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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

XING WEI JING,)	Case No. CV 13-05207 DDP (MANx)
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS' MOTION
)	TO DISMISS SECOND AMENDED
v.)	COMPLAINT
)	
COUNTY OF LOS ANGELES,)	[Dkt. 31]
)	
Defendant.)	
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Presently before the court is Defendant County of Los Angeles' a Motion to Dismiss Plaintiff's Second Amended Complaint. Having considered the parties' submissions, the court grants the motion and adopts the following order.

I. Background

As described in this court's earlier orders, Plaintiff is a Chinese-American citizen. He was a doctor in China, but was employed as a registered nurse at LAC/USC Medical Center, where he participated in the intensive care unit program in the spring and summer of 2012. Plaintiff was the oldest person in the program,

1 and the only Chinese employee. Plaintiff alleges several instances
2 of discriminatory acts that underlie his claims for unlawful
3 termination, hostile work environment and harassment, retaliation,
4 discrimination, and employment defamation.

5 At a Christmas party in 2011, Plaintiff's immediate
6 supervisor's husband asked Plaintiff about his age, religion, and
7 reasons for moving to the United States. In February 2012,
8 assistant supervisor Amelia Shovlin also inquired about his age and
9 reasons for immigrating.

10 Plaintiff also alleges that an instructor stated that "Chinese
11 doctor should not be nurse" while other colleagues opined that
12 Plaintiff was "too old to work in ICU." An instructor also
13 allegedly "reached his face to plaintiff face 2, 3, fists far,
14 shaving his head to Plaintiff said, 'I would not let you pass this
15 program, are you emotional?'" Plaintiff also contends that he was
16 called "Ying Yang" and "Buda" by another instructor, who also
17 suggested to Plaintiff to "forget your culture," and that his
18 eyebrows were too long, and needed to be cut.

19 Plaintiff further alleges that he was required to sign a "DHS
20 Discipline Manual Attestation form" on two occasions, but that no
21 one else signed it. Plaintiff alleges that he was told he had to
22 sign twice because his form was lost, "which is not true, but
23 'Scaring', because is kept in HR, not in manager's hands."

24 Plaintiff alleges that he complained about the instructors'
25 conduct in early 2012 and again in August 2012. Plaintiff alleges
26 that although he was at all times rated "competence," he was

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1 discharged on February 22, 2012 and replaced by a younger, less
2 qualified person.¹

3 Plaintiff appealed his discharge to the County Civil Service
4 Commission, and participated in a two-day hearing in December 2013.
5 The hearing examiner concluded that Plaintiff committed several
6 workplace violations, that his "allegations of discrimination,
7 raised as a defense, do not ring true and appear to be a straw man
8 issue intended to detract from the main charges against him," that
9 Plaintiff provided no evidence of discrimination against him, and
10 that his discharge was appropriate. (Declaration of Natalie Luongo
11 in Support of Defendant's Request for Judicial Notice, Ex. B.) The
12 Civil Service Commission overruled Plaintiff's objections to the
13 hearing officer's findings of fact and conclusions of law and
14 adopted the hearing officer's recommendation. (Luongo Decl., Ex.
15 A). Plaintiff did not appeal that decision.

16 Plaintiff's Second Amended Complaint in this court alleges
17 five claims: (1) "discrimination termination"; (2) "hostile working
18 environment, and harassment"; (3) "retaliation"; (4) "intentional
19 discrimination" and (5) "employment defamation." Defendant now
20 moves to dismiss.

21 **II. Legal Standard**

22 A complaint must include "a short and plain statement of the
23 claim showing that the pleader is entitled to relief." Fed. R.
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26 ¹ It appears that Plaintiff may have intended to allege that
27 he was discharged in February 2013, as much of the workplace
28 conduct Plaintiff describes occurred after February 2012.
Plaintiff's allegation that he was rated "competence" at all times
is inconsistent with several other allegations in the SAC that
Plaintiff received "not met" evaluations.

1 Civ. P. 8(a)(2). The allegations must be "simple, concise and
2 direct." Fed. R. Civ. P. 8(d)(1). Confusing, ambiguous, and
3 distracting pleadings do not meet the requirements of Rule 8. See
4 Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th
5 Cir. 2011). A complaint must be dismissed if it is "so verbose,
6 confused and redundant that its true substance, if any, is well
7 disguised." Hearns v. San Bernardino Police Dep't, 530 F.3d. 1124,
8 1131 (9th Cir. 2008)(quoting Gillibeau v. City of Richmond, 417
9 F.2d 426, 431 (9th Cir. 1969).

10 A complaint will survive a motion to dismiss when it contains
11 "sufficient factual matter, accepted as true, to state a claim to
12 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
13 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
14 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
15 "accept as true all allegations of material fact and must construe
16 those facts in the light most favorable to the plaintiff." Resnick
17 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
18 need not include "detailed factual allegations," it must offer
19 "more than an unadorned, the-defendant-unlawfully-harmed-me
20 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
21 allegations that are no more than a statement of a legal conclusion
22 "are not entitled to the assumption of truth." Id. at 679. Even
23 under the liberal pleading standard of Federal Rule of Civil
24 Procedure 8(a)(2), under which a party is only required to make a
25 "short and plain statement of the claim showing that the pleader is
26 entitled to relief," a "pleading that offers 'labels and
27 conclusions' or a 'formulaic recitation of the elements of a cause
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1 of action will not do.'" Id. 678 (quoting Twombly, 550 U.S. at
2 555).

3 **III. Discussion**

4 A. Res Judicata

5 The doctrine of res judicata "prohibits lawsuits on any claims
6 that were raised or could have been raised in a prior action."
7 Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002). It
8 applies when there is "(1) an identity of claims; (2) a final
9 judgment on the merits; and (3) identity or privity between
10 parties." Id. Defendant contends that the Civil Service
11 Commission's order constitutes a final judgment of the merits for
12 res judicata purposes, and therefore bars Plaintiff's claims. The
13 court agrees.

14 Federal courts afford state court decisions the same
15 preclusive effect that other state courts would give. See MHC
16 Financing Ltd. P'ship v. City of San Rafael, 714 F.3d 1118, 1125
17 (9th Cir. 2013). The same applies to state administrative
18 decisions. See Avila v. Los Angeles Police Dep't, 758 F.3d 1096,
19 1100 (9th Cir. 2014). In cases such as this one, California law
20 provides that administrative decisions are binding in later civil
21 actions to the same extent as state court decisions. White v. City
22 of Pasadena, 671 F.3d 918, 927 (9th Cir. 2012).

23 While Plaintiff's opposition regarding the res judicata issue
24 expresses a clear dissatisfaction with the outcome of his
25 administrative hearing, it presents no reason why the Commission's
26 decision, which Plaintiff did not appeal, does not preclude his
27 claims here. Because the Commission issued a final ruling on the
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1 same discrimination issues Plaintiff now seeks to raise once again
2 before this court, Plaintiff's claims are barred as res judicata.

3 B. Defamation

4 Plaintiff's Fifth Cause of Action for Employment Defamation
5 refers to acts addressed by the Commission's ruling and also to
6 statements made in the course of the administrative hearing.

7 Because the latter statements were not necessarily encompassed in
8 the agency's decision, res judicata may not bar Plaintiff's

9 defamation claim. However, California's Tort Claims Act "requires
10 that any civil complaint for money damages must first be presented
11 to and rejected by the pertinent public entity." Castaneda v.

12 Dep't of Corrections and Rehabilitation, 212 Cal. App. 4th 1051,
13 1061 (2001). Compliance with this requirement is mandatory. Id.

14 Although Plaintiff appears to argue that this requirement does not
15 apply to his claim against the County of Los Angeles, the basis for
16 that contention is unclear to the court, and appears to conflate
17 Plaintiffs' employment claims with his defamation claim. The
18 defamation claim is, therefore, dismissed.

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IV. Conclusion

For the reasons stated above, Defendant's Motion to Dismiss is GRANTED.² The Second Amended Complaint is DISMISSED, with prejudice.

IT IS SO ORDERED.

Dated: May 12, 2015


HON. DEED D. PREGERSON
United States District Judge

² Having dismissed Plaintiff's claims for the reasons stated above, the court need not reach Defendant's additional arguments, including the argument that the SAC, like its earlier iterations, fails to satisfy Federal Rule of Civil Procedure 8.