



1 fired in July 2015 while on temporary disability leave. *See* State Compl. ¶¶ 26–29, ECF No. 20;  
2 Compl. ¶¶ 23–31, ECF No. 1. As did plaintiff’s state court complaint, plaintiff’s federal  
3 complaint makes the following six claims: (1) Violation of the Age Discrimination in  
4 Employment Act; (2) Violation of the Americans with Disabilities Act; (3) Age Discrimination in  
5 Violation of the California Fair Employment and Housing Act; (4) Disability Discrimination in  
6 Violation of the California Fair Employment and Housing Act; (5) Wrongful Termination in  
7 Violation of Public Policy; and (6) Conversion. Plaintiff’s counsel conceded at hearing that the  
8 complaints are identical.

9           Procedurally, plaintiff commenced his action in state court with the filing of a  
10 miscellaneous motion fourteen weeks before he filed his federal complaint. In the interim,  
11 plaintiff filed his state complaint, which defendant answered. The state court resolved plaintiff’s  
12 motion to set aside the parties’ arbitration agreement, and defendant served discovery. Mack  
13 Decl. ¶¶ 5–7, ECF No. 24. Plaintiff filed his federal complaint a day before his discovery  
14 responses in the state action were due, and he dismissed his state complaint a day after he filed  
15 the federal action here. Pl.’s RJN Ex. E, ECF No. 25 at 41.<sup>1</sup>

16           Here, dismissal is warranted for several reasons. First, the state suit proceeded on  
17 the same legal theories and claims as now pled in this action. *See Ryder Truck Rental, Inc. v.*  
18 *Acton Foodservices Corp.*, 554 F. Supp. 277, 279 (C.D. Cal. 1983) (dismissing federal case as  
19 repetitive of state suit for “breach of the same lease and service agreement at issue in the instant  
20 [state] case”). Second, the parties are identical in both cases, and a state court decision would be  
21 *res judicata* in the federal proceeding. *Id.* Third, as plaintiff concedes, his claims allow for  
22 concurrent state and federal jurisdiction; plaintiff could have chosen to maintain the entirety of  
23 his action in state court, but did not. *Cf. Oregon Egg Producers v. Andrew*, 458 F.2d 382, 383  
24 (9th Cir. 1972) (“A plaintiff who commences his action in a state court cannot effectuate removal  
25 to a federal court even if he could have originated the action in a federal court.”). Having elected  
26 to litigate in state court, plaintiff is “bound by [his] choice.” *Ryder Truck Rental, Inc.*, 554 F.

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27           <sup>1</sup> The court takes judicial notice of the state court proceeding granting plaintiff’s request to  
28 dismiss. Fed. R. Evid. 201.

1 Supp. at 280; accord *Robinson v. Nestle Waters N. Am., Inc.*, No.11-856, 2011 WL 2174375, at  
2 \*6 (E.D. Cal. June 1, 2011). Moreover there is no compelling reason for plaintiff's case to be  
3 allowed to proceed here, that might provide an exception to dismissal. In particular, when asked  
4 at hearing whether statutes of limitation would preclude plaintiff from refileing any of his claims in  
5 state court, counsel indicated there are not.

6 Defendant's motion is GRANTED, without prejudice to plaintiff's refileing his case  
7 in state court.

8 This resolves ECF No. 18.

9 IT IS SO ORDERED.

10 DATED: June 16, 2017.

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UNITED STATES DISTRICT JUDGE