 (1976), is best understood in this context, therefore, as a collateral estoppel decision, not a delayed accrual decision. *See Johnson v. City of Loma Linda*, 24 Cal.4th 61, 69-70 (2000); *George v. Cal. Unemployment Ins. Appeals Bd.*, 179 Cal.App.4th 1475, 1486-87 (2009); *Y.K.A. Indus., Inc. v. Redevelopment Agency of City of San Jose*, 174 Cal.App.4th 339, 355-56 (2009); *Gill v. Hughes*, 227 Cal.App.3d 1299, 1305 (1991); *Toy v. Casey*, No. C-93-0513 MHP, 1994 U.S. Dist. LEXIS 18724, *18-20 (N.D. Cal. Dec. 28, 1994). In addition, that the writ proceeding might have affected an assessment of the extent of Plaintiff's damages is not a basis for accrual to be keyed to the conclusion of those writ proceedings. *See Grimmett v. Brown*, 75 F.3d 506, 516-17 (9th Cir. 1996) (rejecting Second Circuit's approach).

conceivable basis for equitable *estoppel* either. *See Lukovsky*, 535 F.3d at 1051-52. That the Hospital's CEO (whom Plaintiff does not identify, and who does not appear to be one of the individual defendants here) did not return Plaintiff's phone call seeking an amicable settlement of his record with the Hospital so that Plaintiff could practice medicine in Pennsylvania does not amount to a basis for tolling or estoppel. Plaintiff certainly has not cited any similar case supporting that proposition.

A *failure* to return such phone calls could not possibly constitute "lulling" Plaintiff into believing that the door for settlement was still open. "[E]quitable tolling...premised on the concept of estoppel...must entail a false representation or wrongful misleading silence." *Schoenberg v. Cnty. of Los Angeles Assessment Appeals Bd.*, 179 Cal.App.4th 1347, 1356 (2009); *see also Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1416 (9th Cir. 1987) ("Appellees' silence or passive conduct does not constitute fraudulent concealment."); *Feduniak v. Cal. Coastal Comm'n*, 148 Cal.App.4th 1346, 1362 (2007) ("It is settled that when the party to be estopped does not say or do anything, its silence and inaction may support estoppel only if it had a duty to speak or act under the particular circumstances."). There was nothing either "wrongful" or "misleading" about the CEO's "silence," and he was under no conceivable "duty" to speak. Indeed, despite this non-responsiveness, Plaintiff ultimately *did* file his writ action. Plaintiff identifies nothing that changed in that pattern of non-responsiveness to eventually kick-start him into action. Moreover, there is no basis for believing that any of the individual defendants could be charged with the hospital CEO's conduct, even if that conduct did constitute a basis for tolling and/or estoppel (which, for the above-mentioned reasons, it does not).

Further, Plaintiff is quite simply wrong that the Court *must* leave the application of equitable estoppel to the factfinder. "The determination of equitable estoppel is a question of fact for the trier of fact, unless the facts are undisputed *and can support only one reasonable conclusion as a matter of law*." *Windsor Pac. LLC v. Samwood Co.*, Inc., 213 Cal.App.4th 263, 272 (2013) (emphasis added). Here, there is only "one reasonable conclusion" – the hospital's CEO's silence could not provide a basis for applying equitable estoppel.

Finally, Plaintiff has not cited a single case in support of his view that his ultimate

expulsion from the Hospital's medical staff is "a new and independent act inflicting new and accumulating injury on Plaintiff" as compared to the injury he suffered when he was suspended from his privileges. *See generally Pouncil v. Tilton*, 704 F.3d 568, 581 (9th Cir. 2012); *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 927 n.6 (9th Cir. 2004); *Grimmett v. Brown*, 75 F.3d 506, 513 (9th Cir. 1996). Even if he had, as Sani points out in his Reply, this expulsion occurred in *2005*, not 2012.

For the aforementioned reasons and those set forth in the Court's April 15, 2013, Tentative Ruling related to the motions to dismiss filed by numerous other individual defendants, the Court will dismiss this action insofar as all of those individual defendants and Sani are concerned, without leave to amend.

SACH's Pending Motion

Plaintiff's response to Sani's motion also clarifies that he has no basis for equitable estoppel or any form of tolling with respect to many of the claims pled against SACH either. As noted in the Court's April 15, 2013, Tentative Ruling, several – though not all – of Plaintiff's claims against SACH were based on events that – like with the individual defendants – occurred no later than 2005, when Plaintiff completed his administrative exhaustion. Those claims would therefore now be dismissed without leave to amend as to SACH as well. His eighth claim would be dismissed on statute of limitations grounds and/or because of a failure to possibly allege a required element – a termination of the earlier proceedings in his favor.[2]

That would leave only Plaintiff's second (RICO), fourth (42 U.S.C. §§ 1985, 1986), and seventh (intentional infliction of emotional distress) claims, which are in part based on SACH's actions during the post-administrative writ proceedings. Based on the failure-to-state-a-claim-related defects in those three claims identified in the Court's April 15, 2013, Tentative Ruling, *see* Docket No. 69, at 11-14 of 25, Plaintiff can amend

[2] The Court's April 15, 2013, Tentative Ruling took different approaches to the question of whether Plaintiff would be given leave to amend as to SACH, on the one hand, and the individual defendants, on the other. The Court took this approach because 1) it wanted to encourage an open discussion during oral argument, in light of its recognition that whether or not to give leave here was somewhat of a close question due to the fact that it was considering a statute of limitations defense asserted against a *pro per* plaintiff and 2) the cases against SACH and the individual defendants were somewhat fundamentally distinct, given the fact that the individual defendants' involvement ceased in 2005. Because Plaintiff's attempt at demonstrating some basis for tolling or equitable estoppel over his pre-2005 claims has undeniably fallen short, the Court now concludes that granting him leave to amend on his first, third, fifth, sixth and eighth claims would be futile as to *all* defendants.

with respect to those three claims against SACH, but only to reference acts that occurred within the applicable statutes of limitations and that comply with other limitations on pleading such acts. *See Grimmett*, 75 F.3d at 513; *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997). SACH is not precluded from arguing its immunity defense (or other arguments not conclusively rejected thus far) again in opposition to any future amended pleading.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

THE HON. GEORGE H. WU, JUDGE PRESIDING

Jehan Zeb Mir, Plaintiff, vs. San Antonio Community Hospital, et al., Defendants.	)	No. EDCV 12-1791-GW(SPx)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, May 6, 2013; 9:09 A.M.

Motion Hearing

Wil S. Wilcox, CSR 9178
Official U.S. District Court Reporter
312 North Spring Street, # 432-A
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LOS ANGELES, CA.; MONDAY, MAY 6, 2013; 9:09 A.M.

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THE COURT: Let me call the matter of Mir versus San Antonio Community Hospital.

MR. MIR: Good morning, Your Honor. Dr. Mir.

THE COURT: All right.

MS. THOMAS: Good morning, Your Honor. Jessica Thomas of McDermott Will & Emery on behalf of defendant San Antonio Community Hospital and 16 of the individual moving physicians.

THE COURT: All right. We are here on a second motion to dismiss. These are by, I guess, two separate groups of individuals -- well, actually no. This is only as to, I guess, Sani.

Is that the only defendant that is moving at this point?

MS. THOMAS: The previous motions were never heard. You continued the hearing until today.

THE COURT: Oh, okay. I issued a tentative, though, I thought, on the other one.

MS. THOMAS: You did, yes.

THE COURT: Okay. I issued another tentative on this one as well. I presume both sides have seen it?

MR. MIR: Yes, Your Honor.

THE COURT: Does somebody want to argue something?

MR. MIR: I want to argue, Your Honor.

THE COURT: Okay.

MR. MIR: First of all, I apologize, Your Honor, in respect to this opposition to Dr. Sani's motion. I didn't have enough time because I had a ruling on the same day and then I had to put together everything and I couldn't make all the arguments and provide all the facts to the court. But, nonetheless, it will be covered with the rest of the 15 physicians.

THE COURT: All right.

MR. MIR: Your Honor, the central question here is whether on August 3rd, 2005, I could go to the state court and file action in all of these causes of action against all these defendants and the hospital. The answer is clearly no. If I had filed an action in the state court, they would have kicked it right out because *Westlake* is a good law still as of today because I had not gone through the judicial remedies.

In the *Interior Design* case, Your Honor, 121 Cal.3d 312, the court stated that the judicial remedies are administrative remedies, and they cite *Westlake* why it should not be, because the writ petition is the appellate hearing on the administrative decision which is one-sided.

They have their own doctors. They investigated the complaint. They charge. They prosecute. Their buddies

are sitting across the table ruling on the motions and the hospital with whom they have kick-back relationship. They affirm the decision. And, finally, it's one-sided. It's a win-win situation.

The only prayer a doctor has is to go to the court and have this thing reversed in a de novo review. So, I have tons of cases, Your Honor, in all variety of situations where they did not -- plaintiff did not exhaust judicial remedies and they dismissed the case. If you have no case, don't come to us.

Now, the tentative, Your Honor, that's as far as the state law case is concerned. And also, I have a case, Your Honor, a California Supreme court case. It's *Lerner v. Board of Education LA*, 59 Cal.2d 382, which provides that if a plaintiff is prevented from taking an action for any reason, there is a tolling, automatic tolling. And the accrual -- and the action does not accrue until that tolling period ends.

In other words, the action -- all of these causes of action could not have accrued -- state causes of action I'm speaking right now, Your Honor -- could not have accrued until January 25th, 2012, when the writ petition was denied at that time.

All right. So, I had no cause of action. They would have kicked it out. Now, coming back to federal

causes of action, Your Honor, you are absolutely correct that the federal law determines when the claim accrues, whether it's a 983 claim, RICO, or whatnot.

And the law also provides, as the tentative states, that the plaintiff should have a clear and present case -- complete and present cause of action so he can file a suit to obtain relief with the court.

So the question here is could I have gone on August the 3rd, 2005, to any federal court and filed this action which I'm filing right now?

THE COURT: Let me stop you. The problem was not that you didn't go to court on August 3rd, 2005. It's that you didn't go to court for many years after that point in time. That's the problem. It's not the August 3rd, 2005, date.

MR. MIR: I just picked a date, Your Honor. This applies from August 3rd, 2005, to 2009, for four years period. I'm addressing for the entire period. If at any time during that four-year period, could I have gone to federal court and filed an action? No. They would have kicked it out.

We have case law, Your Honor, and the tentative cites it. The case law, Your Honor, is from the Ninth Circuit court *Miller v. County of Santa Cruz*, 39 F.3d 1030. So they dismissed a 1983 case because the person had

not exhausted judicial remedies.

Now, the collateral estoppel. You know, one may call it collateral estoppel or issue preclusion. The bottom line is the same, Your Honor, that you cannot proceed in a federal court. And this opinion that the court cited, also cited *Westlake*. They relied on *Westlake*.

So I could not have brought an action in federal court because I did not have a clear present cause of action to file a claim. And the tentative recognizes -- acknowledges that unreviewed administrative findings have preclusive effects, both in the state and the federal court.

So I had no ground to go back. I had no cause of action. The cause of action accrues after the writ petition defines the causes, the actions, the issues.

And in this case, they disrupted the due process equal protection under the law. The review by the court under 1094.5 was a remedy, was appellate remedy. They disrupted that. So they cut off the hearing in the middle. It's just like the hospital starts the administrative hearing and after two days, terminated and said you are off the staff. That's the reason why there is a due process violation here. So if that cannot be applied here because that is some procedure, it's because of them.

Now, Your Honor, the other reason is that the court mentioned about -- excuse me. Can I --

THE COURT: Sure.

MR. MIR: The court mentions about this test, the first case and the second case. That doesn't apply here, Your Honor. That applies in situations where a person has two appellate remedies available, like workman's compensation claim and personal injury claim or retirement situation. There is no alternative remedy available. I had, as I've discussed, Your Honor, within 2005 and 2009, I had no parallel remedy available either in state court or in federal court. So that analysis does not apply.

THE COURT: Let me say this: The thing that you are complaining about occurred on or before August 2nd or 3rd of 2005, and you didn't file anything until July 31st of 2009. And the causes of action, some of them are less than a year. And so the problem is, is that by the time you did file something, that certain of them, the causes of action, the statute of limitation had already lapsed because you did not do anything within the timeframe that's allowed for by law. That's the problem.

MR. MIR: Your Honor, I understand perfectly. The premise is -- what the court is saying is that the statute of limitation on federal and state causes of action accrued on August 3rd, 2005. That's what the court is saying, that they -- they were parallel remedies. They were not parallel remedies, Your Honor. I have discussed in detail. Unless I

had the administrative proceedings overturned. Their decision had a preclusive effect in the state and the federal court.

THE COURT: Why did you wait four years?

MR. MIR: Well, I waited four years, Your Honor, because first of all --

THE COURT: You don't have a good explanation. That's one of the reasons why there is a problem here.

MR. MIR: No, no, no. I'm coming to that. Your Honor, I mentioned that I've been calling the hospital to resolve this matter in good faith. And I see your tentative here, Your Honor, which states that they have the right not to respond. That's fine. But that's not the reason I made that statement, Your Honor. That satisfies the three-prong test for tolling.

THE COURT: It doesn't. And there is no case that holds it. There is no obligation on the part -- when you called up the defendant and asked to settle the case, the defendant doesn't have to respond.

MR. MIR: No. I understand that part, Your Honor, but there are three tests. First of all, notice to the other side. That's serving notice on the other side. There is case law that states any time you request an administrative hearing, that satisfies the notice requirement.

THE COURT: You had not asked for an administrative hearing for four years, almost four years, slightly less than four years.

MS. THOMAS: If I could, I believe he had the -- he had a 15-session administrative hearing. He hadn't requested judicial review yet.

THE COURT: Okay. All right.

MR. MIR: Your Honor, it was filed within the statute of limitations. Now, what the court is saying is that I should have followed a different statute of limitations in filing the petition, that the statute of limitations for a state cause of action like one year applied to my writ petition. There is no authority for that, Your Honor, because they were not federal actions, Your Honor. They were not federal actions. I could not have gone to the court.

THE COURT: Let me hear a response from the defense.

MR. MIR: I have still more stuff, Your Honor.

THE COURT: Let me address that issue in turn.

MR. MIR: Okay. Thank you, Your Honor.

MS. THOMAS: I believe that Dr. Mir has both administrative hearings mixed up with a judicial review of the administrative hearing. There was, as the court pointed out in its tentative and here today, there was nothing that

precluded him from bringing his causes of action any time between 2005 and 2009. There was nothing pending and there was no reason for the delay. And his claim should be time barred for that reason alone.

THE COURT: What else do you want to argue?

MR. MIR: Your Honor, that's a precondition. It's going to --

THE COURT: Let me ask you: Are you arguing something that you have not stated in your papers? Because everything you've argued so far is in your papers.

MR. MIR: Yeah, I have additional arguments here, Your Honor.

THE COURT: Yeah, but are they in your papers? In other words, I've looked at your papers. Don't make an argument to me that you've raised before because I've addressed it in these tentatives. I spend time on these tentatives to present the arguments that are presented to me. So the fact that you now want to orally argue something is not going to change if you've already presented the materials to me in written form.

MR. MIR: Okay.

MS. THOMAS: Are you arguing something that you have not presented to me?

MR. MIR: Yes, Your Honor.

THE COURT: What is it?

MR. MIR: Well, you have asked a question regarding 1983 claim and state claim or was it a state action or not, and you had asked me about the board member, if they were public officials, and I do have the evidence now, Your Honor.

There are four members who heard my appellate review, and all of them are from outside the hospital. Three of them were public officials on the outside. One was a police commissioner and two of the city council who heard -- this is three out of four. The fourth one was also a private person and he was also a member of the Los Angeles County Historical Society. He works with the -- with the City.

The second point, Your Honor, is that the hospital is the only hospital working in -- only operating in the city of Upland. They have a monopoly and this monopoly is set up by the state. The state gives the license to the hospital to operate and they determine how many beds the hospital can have. The wisdom behind that is if there are too many empty beds in the hospital, then the hospital will shift costs to the other patients raising the costs of medical care. So it's a state-mandated monopoly here.

THE COURT: What's your argument? I don't understand what your argument is.

MR. MIR: Your Honor, there was -- it was whether

the hospital Upland was the only hospital which had the monopoly, which is one of the factors for the state determining if there is a state action under 1983.

THE COURT: Let me hear from the defense on that.

MR. MIR: Your Honor, I have not completed. Can I complete my argument here and then she can come back?

THE COURT: Okay. What is the completion of your argument?

MR. MIR: The other part is, Your Honor, that when my $600,000 contract was terminated, I could not go to another hospital in Upland where I could take my contract to. So when it was terminated, it was a state action because state controlled the monopoly and it was terminated and it was a state action.

And the other argument I have, Your Honor, is there is an element of coercion and compulsion because the medical board requires that a hospital is required to file a report within 15 days. If they don't, they fine them a thousand dollars. There is a compulsion and coercion in that aspect.

Finally, Your Honor, there is a joint action here. The medical board, after they took action against me, they served me notice of charges. They immediately filed a report sending them a notice of charges. I sent them all of the three charts. The medical board investigated for two

years. The hospital did the same thing.

And then what happens is the medical board calls me for interview on August 28th, 2002. On December 4th they dismiss all charges against me, which they have brought up notice of charges, and they closed their file. They wrote me a letter.

So there was a favorable determination right there, Your Honor, while this thing was going on. It had an issue preclusion effect under the case law I cited there. So there was a joint action, Your Honor.

THE COURT: All right. Let me hear from defense.

MS. THOMAS: Yes, Your Honor. I believe he's made several different arguments regarding the 1983 public actor.

And the first one was that three of the four board members were public officials, citing that they held other positions within the community. I don't believe there is any case law for saying that that meets the standard for pervasive entwinement of public officials within the hospital. This is a private hospital. It's indisputably a private hospital. They are not publicly-appointed officials.

The second argument he made was that it has a monopoly, but as he knows because he had privileges at Pomona Valley Hospital, it's only six miles away. There are also several other hospitals that are within a five-mile

radius where he could have practiced if he was able to obtain privileges there.

And as for his argument that there was entwinement based on the Medical Board of California actions, as this court has noted several times in its tentative decision, that has never been held sufficient to be state action as well as the fact that the MBC action was an entirely separate investigation.

THE COURT: All right.

MR. MIR: Can I respond, Your Honor?

THE COURT: Pardon? No.

All right. I'm making my tentative my final on this. I will give plaintiff leave to amend as to the second count which is RICO, the fourth which is 1985, and the seventh which is intentional infliction of emotional distress, which are based on supposedly the hospital's actions during the post-administrative writ proceedings. However, I am granting the motion to dismiss without leave to amend as to the individual defendants.

Anything else I need to do today?

MS. THOMAS: There is one other individual defendant who I believe Dr. Mir may have served last week outside of the time granted by this court, Dr. Lee. Would you like a separate -- if he responds, would you like a separate motion from him, or is he also dismissed with the

other ones as well?

THE COURT: I'm dismissing him.

MS. THOMAS: Thank you, Your Honor.

THE COURT: You are welcome.

And I will give the plaintiff two weeks to file an amended pleading as to those causes of action, and that is only as to the hospital. Okay. Thank you.

MR. MIR: Thank you, Your Honor.

MS. THOMAS: Thank you, Your Honor.

(At 9:30 a.m. proceedings were adjourned.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: February 6, 2014

/s/ WIL S. WILCOX

U.S. COURT REPORTER

CSR NO. 9178

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 12-1791-GW(SPx) Date April 15, 2013

Title *Jehan Zeb Mir v. San Antonio Community Hospital, et al.*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	Deborah Gackle	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Jehan Zeb Mir, pro se	Jessica Thomas

PROCEEDINGS: **DEFENDANT DRS. ALPINER, KOUDSI, SHAH, HUNG, ANABI, SCHULTZ, GUPTA, WOOD, OLSEN, BORTOLAZZO, DUBER, MCMILLIAN AND SAUL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 02/28/13)**

DEFENDANTS DR. NEDRA ANNE VINCENT AND DR. MAHMOUD A. IBRAHIM'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/04/13)

DEFENDANT SAN ANTONIO COMMUNITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (filed 03/05/13)

The Court's Tentative Rulings are circulated and attached hereto. For reasons stated on the record, the above-entitled motions are continued to **May 6, 2013 at 8:30 a.m.**

: 04

Initials of Preparer JG

Mir v. San Antonio Community Hospital et al., Case No. 12-1791
Tentative Ruling on Defendant San Antonio Community Hospital's Motion to Dismiss

I. Background

Jehan Zeb Mir, MD ("Plaintiff") sues San Antonio Community Hospital ("Defendant," "the Hospital" or "SACH") and eighteen individual physicians in eight causes of action related to Plaintiff's suspension and termination of privileges at SACH, and subsequent events. Specifically, Plaintiff brings the following claims against all defendants: 1) Intentional Interference with his Right to Practice a Profession under 42 U.S.C. § 1983; 2) Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C § 1964(c); 3) Intentional Interference with a Contractual Relationship under 42 U.S.C. § 1981; 4) Conspiracy to Violate Civil Rights under 42 U.S.C. §§ 1985 and 1986; 5) Interference with Prospective Economic Advantage; 6) Defamation; 7) Intentional Infliction of Emotional Distress; and 8) Malicious Prosecution.

Plaintiff was appointed to SACH's medical staff on December 28, 1998. First Amended Complaint ("FAC") ¶ 27. On or about August 2000, Plaintiff obtained an IPA surgical subcontract with Inland Global valued at $600,000 ("the IPA contract"), which he alleges was previously held by two white physicians employed by SACH. FAC ¶ 30. Following two patient care incidents, the circumstances of which the parties dispute, Plaintiff relinquished his privileges at SACH on October 5, 2000. *Id.* ¶¶ 28, 49, 53. SACH sent Plaintiff a notice of the charges against him on October 30, 2000, and, from December of 2000 to March of 2003, those charges were reviewed in a total of fifteen hearings by a panel of physicians, known as the Judicial Review Committee ("JRC"). *Id.* ¶¶ 55-57. The JRC issued its decision on October 26, 2004, and that decision became administratively final on August 2, 2005, after Plaintiff's unsuccessful challenge before the SACH Board of Directors. *Id.* ¶¶ 7, 56, 59.

On July 31, 2009, Plaintiff filed a petition for a writ of mandate in California state court, seeking to be reinstated to the SACH medical staff. *Id.* ¶ 150. Plaintiff was unable to obtain the pre-filing order required to file the writ as a vexatious litigant and the case was dismissed.[1] FAC

[1] Defendant points out that Plaintiff has been declared a vexatious litigant in both California state court and, as of 1988, in the Ninth Circuit. However, the current effect of those prior declarations is not clear from the pleadings. *See* Motion, Docket No. 48, at 1.

¶¶ 151-156, 159-60. Plaintiff appealed, and the California Supreme Court denied his Petition for Review on January 25, 2012. *Id.* ¶¶ 159, 161. Plaintiff filed his Complaint in this action on October 17, 2012. Docket No. 1. However, no defendants were served until Plaintiff filed the FAC on January 21, 2013. *See* Docket No. 14.

II. Legal Standard

Plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Fed. R. Civ. P. 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A complaint may be dismissed for failure to state a claim for one of two reasons: (1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). A motion to dismiss should be granted if the complaint does not proffer enough facts to state a claim for relief that is plausible on its face. *See Twombly*, 550 U.S. at 558-59; *see also William O. Gilley Enters., Inc. v. Atl. Richfield Co.*, 588 F.3d 659, 667 (9th Cir. 2009) (confirming that *Twombly* pleading requirements "apply in all civil cases"). The court need not accept as true "legal conclusions merely because they are cast in the form of factual allegations." *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). A complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'show[n]' - 'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

In deciding a Rule 12(b)(6) motion, the court is limited to the allegations on the face of the complaint (including documents attached thereto), matters which are properly judicially noticeable, and other extrinsic documents when "the plaintiff's claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). The court must construe the complaint in the light most favorable to the plaintiff and must accept all factual allegations as true. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court must also accept as true all reasonable inferences to be drawn from

the material allegations in the complaint. *See Barker v. Riverside Cnty. Office of Ed.*, 584 F.3d 821, 824 (9th Cir. 2009); *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998).

III. Analysis

The Hospital moves to dismiss all claims on the grounds that: 1) each claim is barred by the statute of limitations and cannot be saved by tolling, 2) the Hospital is shielded by immunity under California law for the actions underlying each claim, and 3) each cause of action fails to state a claim upon which relief can be granted.

A. Statute of Limitations and Tolling

Defendant claims that most of Plaintiff's causes of action (*i.e.* those relying on events occurring in or before 2005) are time-barred. Motion to Dismiss ("MTD"), Docket No. 48, at 8. It argues that the statute of limitations on each claim started to run, at the latest, on August 2, 2005, when the JRC decision became final. MTD, Docket No. 48, at 10. Plaintiff does not seem to contest Defendant's characterization of the applicable statutes of limitations, none of which is over four years, as Defendant summarizes. MTD, Docket No. 48, at 9. Each of the statutes of limitations Defendant lists is correct under the applicable statutes and case law, so if no further tolling applies, all claims as pled would be barred – except the second (RICO), fourth (§§ 1985 and 1986), and seventh (intentional infliction of emotional distress).[2] Those three claims are in part based on Defendant's actions during Plaintiff's unsuccessful attempt to file a petition for a writ of mandamus, which became final on January 25, 2012. FAC ¶¶ 175-76, 183,193, 195. However, the parties dispute the periods of time to which tolling could apply. The critical time period, for which tolling would be necessary to save claims based on pre-2005 actions, appears to be from August 2, 2005, when the Hospital's decision became final, to July 31, 2009, when Plaintiff attempted to file a writ of mandamus.

"When a motion to dismiss is based on the running of the statute of limitations, it can be granted only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled." *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980). Here, there are three categories of claims to which tolling may apply: 1) federal claims with federal statutes of limitations (Claim 2), 2) federal claims with state statutes

[2] These claims are the only ones in which Plaintiff makes specific allegations in the FAC on the basis of post-2005 conduct. Plaintiff's eighth claim, for malicious prosecution, is time barred insofar as it relies on the hospital's dismissal of one claim against him before 2005. However, as discussed below, this does not entirely resolve the claim as to timeliness if a later favorable termination with the Medical Board of California can be shown. This possibility is discussed below.

of limitations (Claims 1, 3, and 4), and 3) state claims with state statutes of limitations (Claims 5-8).

1. Tolling of the RICO Claim (Claim 2)

"Under federal law a cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury that is the basis of the action." *Alexopulos v. San Francisco Unified Sch. Dist.*, 817 F.2d 551, 555 (9th Cir. 1987). One basis for tolling federal statutes of limitations arises when "the plaintiff is required to avail himself of an alternative course of action as a precondition for filing suit," but tolling is not applied when the alternative is merely a "parallel avenue[] of relief." *Grimmett v. Brown*, 75 F.3d 506, 514-15 (9th Cir. 1996) (quoting *Conley v. Int'l Bhd. of Elec. Workers*, 810 F.2d 913, 915-16 (9th Cir. 1987)) (refusing to toll a RICO claim when the claim could have been brought in federal court even during ongoing bankruptcy proceedings, making them "parallel avenues of relief"); *but see Pincay v. Andrews*, 238 F.3d 1106, 1110 (9th Cir. 2001) ("Equitable tolling doctrines, including fraudulent concealment, apply in civil RICO cases. The doctrine is properly invoked only if a plaintiff establishes affirmative conduct upon the part of the defendant which would, under the circumstances of the case, lead a reasonable person to believe that he did not have a claim for relief."). Here, the mandamus action appears to be a parallel avenue rather than a precondition for the RICO suit because there is no indication in the cited case law that exhaustion of state judicial remedies is a precondition to a federal claim, let alone a RICO claim specifically. Tolling is therefore not available.

In fact, with or without tolling during the pendency of the writ petition, the RICO claim would still be time-barred as to the pre-2005 actions. Plaintiff attempted to file his writ petition just days before the four-year RICO statute of limitations had run, and then waited nine months after the California Supreme Court denied review before filing the instant Complaint. Thus, all claims relying on injuries before October 17, 2008, four years before this action was filed, including all of the pre-2005 conduct, are barred by the statute of limitations. This does not necessarily mean Plaintiff's RICO claim must be dismissed in its entirety, but any subsequent pleading would have to rely on non-barred predicate acts and injuries. *See Grimmett*, 75 F.3d at 513 ("[T]wo elements characterize an overt act which will restart the statute of limitations: 1) It must be a *new and independent act* that is not merely a reaffirmation of a previous act; and 2) It must *inflict new and accumulating injury* on the plaintiff.") (quoting *Pace Indus., Inc. v. Three*

Phoenix Co., 813 F.2d 234, 238 (9th Cir. 1987)); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997) ("[T]he plaintiff cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period.").

2. Tolling of Federal Claims with State Statutes of Limitations (Claims 1, 3, and 4)

If a federal statute does not specify a statute of limitations, the most appropriate state law statute of limitations applies. *Donoghue v. Orange Cnty.*, 848 F.2d 926, 930 (9th Cir. 1987). However, federal law still governs when the cause of action accrues. *Cline v. Brusett,* 661 F.2d 108, 110 (9th Cir.1981) ("While state law determines the period of limitations, federal law determines when a cause of action accrues."). "Under federal law a cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury that is the basis of the action." *Alexopulos,* 817 F.2d at 555. Unless inconsistent with underlying federal policy, state law doctrine dictates whether equitable tolling applies to federal claims for which the state statute of limitations is used. *Donoghue*, 848 F.2d at 930.

Although Plaintiff vaguely alleges that accrual of his causes of action could somehow be postponed, Opposition at 6, this Court has been provided with no argument demonstrating that any causes of action based on pre-2005 events accrued later than August 2, 2005.[3] Because state law tolling doctrine applies to the federal claims with state statutes of limitations, the next section's discussion of tolling under California law determines tolling of these claims.

3. Tolling of State Law Claims (Claims 5-8)

Under California law, the only tolling doctrine applicable here is applied based on three criteria: 1) timely notice to a defendant of the claims against it, 2) lack of prejudice to the defendant, and 3) reasonable good faith conduct by the plaintiff. *Addison v. State of Cal.*, 21 Cal.3d 313, 319 (1978); *McDonald v. Antelope Valley Cmty. Coll. Dist.*, 45 Cal.4th 88, 102 (2008). While this fact-intensive test can rarely be resolved at the motion to dismiss stage, the Ninth Circuit has observed that doing so has been permitted when "some fact, evident from the face of the complaint, supported the conclusion that the plaintiff could not prevail, as a matter of law, on the equitable tolling issue." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir.

[3] For any claims accruing before 2005, the statutes of limitations supplied by California law were tolled during the Judicial Review Committee's administrative review. *See Donoghue*, 848 F.2d at 931. This would not affect the conclusion that those statutes of limitation for those claims ultimately expired prior to Plaintiff filing suit here.

1993). In *Cervantes*, the court noted that the notice factor was the "most adaptable to general rules established as a matter of law," qualifying that observation only in cases where different defendants were sued in the first and second claims. *Id.* at 1276 n. 3.

Plaintiff claims that, because he timely filed his writ petition and could not file a claim for damages prior to doing so, the statute of limitations should be tolled until January 25, 2012, the date the California Supreme Court denied review in the writ proceeding. [4] Opposition to Motion to Dismiss ("Opposition"), Docket No. 59, at 5-7. However, while Plaintiff's premises are correct, his conclusion is not. First, Plaintiff claims that he "timely filed" his writ petition. Opposition, Docket No. 59, at 7. Defendants do not contest this contention, and it is at least possible that Plaintiff is correct, since California's "catch all" statute of limitations for mandamus petitions is four years. Cal. Code Civ. Pro. § 343; *Bonner v. Sisters of Providence Corp.*, 194 Cal. App. 3d 437, 440, 443 (1987) (holding the four year statute of limitations applied to a doctor's mandamus petition seeking reinstatement of nephrology privileges at defendant hospital).

Furthermore, California Code of Civil Procedure § 356, which specifies that the statute of limitations tolls when an injunction or statutory prohibition prevents commencing suit, has been applied to allow tolling when "a plaintiff is legally prevented from taking action to protect his rights." *Hover v. Galbraith,* 7 Cal.3d 519, 526 (1972). Under California law, exhaustion of judicial remedies, through filing and successfully obtaining a writ of mandamus to set aside a quasi-judicial administrative action, may be required before a tort or other state law claim challenging that action may be filed. *Westlake Cmty. Hosp. v. Superior Court (Kaiman)*, 17 Cal.3d 465, 484 (1976). Otherwise, the quasi-judicial decision "has the effect of establishing the propriety of the [defendant's] action." *Johnson v. City of Loma Linda*, 24 Cal.4th 61, 70 (2000) (quoting *Westlake,* 17 Cal.3d at 484); *see also McDonald,* 45 Cal.4th at 113-14 (explaining that unless judicial remedies are exhausted, the administrative decision has collateral estoppel effect).[5]

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[4] However, nothing before the Court indicates that the writ is a precondition to suit for federal claims, even when the state statute of limitations is used. Therefore, Plaintiff's argument may not even apply to the federal claims using state statutes of limitations (Claims 1, 3, and 4).

[5] Currently, the *Westlake* approach is seen as a collateral estoppel issue rather than a requirement for judicial exhaustion. *See Miller v. City of Santa Cruz*, 39 F,3d 1030, 1035 (9th Cir. 1994); *Y.K.A. Industries, Inc. v. Redevelopment Agency of the City of San Jose*, 174 Cal.App.4th 339, 355-56 (2009). As such, whether § 356 is really applicable in the judicial exhaustion context is something of an open question.

However, while the requirement of judicial exhaustion supports tolling for state law claims during the pendency of the writ proceeding, there is no plausible argument for tolling during the period *before* the writ was filed. In fact, California courts have explained that "the timely notice requirement essentially means that the first claim must have been filed within the statutory period" in order for the second claim's statute of limitations to toll during those proceedings. *McDonald*, 194 P.3d at 1033 n. 2 (quoting *Collier v. City of Pasadena*, 142 Cal.App.3d 917, 924 (1983) (notice satisfied when the first claim was filed within two and one half months of the injury, well within the second claim's six month statute of limitations)); *see also Tarkington v. Cal. Unemployment Ins. Appeals Bd.*, 172 Cal.App.4th 1494, 1503-04 (2009) (notice satisfied when first claim was filed within second claim's six month statute of limitations).[6] Allowing tolling for the nearly four year period before Plaintiff attempted to file the writ would seriously undermine the purpose of the notice requirement, which is to "alert the defendant in the second claim of the need to begin investigating the facts which form the basis for the second claim." *Collier*, 142 Cal.App.3d at 924. As far as Defendant knew during that time, Plaintiff did not intend to challenge either the substance or the procedure of its review process. Even if Plaintiff was required to file a mandamus petition before filing claims for damages, and even if his filing of that petition was timely under state law, he would have had to undertake that course of action before the statutes of limitations ran on his other claims for them to remain viable through tolling.[7]

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[6] Some courts have extended the second claim's limitations period by a few days when only days remain on the second statute of limitations period after the first proceeding concludes. *See Tarkington*, 172 Cal.App.4th at 1506-1508 (summarizing the case law). However, nowhere is it questioned that the first case must be filed within the second claim's limitations period, and those extensions were for days or weeks – here, it took Plaintiff nine months to file this claim after final denial of his attempt to file the writ. *See id.* (allowing as timely a claim filed two weeks after tolling ended with the conclusion of the first proceeding, which had been filed days before the second limitations period ran) (citing *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal.3d 247, 269 (1972) (allowing second claim, filed within four days of the first proceeding's conclusion, to proceed when only two days remained of the limitations period even after tolling)). In fact, waiting too long between the first and second action can be evidence of bad faith. *Ervin v. Los Angeles Cnty.*, 848 F.2d 1018, 1020 (9th Cir. 1988) (holding that a plaintiff's year and a half delay before filing a second claim was outside of the statute of limitations period, unwarranted, unreasonable, and not in good faith).

[7] An analogous example is provided by the accrual and tolling of malicious prosecution claims within the state court system. "Under California law, a malicious prosecution claim accrues on the date that the trial court enters judgment. The statute of limitations is then tolled during an appeal from the judgment. However, the time between the filing of the judgment and filing of the notice of appeal is *not* tolled. In other words, the limitations period *begins to run* on the date of judgment, is *tolled* from the date the notice of appeal is filed, and *begins to run again* when the state appellate court issues a remittitur [which is analogous to a mandate]." *Morales v. City of Los*

Notably, even the notice provided by Plaintiff's attempt to file the writ petition was likely not adequate. In the causes of action herein alleged, Plaintiff does not merely dispute the factual findings, procedures, and ultimate decision of the JRC. Instead, he alleges improper motives and goals of the Hospital's actions, such as race-based animus and extortion. Requiring the Hospital to defend itself on the merits now, which it has likely not prepared to do at any point in over seven years, would make prejudice likely; Defendant's evidence now presumably resides in stale memories and archived records, arming it with a fraction of what it could have obtained with proper notice. While no bad faith on the part of the Plaintiff is specifically demonstrated, his actions in pursuing these claims can hardly be called reasonable.[8]

4. Conclusion

In 2005, Plaintiff had several choices to pursue his claims. He could either have followed the proper procedures to file the writ as a vexatious litigant within the other claims' limitations periods, preserving the ability to later bring state law damages claims, or timely brought his federal claims in federal court, or both. Plaintiff chose to wait almost four years to pursue the state law mandamus course of action, and, having put all of his eggs in that particular basket, he allowed the statutes of limitations to run on all of his other claims until tolling could not save them. Tolling is not appropriate when the nearly four-year delay was entirely within his control and when Defendant would likely be prejudiced.

In light of the foregoing, this Court would decline to apply equitable tolling and grant Defendant's motion to DISMISS WITH LEAVE TO AMEND all claims relying on actions during or prior to 2005. As such, all claims other than the second, fourth, and seventh (because they also concern Defendant's actions during Plaintiff's unsuccessful attempt to file a petition for a writ of mandamus) would be dismissed *at least* with leave to amend. However, the Court stresses that leave to amend is only being granted on two grounds: 1) to give Plaintiff the

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Angeles, 214 F.3d 1151, 1155 (9th Cir. 2000) (citations omitted). Here, the claim accrued and the limitations period began to run when the JRC's quasi-judicial decision became final, the limitations period began to toll when the writ was filed, and it ran again when the adjudication of the writ became final. It did not toll between the final decision and the filing of the writ.

[8] Plaintiff argues that Defendant should be equitably estopped from asserting the statute of limitations as a defense, correctly pointing out that the issue is one of fact. *Holdgrafer v. Unocal Corp.*, 160 Cal.App.4th 907, 925 (2008). However, Plaintiff fails to properly plead estoppel, which requires facts plausibly showing that there has been "some conduct by the defendant, relied on by the plaintiff, which induces belated filing of the action." *Id.* Although Plaintiff protests that Defendant stretched his JRC review over five years and that Defendant opposed the filing of his writ petition, Opposition at 7, neither of these actions induced him to wait nearly four years to file the writ. He therefore cannot claim the benefit of estoppel for the relevant time period, if at all.

opportunity to plead facts showing that his claims based on pre-2005 events accrued after that year, or 2) that estoppel is appropriate because he relied on conduct by Defendant that induced him to wait until 2009 to file his first action. All amendments re-alleging the tolling claims herein considered will be rejected. The sufficiency of both the time-barred (should the Court decide to dismiss them with leave to amend) and non-time barred claims is considered below.

B. Immunity

Defendant argues that it is absolutely immune, or at least has qualified immunity, from suit based on communications to the Medical Board of California and the National Practitioners' Data Base, as well as those made during the writ petition litigation. Motion, Docket No. 48, at 7-8. Under California Code § 47(b), communications are privileged if made in any "(1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate]." Even if Defendant was immune from suit based on the communications it identifies, Plaintiff's allegations relate not just to those communications but to Defendant's conduct, such as drawing out his JRC review over a five-year period, FAC ¶ 164, or suspending him without cause in the first place, even if it was required to report that suspension, FAC ¶ 180. Furthermore, while Defendant's communications in opposing the writ petition would be privileged, Plaintiff alleges that Defendant corruptly influenced the state court judges. An application of § 47(b), therefore, does not fully dispose of Plaintiff's claims.[9]

C. Sufficiency of Pleading Under Rule 12(b)(6)

1. First Claim: Intentional Interference with the Right to Practice a Profession, 42 U.S.C. § 1983

Although under the above analysis this claim is almost certainly time-barred, even if it were not, it is insufficiently pled. A claim under 42 U.S.C. § 1983 requires both: 1) "deprivation of a right secured by the Constitution or laws of the United States," and 2) "that the deprivation was committed by a person acting under color of state law." *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir. 2011). The Ninth Circuit recognizes at least four tests to identify actions under color of state law, any one of which is sufficient absent a countervailing

[9] While removing any allegations for which the hospital could claim immunity could leave some claims without sufficient support, those claims are likely time-barred or, as considered in the next section, insufficiently pled, regardless. It is therefore not necessary for the Court to determine how immunity would affect each claim at this time.

factor. *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). These are: "1) public function; 2) joint action; 3) governmental compulsion or coercion; and 4) governmental nexus." *Id.* (quoting *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-36 (9th Cir. 1999)).

Plaintiff contends that the Hospital was acting under color of state law because: 1) it filed a Section 805 report with the Medical Board of California, 2) the State investigated the allegations but dismissed them, which is allegedly state "supervision," 3) the state failed to take action against Defendant for reaching a different conclusion by denying due process, somehow to the state's benefit, 4) Defendant conspired with a judge to violate Plaintiff's rights by denying his writ petition, and 5) the Hospital is the only one in Upland and some of the Hospital's Board members also hold public offices. Opposition at 10-12. Each of these allegations is insufficiently pled or legally insufficient.

First, the filing of a Section 805 report by a private hospital does not make the deprivation of a doctor's privileges at that hospital a state action. *Safari v. Kaiser Found. Health Plan*, No. C 11-05371 JSW, 2012 U.S. Dist. LEXIS 67059, at *15-27 (N.D. Cal. May 11, 2012) (finding no state action under public function, joint action, or entwinement theories); *Pinhas v. Summit Health Ltd.*, 894 F.2d 1024, 1034 (9th Cir. 1990) ("[T]he removal of [plaintiff's] staff privileges at [the hospital], cannot be attributed to the state of California. Only private actors were responsible for the decision to remove [plaintiff]. That the decision was made pursuant to a review process that has been approved by the state is of no consequence."). Second, and for the same reasons, the state's own regulation and review of the medical professionals it licenses does not make Defendant's concurrent proceedings state action. The third claim is both difficult to follow and legally baseless. A feature of private behavior deemed "state action" can be that it allows the state to benefit from unconstitutional behavior (and it is questionable whether any state "benefit" is cognizable here). However, first the state must have "so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity." *Parks School of Bus., Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995) (quoting *Gorenc v. Salt River Project Agric. Improvement & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989)). Here, the state and the Hospital clearly conducted separate proceedings, and, as explained above, state regulation of the Hospital's review is insufficient for "state action."

The fourth allegation, that Defendant conspired with a judge, is conclusory and

completely devoid of factual support. While it is a matter of public record that Defendant opposed the writ petition, Plaintiff provides no basis whatsoever for believing Defendant exerted *improper* influence over the judge in doing so. *See Iqbal,* 556 U.S. at 678 (a complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'") (quoting *Twombly*, 550 U.S. at 556)). Finally, the contention that there was state action because the Hospital is the only one in Upland and Board members also happen to hold public offices is not enough to satisfy joint action or nexus. For the Hospital's alleged monopoly to be relevant, Plaintiff would have to show a sufficient "relationship between the challenged actions of the entity involved and their monopoly status," which he has not even attempted to do. *Taylor v. St. Vincent's Hosp.*, 523 F.2d 75, 78 (9th Cir. 1975) (quoting *Jackson v. Met. Edison Co.*, 419 U.S. 345, 351 (1974)). No facts are provided as to what positions the Board members hold or their relevance to any state-private nexus in Plaintiff's JRC proceeding. Without such facts (at a minimum), the Hospital is clearly a private actor. *See Safari*, 2012 U.S. Dist. LEXIS 67059, at *25 (explaining that "pervasive entwinement of public officials" has been found to be state action).

Therefore, even putting aside the timeliness question, this claim should be DISMISSED WITHOUT LEAVE TO AMEND. However, the Court would inquire at the hearing whether the Plaintiff can amend to cure the two factual insufficiencies identified: 1) the lack of factual support for the allegation that the Hospital exercised corrupt influence over a judge, and 2) the lack of evidence showing state action on the basis of the Hospital's monopoly in the city of Upland or its Board member's public positions.

2. Second Claim: Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C § 1964(c)

The elements of a RICO claim are: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiffs' business or property." *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005). Although the parties dispute it, Plaintiff alleges at least the possibility that the Hospital and one or more of its doctors formed an enterprise. The key issues here seem to be whether any predicate acts are plausibly pled and whether such acts caused Plaintiff's injuries.

Plaintiff lists several acts of Defendant, but he fails to show how any of them fall within the definition of "racketeering activity" given in 18 U.S.C. § 1961(1). In his Opposition,

plaintiff points to nine[10] "racketeering" acts alleged in the FAC, only a few of which even come close to being plausibly pled, and most of which are time-barred. Opposition at 16-17. The first four are time-barred, and are all related to § 1961(1)(A), which includes "any act or threat involving . . . extortion." Opposition at 16-17. Plaintiff alleges that he was physically and verbally threatened, including with summary suspension, to give up his IPA contract and his privileges at the Hospital. *Id.* Plaintiff also alleges that Defendant (or associated doctors) refused to provide "back up coverage," making him unable to perform his contract. *Id.*; FAC ¶ 31. However, the claimed predicate acts that he was threatened and coerced into giving up his privileges are completely devoid of factual support.

Plaintiff's non time-barred alleged predicate act is that Defendant improperly influenced the state court judge who denied the writ petition (predicate acts nine and eleven). Opposition at 16-17. Plaintiff claims that these activities constituted the predicate act of obstruction of justice. Opposition at 16. These acts, while within the limitations period, are not predicate acts under the statute because the predicate act of obstruction of justice relates only to federal judges, and Plaintiff alleges corruption of state court judges. 18 U.S.C. § 1503; *see also U.S. v. Regina*, 504 F. Supp. 629, 631 (D.C. Md. 1980). Plaintiff's remaining allegations similarly fall short.[11]

Defendant also raises the issue that Plaintiff does not have standing to raise his RICO claim because his damages are not "fairly traceable" to the Hospital's action. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (plaintiff must, to have standing, establish "actual or imminent invasion of a concrete and legally-protected interest which is fairly traceable to the conduct complained of and likely to be redressed by a favorable decision on the merits"). Focusing on the claims that are not time-barred, Plaintiff's alleged injury is that he lost income and incurred expenses during the litigation over the writ petition. FAC ¶ 179. If Plaintiff could sufficiently plead corrupt influence, he may have such damages traceable to Defendant and therefore standing (though proving such allegations sufficiently to survive a summary judgment

[10] The claims are mis-numbered, so that while the last claim is numbered (11), there are only nine claims because there is no claim numbered (7) or (8).

[11] Plaintiff's fifth predicate act is interference with interstate commerce for Defendant's filing of an allegedly false National Data Bank Report. The failure to set aside the administrative review through a writ of mandate establishes the propriety of this action, and the claim is time barred in any event. Plaintiff's sixth predicate act, mail fraud, fails to state sufficient facts to demonstrate what was communicated and how it perpetrated a fraud. Finally, Plaintiff's tenth predicate act, conspiracy, fails to allege any types of predicate acts that Defendant conspired to perform.

motion may be difficult).

Putting aside the timeliness issue, this claim would therefore be DISMISSED WITH LEAVE TO AMEND.[12]

3. Third and Fourth Claims: Intentional Interference with a Contractual Relationship under 42 U.S.C. § 1981 and Conspiracy to Violate Civil Rights under 42 U.S.C. §§ 1985 and 1986

Of these two, only the fourth claim pleads actions relating to the writ petition and is not time-barred. The required elements for a § 1985 claim are: 1) a conspiracy, 2) for the purpose of depriving a person of equal privileges or immunities under the law, 3) an act in furtherance of the conspiracy, and 4) a deprivation of a right or privilege of citizenship, or injury to the person or his property. *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). In addition, for both a § 1981 and a § 1985 claim, a plaintiff must allege facts showing that the conspiracy is motivated by race or other class-based animus. *Stones v. Los Angeles Cmty. Coll. Dist.*, 796 F.2d 270, 272 (9th Cir. 1986) (racial discrimination required for a § 1981 claim); *Burns v. Cnty. of King*, 883 F.2d 819, 821 (9th Cir. 1989) (§ 1985 conspiracy must be motivated by animus against a particular race or protected class). Section 1986 liability is predicated on a § 1985 violation. *See Delta Savs. Bank v. United States*, 265 F.3d 1017, 1024 (9th Cir. 2001).

Plaintiff has insufficiently pled any connection between Defendant's alleged actions against him and his race. He claims that Defendant conspired to obstruct justice and deprive him of time to pursue other work by opposing his writ petition. FAC ¶ 183. He also states that these actions were done because of his race, and he cites case law demonstrating that East Indians, such as himself, can be and have been subject to class animus. FAC ¶¶ 169, 180, 184; Opposition at 13. However, even if he is able to amend the deficiencies in his writ-based allegations, noted *supra*, Plaintiff is missing the crucial link between these propositions. He provides no factual allegations that Defendant acted in the way it did *because of* race-based motivations.

Putting aside questions of timeliness, these claims would be DISMISSED WITH LEAVE TO AMEND.

[12] Although no sufficient RICO predicate act and injury is currently pled, the application of the law on accrual of RICO claims to these facts is too uncertain at present to warrant dismissal without leave to amend. *See supra* at 5.

4. State Law Claims: Interference with a Prospective Economic Advantage; Defamation; Intentional Infliction of Emotional Distress; Malicious Prosecution

Plaintiff's only state law claim not barred by the statute of limitations is the seventh one, for intentional infliction of emotional distress ("IIED"). The other claims may not have survived in any event, because under *Westlake,* as Plaintiff did not succeed in his mandamus petition, the JRC's decision would have collateral estoppel effect for all issues it determined.[13] However, Plaintiff's IIED claim would have to depend only on any corrupt influence over a judge, because participation in the usual course of litigation does not provide grounds for such a claim. *Cervantes v. J.C. Penny Co.*, 24 Cal.3d 579, 593 (1979) (outrageous conduct is an element of the tort, and to be outrageous, the conduct "must be so extreme as to exceed all bounds of that usually tolerated in a civilized community"). As previously noted, corrupt influence is far from sufficiently pled.

As to the malicious prosecution claim, even if that claim did not accrue until – or was tolled until – Plaintiff's writ proceedings were finalized in January 2012,[14] Plaintiff admittedly failed to achieve success in those writ proceedings, a necessary element of his claim. *See Roberts*, 660 F.3d at 1163 ("To succeed on a malicious prosecution claim under California law, a plaintiff must prove that the prior action: '(1) was commenced by or at the direction of the defendant *and was pursued to a legal termination in his, plaintiff's, favor*; (2) was brought without probable cause; and (3) was initiated with malice.'") (emphasis added) (quoting *Paiva v. Nichols*, 168 Cal.App.4th 1007, 1018 (2008)); *Yount v. City of Sacramento*, 43 Cal.4th 885, 893 (2008). Although Plaintiff argues that he did achieve some limited success when the Medical

[13] Plaintiff cites a different portion of the *Westlake* opinion as evidence that he is not barred and that Defendant's opposition to the writ petition somehow relieves him of the exhaustion requirement. Opposition at 21. The cited excerpt, however, applies only in a completely different factual situation-one in which a physician is not granted privileges initially. Here, privileges were granted and then revoked according to the quasi-judicial process whose results Plaintiff has failed to set aside.

[14] *See Morales v. City of Los Angeles*, 214 F.3d 1151, 1155 (9th Cir. 2000) ("Under California law, a malicious prosecution claim accrues on the date that the trial court enters judgment. The statute of limitations is then tolled during an appeal from the judgment. However, the time between the filing of the judgment and filing of the notice of appeal is *not* tolled. In other words, the limitations period *begins to run* on the date of the judgment, is *tolled* from the date the notice of appeal is filed, and *begins to run again* when the state appellate court issues a remittitur.") (omitting internal citations); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998); *cf. Erlin v. United States*, 364 F.3d 1127, 1131 (9th Cir. 2004) (discussing effect of *Heck v. Humphrey*, 512 U.S. 477 (1994), on viability of § 1983 claim, and indicating that claim does not accrue until conviction or sentence is invalidated).

Board of California dismissed certain charges against him, he does not allege that such a conclusion occurred within the applicable statute of limitations (nor that it involved a review of the actions SACH took *vis a vis* Plaintiff)[15]. *See* FAC ¶54.

Therefore, putting aside timeliness issues, the Court would DISMISS WITH LEAVE TO AMEND Plaintiff's seventh and eighth state law claims. If the Court is inclined to allow claims five and six to survive a fatal timeliness challenge, it may need to further analyze Defendant's other arguments for why these claims cannot survive the pleadings.

IV. Conclusion

Ignoring any timeliness issues, the Court would DISMISS claim one WITHOUT LEAVE TO AMEND and DISMISS all other claims WITH LEAVE TO AMEND.

[15] The only question would be whether, because of the indeterminacy in Plaintiff's allegations in this regard, the Court can tell from the face of the FAC (or other material suitable for examination on a Rule 12(b)(6) motion) that this allegation is time-barred or otherwise irrelevant to showing a favorable termination of SACH's proceedings against Plaintiff. The Court would ask the Defendant to address this point at oral argument.

Mir v. San Antonio Cmty. Hosp., et al., Case No. CV-12-1791 GW (SPx)
Tentative Rulings on: (1) Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendants Dr. Donald Alpiner, Dr. Nabil Koudsi, Dr. Jayprakash Shah, Dr. Chuang-Ti Hung, Dr. Samir Anabi, Dr. Carl L. Schultz, Dr. Naveen Gupta, Dr. Michael N. Wood, Dr. Wanda Bell Olsen, Dr. Tomi Lin Bortolazzo, Dr. Roger D. Duber, Dr. Lothar McMillian, and Dr. Stanley R. Saul, and (2) Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendants Dr. Nedra Anne Vincent and Dr. Mahmoud A. Ibrahim

In two separate motions raising the exact same arguments, 15 individual defendants[1] ("the Physician Defendants") seek the dismissal of the First Amended Complaint ("FAC") Jehan Zeb Mir, M.D. ("Plaintiff") filed January 31, 2013.[2] Defendant San Antonio Community Hospital ("SACH") has filed another motion to dismiss, which raises many of the same arguments and is analyzed separately.[3] Reference is made to that analysis for purposes of the factual background of the case and a more complete discussion of issues presented by the motions other than the question of the FAC's timeliness.

As with SACH, all, or almost all, of Plaintiff's claims for relief against the Physician Defendants[4] are barred by applicable statutes of limitation, the longest of which is four years. With the possible exception of the malicious prosecution claim, all of the limited conduct allegedly attributable to the Physician Defendants was complete – and Plaintiff had suffered alleged injuries therefrom – by 2005 *at the latest*. *See* FAC ¶¶ 7, 31, 35, 37, 44, 49, 53, 56-57, 59, 65, 67, 69, 103, 106, 109, 112, 129, 131, 162-63, 169, 174-75, 177-78, 180-81, 183-86, 188-89, 192-97.

Federal law governs accrual of federal claims, even where the federal claim

[1] Drs. Donald Alpiner, Nabil Koudsi, Jayprakash Shah, Chuang-Ti Hung, Samir Anabi, Carl L. Schultz, Naveen Gupta, Michael N. Wood, Wanda Bell Olsen, Tomi Lin Bortolazzo, Roger D. Duber, Lothar McMillian, Stanley R. Saul, Nedra Anne Vincent and Mahmoud A. Ibrahim.

[2] Plaintiff filed his original Complaint on October 17, 2012.

[3] Plaintiff filed a single Opposition to the three motions.

[4] 1) Intentional Interference with Right to Practice a Profession, 42 U.S.C. § 1983; 2) Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1964(c); 3) Intentional Interference with Contractual Relationship, 42 U.S.C. § 1981; 4) Conspiracy to Violate Civil Rights, 42 U.S.C. §§ 1985-1986; 5) Interference with Prospective Economic Advantage; 6) Defamation; 7) Intentional Infliction of Emotional Distress; 8) Malicious Prosecution.

borrows a state's statute of limitations.[5] *See Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir. 2012) ("Federal law determines when a cause of action for a Section 1983 claim accrues and, hence, when the statute of limitations begins to run."); *Bonneau v. Centennial Sch. Dist. No. 28J*, 666 F.3d 577, 581 (9th Cir. 2012); *DirecTV, Inc. v. Webb*, 545 F.3d 837, 852 (9th Cir. 2008) ("The accrual of federal rights generally remains a matter of federal law even when a limitations period is borrowed from a state source."); *Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Aloha Airlines, Inc.*, 790 F.2d 727, 737 (9th Cir. 1986). State law claims enjoy state accrual (and tolling) principles (which have often been applied by the Ninth Circuit). *See Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530, 533 (1949) ("Since that cause of action is created by local law, the measure of it is to be found only in local law.... It accrues and comes to an end when local law so declares."); *Norco Constr., Inc. v. King Cnty.*, 801 F.2d 1143, 1146 (9th Cir. 1986); *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 878 F.Supp.2d 1009, 1015 (C.D. Cal. 2011).

The discussion which follows incorporates the language from Tentative Ruling as to SACH's Motion to Dismiss but adds the further analysis/case citations as indicated below.

A. Accrual

"Under federal law, accrual occurs when the plaintiff has a complete and present cause of action and may file a suit to obtain relief. An action ordinarily accrues on the date of the injury. A federal claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action." *Pouncil*, 704 F.3d at 573-74; *see also Bonneau*, 666 F.3d at 581. This general rule applies to each of Plaintiff's claims, as the citations below demonstrate:

1. Section 1983

See Coppinger-Martin v. Solis, 627 F.3d 745, 749 (9th Cir. 2010) ("We have previously held, in the context of civil rights claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986, that a plaintiff's claim accrues when the plaintiff learns of the 'actual injury,' i.e., an adverse employment action, and not when the plaintiff suspects a 'legal

[5] The same is not true with respect to *tolling* (at least where the state tolling principles are not inconsistent with federal law). *See Morales v. City of Los Angeles*, 214 F.3d 1151, 1155 (9th Cir. 2000).

wrong,' i.e., that the employer acted with a discriminatory intent.") (citing *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1049-51 (9th Cir. 2008)); *Lukovsky*, 535 F.3d at 1051 ("At this point, the plaintiffs knew they had been injured and by whom, even if at that point in time the plaintiffs did not know of the legal injury, i.e., that there was an allegedly discriminatory motive underlying the failure to hire."); *see also Wallace v. Kato*, 549 U.S. 384, 388 (2007) ("[T]he accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law.... "[I]t is the standard rule that [accrual occurs] when the plaintiff has a complete and present cause of action.") (omitting internal quotation marks) (quoting *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)); *Rotella v. Wood*, 528 U.S. at 555 ("[I]n applying a discovery accrual rule, we have been at pains to explain that discovery of the injury, not discovery of the other elements of a claim, is what starts the clock.").

Although there is some support in the case law under the "continuing violation" theory for new causes of action for later injuries, *Pouncil* clarified this question. *See Pouncil*, 704 F.3d at 581 ("The proper question...is...does this case involve the delayed, but inevitable, consequence of the original 2002 decision, making Pouncil's claims arising from the 2008 decision time-barred, or an independently wrongful, discrete act in 2008, which began the running of the statute of limitations anew, notwithstanding the prior denial pursuant to essentially the same regulation in 2002?"); *see also Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 927 n.6 (9th Cir. 2004) ("Olsen asserts that the 'last act rule' salvages her time-barred claims. She asserts that her claims did not accrue until the Board issued its final order denying her application for reinstatement on August 12, 1999, and that this act pulls into the statute of limitations each of appellees' previous actions. This argument is without merit."); *Grisham v. Philip Morris U.S.A., Inc.*, 40 Cal.4th 623, 644 (2007) ("Philip Morris cites no authority, and we have found none, for the proposition that the rule that the statute of limitations commences with the infliction of appreciable injury bars suits based on a later manifesting injury *of a different type*.") (emphasis added); *cf. Del. State Coll. v. Ricks*, 449 U.S. 449 U.S. 250, 258-59 (1980). Here, any injuries occurring within the applicable limitations period (two years, *see Pouncil*, 704 F.3d at 573), insofar as the Physician Defendants are concerned, would have

only been "the delayed, but inevitable, consequence" of their pre-2005 conduct, not the result of some new, "independently wrongful, discrete act."[6]

2. RICO

See Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 365 (9th Cir. 2005) ("The limitations period for civil RICO actions begins to run when a plaintiff knows or should know of the injury which is the basis for the action. Thus, Plaintiffs' RICO claims accrued when Plaintiffs had actual or constructive knowledge of DuPont's fraud."). Like the Section 1983 claim, at first glance Plaintiff would seem to have a potential way out of a statute of limitations bar by virtue of the Ninth Circuit's decision in *Grimmett v. Brown*, 75 F.3d 506 (9th Cir. 1996), where the court indicated that the Circuit follows *both* the "injury discovery" rule *and* a "separate accrual rule," the latter of which "provides that a new cause of action accrues for each new and independent injury, even if the RICO violation causing the injury happened more than four years before." *Id.* at 510-12.[7] But as *Grimmett* later clarified, the same limitation *Pouncil* observed would work to prevent such an argument in the RICO context here as well. *See id.* at 513 ("[T]wo elements characterize an overt act which will restart the statute of limitations: 1) It must be a *new and independent act* that is not merely a reaffirmation of a previous act; and 2) It must *inflict new and accumulating injury* on the plaintiff.") (quoting *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987)); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997) ("[T]he plaintiff cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period.").[8] Moreover, the mere existence of

[6] Indeed, Plaintiff effectively admits as much. *See* FAC ¶ 162 (acknowledging that summary suspension at SACH "would adversely affect [sic] Plaintiff his right [sic] to practice medicine at other hospitals"); *id.* ¶¶ 163, 168, 177-78, 181-83, 186, 197 (alleging – and thus acknowledging – that defendants' pre-2005 actions caused him to be unable to secure employment at other hospitals).

[7] The Supreme Court has, however, made clear that a "last predicate act" rule cannot be applied. *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997); *see also Rotella v. Wood*, 528 U.S. 549, 554 (2000). The Supreme Court refused to settle upon either an "injury discovery" or "injury occurrence" rule, however. *See Rotella*, 528 U.S. at 554 n.2.

[8] If it is true that the same federal accrual rule applies in RICO and Section 1983 actions, *see State Farm Mut. Auto. Ins. Co. v. Ammann*, 828 F.2d 4, 5 (9th Cir. 1987) (Kennedy, J., concurring), then *Pouncil* would appear to change the nature of the analysis under *Grimmett*. The question would then be whether anything that might fall within the limitations period was a "delayed, but inevitable, consequence" of an earlier alleged violation or a new, "independently wrongful, discrete act." *See Pouncil*, 704 F.3d at 581. As discussed above, here we have the former.

the writ proceeding could not have precluded the accrual of Plaintiff's RICO claim to the extent it is based upon pre-2005 conduct and is pled against the Physician Defendants. *See id.* at 517 (rejecting claim that pending bankruptcy case postponed accrual of claim where plaintiff already knew the value of her injury – "That she might have been able to recoup some of those damages in the bankruptcy proceeding did not preclude her from bringing her RICO action").

3. Section 1981

See Coppinger-Martin v. Solis, 627 F.3d at 749; *Lukovsky*, 535 F.3d at 1051.

4. Sections 1985/1986

See Coppinger-Martin v. Solis, 627 F.3d at 749; *Lukovsky*, 535 F.3d at 1051.

5. Intentional Interference with Prospective Economic Advantage

See Perfect 10, Inc. v. Visa Int'l Serv. Ass'n, 494 F.3d 788, 809-10 (9th Cir. 2007) (holding that accrual for libel and intentional interference with prospective economic advantage occurred when plaintiff put on industry "black list").

6. Defamation

See Roberts v. McAfee, Inc., 660 F.3d 1156, 1166-68 (9th Cir. 2011) (defamation claim, even in mass communication context, accrues upon first publication); *Perfect 10*, 494 F.3d at 809-10; *Cusano v. Klein*, 264 F.3d 936, 949 (9th Cir. 2001) ("A defamation claim 'accrues upon the first general distribution of the publication to the public.' Generally, the 'statute of limitations will begin to run regardless of whether a plaintiff is aware that he has a cause of action.'") (omitting internal citations) (quoting *McGuiness v. Motor Trend Magazine*, 129 Cal.App.3d 59, 61 (1982) and *Johnson v. Harcourt, Brace, Jovanovich, Inc.*, 43 Cal.App.3d 880, 896 (1974)).

7. Intentional Infliction of Emotional Distress

See Johnson v. Lucent Techs. Inc., 653 F.3d 1000, 1008 (9th Cir. 2011) ("Under California law, an IIED claim accrues 'when the harm is inflicted.'"). This is the only one of the claims as to which the Court might have been *unable* to resolve the accrual issue based only on the pleadings because, in *Johnson*, the Ninth Circuit took the position that "[t]he question of when a continuing harm grows severe enough to constitute intentional infliction of emotional distress is one of fact," *id.*, apparently indicating that the emotional distress does not have to be an immediate consequence of the conduct in

question. *See also Bibeau v. Pac. Nw. Research Found. Inc.*, 188 F.3d 1105, 1107-11 (9th Cir. 1999); *Kiseskey v. Carpenters' Trust for S. Cal.*, 144 Cal.App.3d 222, 232 (1983) ("[T]he tort of intentional infliction of emotional distress…is not complete until the effect of a defendant's conduct results in plaintiff's *severe* emotional distress. That is the time the cause of action accrues and starts the statute of limitations running.").

However, the applicable statute of limitations is two years. *See Johnson*, 653 F.3d at 1008; *Pugliese v. Superior Court (Pugliese)*, 146 Cal.App.4th 1444, 1450 (2007). There is *nothing* in the FAC to suggest that Plaintiff *first* suffered the type of emotional distress necessary for an intentional infliction of emotional distress within the two years preceding October 17, 2012. *See* FAC ¶¶ 191-98. The only incidents that occurred during that time involved his state court writ proceedings and *SACH's* opposition thereto. Although it is conceivable that Plaintiff could amend to cure the apparent timeliness problem with this claim, he has given the Court no reason to believe that he can plead that, during that two year period, he *first* suffered some form of severe emotional distress stemming from something one or more of the *Physician Defendants* had done 5-plus years earlier.

In fact, the few discernible allegations Plaintiff provides in connection with this claim would appear to indicate that the emotional distress on this claim either started soon after his initial suspension began – which could conceivably have been caused by one or more of the Physician Defendants' actions, but would be time-barred – or occurred only as a result of the recent writ proceedings, which do not appear to have had anything to do with any of the Physician Defendants. *See id.* ¶ 196 ("In doing the acts of which Plaintiff complains, Defendants intended and did cause severe emotional distress and shock to the Plaintiff by their outrageous conduct with reckless disregard of the probability of causing emotional distress, when in fact they knew that Plaintiff was susceptible to emotional distress *due to ongoing legal battles and unemployment for years*.") (emphasis added); *id.* ¶ 197 ("As a direct and proximate cause of Defendant's acts, Plaintiff was subjected to extreme emotional distress *for having to pay huge legal fees and costs* with no income to support and to *face ridicule, embarrassment of losing staff membership and privileges* and standing in the community.") (emphasis added). As such, notwithstanding the approach taken in *Johnson* to the issue of accrual for this type

of claim, the claim as to the Physician Defendants appears to be time-barred.

8. Malicious Prosecution

As pled, Plaintiff's malicious prosecution claim does not concern the writ proceedings which terminated in January 2012. Instead, it concerns what Plaintiff refers to as "Charge (b)." FAC ¶ 199. He asserts that he received a favorable termination of that charge because the defendants dismissed it. *See id.* Plaintiff admits that dismissal occurred in 2004. *See id.* ¶ 59. It is, therefore, plainly time-barred. *See Stavropoulos v. Superior Court (Stavropoulos)*, 141 Cal.App.4th 190, 192 (2006) (concluding that two-year statute of limitations in Cal. Code Civ. Proc. § 335.1 applies).

Even if Plaintiff's malicious prosecution claim did not accrue until – or was tolled until – Plaintiff's writ proceedings were finalized in January 2012,[9] Plaintiff admittedly failed to achieve success in those writ proceedings, a necessary element of his claim. *See Roberts*, 660 F.3d at 1163 ("To succeed on a malicious prosecution claim under California law, a plaintiff must prove that the prior action: '(1) was commenced by or at the direction of the defendant *and was pursued to a legal termination in his, plaintiff's, favor*; (2) was brought without probable cause; and (3) was initiated with malice.'") (emphasis added) (quoting *Paiva v. Nichols*, 168 Cal.App.4th 1007, 1018 (2008)); *Yount v. City of Sacramento*, 43 Cal.4th 885, 893 (2008). Although Plaintiff argues that he did achieve some limited success when the Medical Board of California dismissed certain charges against him, he does not allege that such a conclusion occurred within the applicable statute of limitations (nor that it involved a review of the actions SACH took *vis a vis* Plaintiff)[10]. *See* FAC ¶54. If that is the basis for his claim of malicious

[9] *See Morales v. City of Los Angeles*, 214 F.3d 1151, 1155 (9th Cir. 2000) ("Under California law, a malicious prosecution claim accrues on the date that the trial court enters judgment. The statute of limitations is then tolled during an appeal from the judgment. However, the time between the filing of the judgment and filing of the notice of appeal is *not* tolled. In other words, the limitations period *begins to run* on the date of the judgment, is *tolled* from the date the notice of appeal is filed, and *begins to run again* when the state appellate court issues a remittitur.") (omitting internal citations); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998); *cf. Erlin v. United States*, 364 F.3d 1127, 1131 (9th Cir. 2004) (discussing effect of *Heck v. Humphrey*, 512 U.S. 477 (1994), on viability of § 1983 claim, and indicating that claim does not accrue until conviction or sentence is invalidated).

[10] The only question would be whether, because of the indeterminacy in Plaintiff's allegations in this regard, the Court can tell from the face of the FAC (or other material suitable for examination on a Rule 12(b)(6) motion) that this allegation is time-barred or otherwise irrelevant to showing a favorable termination of SACH's proceedings against Plaintiff. The Court would ask the Physician Defendants to address this point at oral argument.

prosecution, it is at least very likely, *see* supra Footnote 10, barred by the applicable statute of limitations. *See Stavropoulos*, 141 Cal.App.4th at 192. Finally, though it is completely irrelevant given the two foregoing points, even if Plaintiff could be entitled to some form of tolling or equitable estoppel due to *SACH's* opposition to Plaintiff's writ efforts, none of the *Physician Defendants* opposed those efforts.

B. Equitable Tolling and Equitable Estoppel

Plaintiff has not set forth any basis for believing that either federal principles of equitable tolling or federal or state principals of equitable estoppel would apply on the facts here to prevent the statutes of limitation from running insofar as the Physician Defendants are concerned. *See Lukovsky*, 535 F.3d at 1051 ("The federal version of…'[e]quitable tolling' focuses on 'whether there was excusable delay by the plaintiff: If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs.' Equitable estoppel, on the other hand, focuses primarily on actions taken by the defendant to prevent a plaintiff from filing suit, sometimes referred to as 'fraudulent concealment.'") (quoting *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir. 2002)); *id.* at 1052 ("California equitable estoppel is…similar to and not inconsistent with federal common law, as both focus on actions taken by the defendant which prevent the plaintiff from filing on time."). Meanwhile, both in terms of the lack of notice to the Physician Defendants and the obvious prejudice to their ability to gather evidence for occurrences that – as to them – are at least almost a decade old makes abundantly clear that there is no basis for equitable tolling under California law either. *See Hatfield v. Halifax PLC*, 564 F.3d 1177, 1185 (9th Cir. 2009) ("Three factors are taken into consideration when deciding whether to apply equitable tolling under California law: (1) timely notice to the defendant in the filing of the first claim; (2) lack of prejudice to the defendant in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by the plaintiff in filing the second claim.").

Even if equitable tolling somehow did apply during the time in which Plaintiff's writ proceeding was pending, almost all of the applicable statutes of limitation (the longest of which is four years) had expired by that time and for those that had not yet

done so, they would have in the nine months between when the writ proceeding concluded and Plaintiff filed his initial Complaint in this action. As such, Plaintiff has not demonstrated – or even suggested – a basis by which he might save any of his claims against the Physician Defendants from a statute-of-limitations-based demise.

C. Amendment

Ordinarily, *pro per* litigants are given leave to amend at least once (at least where there is a defect in pleading the elements of their claims) and Rule 12(b)(6) dismissals based on statutes of limitation defenses are difficult to achieve. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) ("A district court should not dismiss a pro se complaint without leave to amend unless 'it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.'") (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988)); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1045 (9th Cir. 2011) ("A district court may dismiss a claim '[i]f the running of the statute is apparent on the face of the complaint.' However, a district court may do so 'only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.'"). Likewise, ordinarily questions of equitable tolling and equitable estoppel are not amenable to resolution on a motion to dismiss. *See Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 1003-04 (9th Cir. 2006) ("Generally, the applicability of equitable tolling depends on matters outside the pleadings, so it is rarely appropriate to grant a Rule 12(b)(6) motion to dismiss (where review is limited to the complaint) if equitable tolling is at issue.").

This is not an ordinary case. From what Plaintiff has already pled on the face of the FAC, his claims are time-barred, and from his silence on any potential relevant amendment in his Opposition, there does not appear to be any basis for pleading a claim against any of the Physician Defendants that would fall within the applicable statutes of limitation. Nor does Plaintiff give any suggestion of how he might change his allegations such that some form of equitable tolling or equitable estoppel (federal or state) could serve to save any of his claims against the Physician Defendants. As such, the Court would dismiss Plaintiff's claims against the Physician Defendants without leave to amend.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

JEHAN ZEB MIR, Plaintiff, vs. SAN ANTONIO COMMUNITY HOSPITAL, Defendant.	No. CV 12-1791-SVW

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, APRIL 15, 2013

DEBORAH K. GACKLE, CSR, RPR
United States Courthouse
312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

APPEARANCES OF COUNSEL:

For the Plaintiff:

JEHAN ZEB MIR, PRO SE

For the Defendant:

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- - - - -

LOS ANGELES, CALIFORNIA; MONDAY, APRIL 15, 2013; 9:30 A.M.

- - - - -

THE COURT: All right. Let me call the matter of Mir versus San Antonio Community hospital.

MR. MIR: Good morning, Your Honor. Dr. Mir, plaintiff, pro se.

THE COURT: All right.

MS. THOMAS: Good morning, Your Honor. Jessica Thomas of McDermott, Will and Emery on behalf of defendant San Antonio Community Hospital and the 16 individual moving physicians.

THE COURT: All right. We're here on motions to dismiss that were filed by the hospital and by two groups of medical personnel, and I've issued a tentative: One for the hospital, which is kind of like the beginning one, and then another tentative to the two moving groups of doctors.

And let me ask both sides: I presume both sides have had the opportunity to read the tentatives?

MR. MIR: Your Honor, I just made a cursory look at it, and I would request a continuance because in order for me to have an intelligent exchange with the honorable court, I need some time to digest all this; and I do see some problems with your opinion, Your Honor, with -- respectfully, with your ruling --

THE COURT: Let me stop you. Let me ask the defense counsel.

Do you have an objection to giving the defendant some time to look at the materials and digest it?

MS. THOMAS: We do to the extent that the defendants in this case have already been litigated against on several occasions. I think that they're entitled to some form of swift justice or at least some timely justice juris --

THE COURT: I will tell you what I'll do: I will continue this matter until Thursday. I'll give him time to look it over, until Thursday. I don't want any further submissions of materials, however, because that is not what we're doing at this stage.

MR. MIR: No, I understand, Your Honor, but there is one more point. They have one more defendant pending here, which is -- has -- from one of the doctors, and she has filed a separate motion, and that is supposed to be heard on May 6th. So may we continue that hearing so we can hear everything together at the same time?

MS. THOMAS: There's one additional doctor, Dr. Sani, who was served quite a bit later than the other defendants, so his response was due later; so we filed the motion to dismiss exactly the same as the other defendants.

MR. MIR: So --

THE COURT: Well, let me ask you: Do you have an

objection to my continuing these motions to that date?

MS. THOMAS: Only to the extent our clients are anxiously awaiting to hopefully be dismissed.

THE COURT: I'll continue to May 6th.

MR. MIR: Thank you, Your Honor. Have a good day.

THE COURT: Thank you.

But I do not want any further submission in so far as these motions are concerned. These motions are submitted. As they are. It would only be as to the remaining defendant.

MS. THOMAS: I believe our brief is the exact same brief submitted on behalf of the other defendants, individual physician --

THE COURT: No. I mean, you obviously -- in so far as the new motion is concerned, you can submit whatever you want. I mean, I'm not putting any restrictions -- I'm only saying as to these three motions that we've issued tentatives on, they are submitted on the papers. I'm only allowing continuation for the doctor to familiarize himself more with what I've said and also to respond to the new motion that is going -- that has been filed.

MS. THOMAS: Thank you, Your Honor.

THE COURT: Thank you.

MS. THOMAS: Thursday at eight o'clock -- 8:30 --

THE COURT: 8:30. And have a nice day -- sorry. May is the --

MS. THOMAS: I'm sorry. May 6th?

THE COURT: May 6th. I'm sorry, not May 6th -- I'm sorry. It is May 6th. May 6th is a Monday, and that would be at 8:30. Okay. Thank you.

MS. THOMAS: Thank you.

(Proceedings concluded at 9:35 a.m.)

- - - - -

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

February 18, 2013

/S/_____ _____

Deborah K. Gackle
Official Court Reporter
CSR No. 7106

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9th Circuit Case Number(s) 13-57138/13-57181

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

****

CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) _____.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) _____

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) September 26, 2014.

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Jehan Zeb Mir
417 Via Anita
Redondo Beach, CA 90277

Signature (use "s/" format) s/ Christi Gilbert