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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE C. STONUM,  
Plaintiff,  
v.  
COUNTY OF KERN, et al.,  
Defendants.

No. 1:16-cv-01076-DAD-JLT  
ORDER GRANTING DEFENDANTS’  
MOTION FOR JUDGMENT ON THE  
PLEADINGS  
(Doc. No. 29)

This matter came before the court on June 6, 2017, for hearing of defendants’ motion to dismiss pursuant to Federal Civil Procedure Rule 12(b)(6). (Doc. No. 29.) Plaintiff Dywane C. Stonum, proceeding pro se, appeared telephonically on his own behalf. Attorney James Brannen appeared telephonically on behalf of defendants County of Kern, Patricia Gable, Tracy Selph, James McClellan, Shannon Oastler, Debbie Spears, and Debra Davis. After oral argument, the motion was taken under submission. For the reasons set forth below, the defendants’ motion will be granted.

**FACTUAL BACKGROUND**

On July 26, 2016, plaintiff commenced this action against defendants, alleging employment discrimination claims under the Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C. §§ 621–634, and Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000(e), et seq. (Doc. No. 1.) On March 20, 2017, this court granted defendants’

1 motion to dismiss plaintiff's ADEA claims as well as his Title VII claims based on hostile work  
2 environment. (Doc. No. 26.) On April 4, 2017, plaintiff filed a notice of intent to proceed on the  
3 surviving Title VII claims for race discrimination and retaliation. (Doc. No. 27.)

4 In the complaint, plaintiff alleges the following facts. Plaintiff is a California resident  
5 who was employed with defendant Kern County in the Department of Human Services ("KDHS")  
6 between April 2013 and January 2014. (*Id.* at 6, 17.) The individual defendants were also  
7 employed by KDHS in supervisory positions during the relevant time frame.<sup>1</sup>

8 On April 1, 2013, plaintiff was hired by KDHS to fill the position of Human Services  
9 Technician I, charged with determining new and ongoing eligibility for California public  
10 assistance programs. (*Id.* at 6.) In May 2013, plaintiff was placed at Kern County's Mojave  
11 office. (*Id.*)

12 During his employment at the Mojave office, plaintiff was exposed to a discriminatory  
13 work environment. (*Id.* at 11.) Specifically, plaintiff observed "Obama-bashing"; the belittling  
14 of the Director of KDHS, a black woman; and co-workers celebrating after rejecting individual  
15 and family public assistance requests. (*Id.*) Plaintiff also observed defendants Gable and Selph,  
16 together with Melissa Calliston, operating as a management team that "target[ed] to eliminate  
17 anyone who disagree[d] with their unlawful acts of discrimination, and to discourage prospective  
18 applicants [for state public assistance]." (*Id.* at 12.)

19 On multiple occasions, defendants disputed plaintiff's handling of public assistance cases.  
20 (*Id.* at 11-17.) In May 2013, plaintiff provided a customer with advice about how to avoid losing  
21 her public benefits, and Calliston reacted by reprimanding plaintiff and disparaging his character  
22 in front of coworkers. (*Id.* at 11-12.) Calliston ordered plaintiff to send the customer notice that  
23 she owed the county eleven years of over-payments; when plaintiff expressed concerns about this  
24 determination, Calliston admitted that the customer did not owe money to the county. (*Id.*)

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25 <sup>1</sup> Defendant Gable is a Human Services Supervisor for the Mojave office and supervised both  
26 plaintiff and plaintiff's mentor, Melissa Calliston. (Doc. No. 1 at 10.) Defendant Selph was the  
27 Assistant Program Director for the Mojave office, and supervised defendant Gable. (*Id.* at 10.)  
28 Defendants Spears and Oastler were Assistant Program Directors from the Kern County  
Bakersfield office; defendant Davis was a Human Services Personnel Manager at the Mojave  
office; and defendant McClellan was a Social Service Supervisor at the Mojave office. (*Id.* at 9.)

1 At a later time, plaintiff identified an improper public assistance sanction being imposed  
2 on a customer, and instructed the customer regarding how to address the problem. (*Id.* at 14–15.)  
3 Defendants Gable and McClellan then met with plaintiff and reprimanded him, with defendant  
4 Gable telling plaintiff to be “very careful.” (*Id.* at 15.)

5 Kern County State Investigation Unit (“SIU”) officials also began to harass plaintiff. (*Id.*  
6 at 16.) The SIU officials expressed dissatisfaction with the number of suspected fraud cases  
7 plaintiff was reporting, and told him that he was falling short of the required fraud case quota.  
8 (*Id.*)

9 Defendant Gable began instructing coworkers to send adverse letters to customers under  
10 plaintiff’s name, resulting in a series of complaints being made against plaintiff. (*Id.* at 17.)  
11 Defendant Gable also restricted plaintiff’s ability to schedule walk-in appointments with  
12 customers, causing him to miss a work deadline. (*Id.*) In response to the missed deadline,  
13 defendant Gable wrote plaintiff a negative performance evaluation. (*Id.*)

14 Meanwhile, plaintiff’s white co-worker, Donald Burke, was treated more favorably and  
15 given less scrutiny in the workplace. (*Id.* at 18.) In particular, Burke was given an earlier lunch  
16 hour, was assigned a desk that was located closer to supervisors and managers, and was asked by  
17 Calliston to join a union that plaintiff was never asked to join. (*Id.*)

18 On July 25, 2013, plaintiff received a Memo of Concern from defendant Gable threatening  
19 plaintiff with disciplinary action and termination. (*Id.* at 13.) Plaintiff was not provided any  
20 additional information by defendant Gable, and was not given an August 2013 performance  
21 evaluation report. (*Id.*) Plaintiff did not receive his employee performance report until December  
22 13, 2013. (*Id.* at 16.)

23 On September 4, 2013, plaintiff made a complaint of racial discrimination to defendant  
24 Davis. (*Id.* at 13.) Plaintiff also submitted a written request for an appointment with KDHS  
25 Department Head Tony Lopez to discuss his employee performance report, but plaintiff’s request  
26 for that appointment was denied without explanation. (*Id.*)

27 In November 2013, plaintiff interviewed for the position of KDHS Social Services  
28 Worker, for which he had applied earlier that year. (*Id.*) The interview panel consisted of

1 defendants Selph, McClellan, and Oastler. (*Id.*) According to plaintiff, he was denied the  
2 position in retaliation for his earlier complaint of racial discrimination. (*Id.*) By December 2013,  
3 plaintiff’s work started to be reassigned to his coworkers. (*Id.* at 16.)

4 On January 3, 2014, plaintiff was discharged by defendant Gable. (*Id.* at 17.) Plaintiff  
5 was not given his final pay after the discharge. (*Id.*)

6 Following his discharge, plaintiff filed a grievance with SEIU Local 521 and the Kern  
7 County Human Resources Department. (*Id.* at 18.) On April 2, 2014, plaintiff also filed a  
8 complaint with the Equal Employment Opportunity Commission (“EEOC”). (*Id.* at 6, 18.)  
9 Plaintiff’s grievance and complaint were found to be without merit. (*Id.* at 18.)

10 On April 20, 2017, defendants filed the instant motion for judgment on the pleadings.  
11 (Doc. No. 29.) Plaintiff filed his opposition on May 22, 2017. (Doc. No. 31.) On May 30, 2017,  
12 defendants filed their reply. (Doc. No. 32.)

### 13 LEGAL STANDARD

14 Rule 12(c) of the Federal Rules of Civil Procedure provides that: “After the pleadings are  
15 closed—but early enough not to delay trial—a party may move for judgment on the pleadings.”  
16 In reviewing a motion brought under Rule 12(c), the court “must accept all factual allegations in  
17 the complaint as true and construe them in the light most favorable to the nonmoving party.”  
18 *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

19 The same legal standard applicable to a Rule 12(b)(6) motion applies to a Rule 12(c)  
20 motion. *See Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).  
21 Accordingly, “judgment on the pleadings is properly granted when, taking all the allegations in  
22 the non-moving party’s pleadings as true, the moving party is entitled to judgment as a matter of  
23 law.” *Marshall Naify Revocable Trust v. U.S.*, 672 F.3d 620, 623 (9th Cir. 2012) (quoting  
24 *Fajardo v. County of L.A.*, 179 F.3d 698, 699 (9th Cir. 1999)); *see also Fleming v. Pickard*, 581  
25 F.3d 922, 925 (9th Cir. 2009) (stating that “judgment on the pleadings is properly granted when  
26 there is no issue of material fact in dispute, and the moving party is entitled to judgment as a  
27 matter of law”). The allegations of the nonmoving party must be accepted as true, while any  
28 allegations made by the moving party that have been denied or contradicted are assumed to be

1 false. *See MacDonald v. Grace Church Seattle*, 457 F.3d 1079, 1081 (9th Cir. 2006). The facts  
2 are viewed in the light most favorable to the non-moving party and all reasonable inferences are  
3 drawn in favor of that party. *See Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d  
4 353, 360 (9th Cir. 2005).

## 5 ANALYSIS

6 Defendants move for judgment on the pleadings with respect to plaintiff's Title VII  
7 discrimination and retaliation claims against all individual defendants.

8 Title VII of the Civil Rights Act of 1964 forbids an employer from "discriminat[ing]  
9 against any individual with respect to his compensation, terms, conditions, or privileges of  
10 employment, because of such individual's race." 42 U.S.C. § 2000e-2(a)(1). Title VII also  
11 prohibits retaliation by an employer "against an employee for making a charge or otherwise  
12 participating in a Title VII proceeding." *Nilsson v. City of Mesa*, 503 F.3d 947, 953 (9th Cir.  
13 2007). However, "Title VII does not provide a cause of action against supervisors or co-  
14 workers." *Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1058 (9th Cir. 2007); *see also Holly D.*  
15 *v. California Inst. of Tech.*, 339 F.3d 1158, 1179 (9th Cir. 2003); *Miller v. Maxwell's Int'l Inc.*,  
16 991 F.2d 583, 587–88 (9th Cir. 1993).

17 "When a county official . . . is sued in [their] official capacity, the claims against [them]  
18 are claims against the county." *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1250 (9th Cir.  
19 2016); *see also Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[A]n official-capacity suit is, in  
20 all respects other than name, to be treated as a suit against the entity"). "For this reason, when  
21 both an officer and the local government entity are named in a lawsuit and the officer is named in  
22 official capacity only, the officer is a redundant defendant and may be dismissed." *Atayde v.*  
23 *Napa State Hosp.*, No. 1:16-cv-00398-DAD-SAB, 2016 WL 4943959, at \*7 (E.D. Cal. Sept. 16,  
24 2016) (quoting *Megargee v. Wittman*, 550 F. Supp. 2d 1190, 1206 (E.D. Cal. 2008)); *see also Ctr.*  
25 *For Bio-Ethical Reform, Inc. v. Los Angeles Cty. Sherriff Dep't.*, 533 F.3d 780, 799 (9th Cir.  
26 2008); *Hofschneider v. City of Vancouver*, 182 F. Supp. 3d 1145, 1150 (W.D. Wash. 2016).

27 Here, defendants argue that they are entitled to judgment on the pleadings as to plaintiff's  
28 claims against individual defendants on the basis that Title VII does not support individual

1 liability for claims of discrimination or retaliation. (Doc. No. 29-1 at 3.) In opposition, plaintiff  
2 acknowledges that Title VII does not support individual liability for discrimination or retaliation  
3 claims, but argues that he intended to sue the named defendants in their official capacities. (Doc.  
4 No. 31 at 3–4.) Defendants argue in reply that plaintiff’s complaint did not name the relevant  
5 defendants in their official capacity, and that in any event, the court should dismiss the individual  
6 defendants from this action. (Doc. No. 32 at 1–2.)

7 In the original complaint, plaintiff does not clearly state whether he seeks to bring claims  
8 against the individual defendants in an official or a personal capacity. (Doc. No. 1 at 1–8.)<sup>2</sup>  
9 However, to the extent plaintiff alleges personal capacity claims against these defendants, such  
10 claims are subject to dismissal because Title VII does not support individual liability. *See Craig*,  
11 496 F.3d at 1058; *see also Miller v. Maxwell’s Int’l Inc.*, 991 F.2d 583, 587–88 (9th Cir. 1993);  
12 *Bradley v. Cty. of Sacramento Dep’t of Human Assistance of N. Cal. Welfare Div.*, No. 2:13–cv–  
13 2420 TLN DAD PS, 2014 WL 4078945, at \*3 (E.D. Cal. Aug. 14, 2014) (citing cases). To the  
14 extent plaintiff alleges claims against the individual defendants in their official capacities, these  
15 causes of action are also subject to dismissal because they are duplicative of claims against  
16 defendant Kern County. *See Ctr. For Bio-Ethical Reform, Inc.*, 533 F.3d at 799 (“When both a  
17 municipal officer and a local government entity are named, and the officer is named only in an  
18 official capacity, the court may dismiss the officer as a redundant defendant.”); *see also*  
19 *Ogbonnaya v. City of Mesa*, No. 2:14–cv–1544–HRH, 2015 WL 241444, at \*4 (D. Ariz. Jan. 20,  
20 2015) (granting defendant’s motion for judgment on the pleadings on claims against individual  
21 defendants sued in an official capacity and dismissing these causes of action, after finding them  
22 duplicative of claims against the local government entity).

23 Accordingly, plaintiff’s Title VII claims against individual defendants will be dismissed  
24 without leave to amend. *See, e.g., Ogbonnaya*, 2015 WL 241444, at \*4 (declining to grant leave  
25 to amend on redundant official capacity claims against individual defendants on the grounds that  
26 amendment would be futile).

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27 <sup>2</sup> Plaintiff has clearly brought his Title VII claim against the local government entity—the County  
28 of Kern.

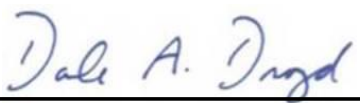
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**CONCLUSION**

For the reasons set forth above, defendants' motion for judgment on the pleadings (Doc. No. 29) is granted as to plaintiff's Title VII claims for discriminatory treatment and retaliation against all individual defendants, and these claims are hereby dismissed without leave to amend.

IT IS SO ORDERED.

Dated: June 15, 2017

  
UNITED STATES DISTRICT JUDGE