



1 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s  
2 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and  
3 conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual  
4 allegations must be enough to raise a right to relief above the speculative level on the assumption  
5 that all of the complaint’s allegations are true.” *Id.* (citations omitted). Dismissal is appropriate  
6 based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to  
7 support cognizable legal theories. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
8 1990).

9 Under this standard, the court must accept as true the allegations of the complaint in  
10 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the  
11 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,  
12 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading  
13 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a  
14 complaint to include “a short and plain statement of the claim showing that the pleader is entitled  
15 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon  
16 which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

17 Plaintiff brings this action against his former employer, The Procter & Gamble Company.  
18 ECF No. 7. The first amended complaint alleges plaintiff was subjected to discrimination on  
19 account of his race, gender, and marital status. *Id.* at 1. Plaintiff, a Caucasian male, claims that  
20 while employed by defendant, he was held to more rigorous standards than his Asian, female  
21 coworkers. *Id.* Specifically, he claims that he was required to complete all testing during his  
22 shift, while the three Asian, female employees were permitted to leave testing unfinished. *Id.* He  
23 also claims that he was required to run separate tests for each individual sample, while the three  
24 coworkers were permitted to share data between samples. *Id.*

25 The amended complaint further alleges that plaintiff and other male analysts were verbally  
26 harassed and threatened by the lab’s supervisor, Bobby Nand, and that such harassment was never  
27 directed towards Asian, female employees. *Id.* at 2. Plaintiff also alleges that after he requested  
28 the department manager address Nand’s conduct, plaintiff was placed on leave without pay for 15

1 weeks and eventually terminated. *Id.* Plaintiff claims he subsequently filed a charge with the  
2 Equal Employment Opportunity Commission, which dismissed the charge without conducting a  
3 proper investigation. *Id.* at 3.

4 Although the amended complaint does not identify a specific cause of action, plaintiff's  
5 allegations indicate that he is attempting to allege claims for discrimination and retaliation under  
6 Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII prohibits employment  
7 discrimination based on race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a). A  
8 person suffers disparate treatment when he is "singled out and treated less favorably than others  
9 similarly situated on account" of his membership in a protected class. *McGinest v. GTE Serv.*  
10 *Corp.*, 360 F.3d 1103, 1121 (9th Cir. 2004) (internal quotations omitted). To state a claim for  
11 retaliation in violation of Title VII, plaintiff must allege that "(1) he engaged in protected activity,  
12 (2) he suffered an adverse personnel action, and (3) there was a causal link between the two."  
13 *Jordan v. Clark*, 847 F.2d 1368, 1376 (9th Cir. 1988); *Yartzoff v. Thomas*, 809 F.2d 1371, 1375  
14 (9th Cir. 1987); *see also Ray v. Henderson*, 217 F.3d 1234, 1240 n.3 (9th Cir. 2000) (an informal  
15 complaint to a supervisor is protected activity under Title VII).

16 Plaintiff alleges that he was treated less favorably than Asian, female employees. He also  
17 claims that after he complained about being harassed by his lab supervisor, he was placed on  
18 leave and eventually terminated. Liberally construed, these allegations are sufficient to  
19 potentially state cognizable retaliation and race and sex-based discrimination under Title VII.<sup>2</sup>

20 Accordingly, it is hereby ORDERED that:

21 1. Plaintiff's first amended complaint alleges, for screening purposes, potentially  
22 cognizable discrimination and retaliation claims under Title VII.

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26 <sup>2</sup> The first sentence of the amended complaint states that this action concerns  
27 discrimination based on race, gender, and marital status. ECF No. 7 at 1. The amended  
28 complaint, however, is devoid of any allegations concerning plaintiff's marital status. In fact, the  
complaint contains no other references to marital status. Accordingly, it does not appear that  
plaintiff seeks to allege a discrimination claim based on his marital status.

1           2. The Clerk of Court shall send plaintiff one USM-285 form, one summons, a copy of  
2 the complaint, this court's scheduling order, and the forms providing notice of the magistrate  
3 judge's availability to exercise jurisdiction for all purposes.

4           3. Plaintiff is advised that the U.S. Marshal will require:

5                 a. One completed summons;

6                 b. One completed USM-285 form for defendant;

7                 c. A copy of the complaint for defendant, with an extra copy for the U.S. Marshal;

8           and

9                 d. A copy of this court's scheduling order and related documents for defendant.

10          4. Plaintiff shall supply the United States Marshal, within 14 days from the date this order  
11 is filed, all information needed by the Marshal to effect service of process, and shall, within 14  
12 days thereafter, file a statement with the court that said documents have been submitted to the  
13 United States Marshal.

14          5. The U.S. Marshal shall serve process, with copies of this court's scheduling order and  
15 related documents, within 90 days of receipt of the required information from plaintiff, without  
16 prepayment of costs. The United States Marshal shall, within 14 days thereafter, file a statement  
17 with the court that said documents have been served. If the U.S. Marshal is unable, for any  
18 reason, to effect service of process on defendant, the Marshal shall promptly report that fact, and  
19 the reasons for it, to the undersigned.

20          6. The Clerk of Court shall serve a copy of this order on the United States Marshal, 501  
21 "I" Street, Sacramento, CA 95814 (tel. 916-930-2030).

22          7. Failure to comply with this order may result in a recommendation that this action be  
23 dismissed.

24 DATED: July 6, 2020.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE