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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GANIYU AYINLA JAIYEOLA,  
Plaintiff,  
v.  
APPLE, INC,  
Defendant.

Case No. [5:23-cv-03462-EJD](#)

**ORDER GRANTING MOTION TO  
DISMISS; DENYING MOTION FOR  
LEAVE TO AMEND**

Re: Dkt. Nos. 44, 50

Pro se Plaintiff, Ganiyu Ayinla Jaiyeola (“Jaiyeola”), filed this action against his former employer, Defendant, Apple, Inc., (“Apple”), asserting six claims under 42 U.S.C. § 1981, Title VII, and the California Fair Employment and Housing Act (“FEHA”) based on race and national origin discrimination, hostile work environment, and retaliation. First Am. Compl. (“FAC”), ECF No. 31. Before the Court are Apple’s motion to dismiss Jaiyeola’s first amended complaint (“FAC”), and Jaiyeola’s motion for leave to file a second amended complaint (“SAC”). Mot. to Dismiss (“MTD”), ECF No. 44; Mot. for Leave to Amend (“Mot. for Leave”), ECF No. 50. Both motions are fully briefed. Opp’n to MTD, ECF No. 53; Reply In Supp. of MTD, ECF No. 55; Opp’n to Mot. for Leave, ECF No. 54; Reply in Supp. of Mot. for Leave, ECF No. 56.

Having carefully reviewed the relevant documents, the Court finds this matter suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons explained below, the Court **GRANTS** Apple’s motion to dismiss and **DENIES** Jaiyeola’s motion for leave to file an amended complaint.

1 **I. BACKGROUND**

2 **A. Factual Background**

3 Jaiyeola worked for Apple as a Senior Subject Matter Expert from February 21, 2022, until  
4 his termination on August 8, 2023. FAC ¶¶ 2, 5–6. Jaiyeola’s claims arise out of his interactions  
5 with the following Apple employees.

6 Shiva Mandepudi

7 Shiva Mandepudi was a senior Apple manager during Jaiyeola’s employment. *Id.* ¶ 11. In  
8 Jaiyeola’s initial video meeting with Mandepudi, Mandepudi allegedly told Jaiyeola that Jaiyeola  
9 “couldn’t do the job,” that Mandepudi “didn’t want a lazy person,” and that Jaiyeola should  
10 decline the offer. *Id.* Jaiyeola also alleges that at some point in 2022, Mandepudi “scolded”  
11 Jaiyeola in a one-on-one meeting and during a presentation. *Id.* ¶ 32. Jaiyeola further alleges that  
12 Mandepudi told Rolling<sup>1</sup> that Rolling “was hired because he is White,” and willfully delayed the  
13 permanent resident application for Afolabi,<sup>2</sup> who Jaiyeola alleges is Black and Nigerian. *Id.*

14 Jaiyeola filed a “discrimination complaint” against Mandepudi “based on what he did and  
15 said on January 2022 and after January 2022.” *Id.* ¶ 11. The results of the investigation are  
16 currently unknown to Jaiyeola. *Id.*

17 Sowmya Laxminarayanan

18 Sowmya Laxminarayanan was Jaiyeola’s supervisor during his entire employment at  
19 Apple. *Id.* ¶ 7. Jaiyeola alleges that Laxminarayanan “repeatedly discriminated against Jaiyeola,  
20 undervalued Jaiyeola’s knowledge, harassed Jaiyeola, created a very hostile work environment  
21 harassment, denied Jaiyeola due process, frequently shop for negatives on Jaiyeola, [and] denied  
22 Jaiyeola a performance bonus.” *Id.* ¶ 12. Laxminarayanan allegedly made negative comments to  
23 Jaiyeola, including telling him that “nobody likes [him],” that Mandepudi “thinks [he] just sit[s]  
24 down in the office doing nothing,” and that a senior Apple manager Mike Barnstead “thinks [his]

25 \_\_\_\_\_  
26 <sup>1</sup> The FAC does not identify Rolling’s position, but the Court presumes based on the context that  
27 Rolling is another Apple employee.

28 <sup>2</sup> The FAC does not identify Afolabi’s position, but again here, the Court presumes based on the  
context that Afolabi is another Apple employee.

1 job is subpar.” *Id.*

2           Jaiyeola filed “many” complaints against Laxminarayanan with Apple’s Equal  
3 Employment Opportunity (“EEO”) office but alleges that the reports did not produce any  
4 improvement to Laxminarayanan’s conduct. *Id.* To the contrary, Jaiyeola alleges that  
5 “Laxminarayanan increased her EEO violations against Jaiyeola after every EEO complaint-  
6 investigation that Jaiyeola initiated.” *Id.*

7           On June 28, 2023, Laxminarayanan informed Jaiyeola that he exhibited negative  
8 performance from October 2022 to June 2023, and told Jaiyeola that he could either be placed on a  
9 performance improvement plan known as Documented Coaching (“DC”), or he could sign a  
10 “Settlement Offer” and resign from Apple. *Id.* ¶¶ 12, 22. Jaiyeola chose to be placed on DC,  
11 which began on July 5, 2023. *Id.* ¶ 12. Jaiyeola then filed an EEO complaint against  
12 Laxminarayanan for placing him on DC and presently alleges that his DC placement was an  
13 adverse employment action and a denial of his due process rights because Laxminarayanan did not  
14 give Jaiyeola a chance to respond to the allegations regarding his negative performance. *Id.* ¶¶ 12,  
15 13.

16           Shortly after being placed on DC, Jaiyeola made a request to use vacation time for the  
17 following day. *Id.* ¶ 14. Laxminarayanan approved the vacation time but allegedly added that  
18 Jaiyeola still must meet his DC deadline requirements. *Id.* Jaiyeola alleges that, “[b]y insisting  
19 that Jaiyeola must meet the deadlines in the DC for Jaiyeola, Laxminarayanan violated Apple’s  
20 policy and guidelines on vacation time and she violated Jaiyeola’s Apple EEO and Jaiyeola’s U.S.  
21 EEO Rights.” *Id.* ¶ 14.

22           Jaiyeola also alleges that Laxminarayanan engaged in other discriminatory behavior,  
23 including: pressuring him to accept incorrect data; asking him to not talk at certain meetings;  
24 telling him that there was confusion when he gave PowerPoint presentations; telling him that  
25 “multiple sources” said that he wasn’t doing his job; giving him a “below expectation” rating at  
26 his mid-year review; scolding him; and calling only certain other employees aside for a meeting  
27 who were “White and American,” “Asian and Chinese,” and “Asian and Indian,” but not calling

1 Jaiyeola and Afolabi into the meeting. *Id.* ¶ 31.

2 Christopher Bruni

3 Christopher Bruni was Mandepudi’s supervisor during Jaiyeola’s employment. *Id.* ¶ 15.  
4 Jaiyeola alleges that Bruni discriminated against Jaiyeola by pressuring Jaiyeola to not file EEO  
5 complaints and telling Jaiyeola that “it was improper for Jaiyeola to use the word ‘wrong’ when  
6 letting a vendor employee know that the vendor employee was wrong as regards [*sic*] an  
7 engineering testing that Jaiyeola asked the vendor employee to do.” *Id.* ¶ 15. Jaiyeola also  
8 alleges that Bruni had falsely accused him of threatening to file a lawsuit in a March 30 meeting,  
9 which prompted Jaiyeola to file an EEO complaint against Bruni. *Id.*

10 Jaiyeola also alleges that on June 27, 2023, Bruni—along with another Apple employee  
11 Lewis Botsford (discussed further below)—“improperly showed up at a one-on-one meeting that  
12 Laxminarayanan scheduled with Jaiyeola and Bruni pressured Jaiyeola for about 20 minutes  
13 requesting to be part of the one-on-one meeting,” which “emotionally traumatized” Jaiyeola. *Id.*  
14 ¶¶ 15, 16. Jaiyeola filed another EEO complaint against Bruni for “being present at a meeting that  
15 he [] was not scheduled to attend and for pressuring Jaiyeola to have an unscheduled meeting with  
16 him.” *Id.*

17 Lewis Botsford

18 Lewis Botsford was an Apple employee during Jaiyeola’s employment. *Id.* ¶ 15. During  
19 the June 27 discussion described in the prior paragraph, Botsford allegedly “asked Jaiyeola to step  
20 out of the meeting room for about 5 minutes, cool off, and then come back in” to continue the  
21 meeting. *Id.* ¶ 16. After the meeting, Jaiyeola filed an EEO complaint against Botsford “for being  
22 present at a meeting that he was not scheduled to attend and for pressuring Jaiyeola to have an  
23 unscheduled meeting.” *Id.*

24 Howard Bujtor

25 Howard Bujtor was a senior Apple director during Jaiyeola’s employment. *Id.* ¶ 17.  
26 Jaiyeola alleges that Bujtor had told him that he “heard from multiple sources that [Plaintiff was]  
27 not being a team player” and asked him, “Do you want to lose your job?” *Id.* Jaiyeola also alleges

1 that at a May 4, 2023, meeting with Jaiyeola, Bujtor allegedly pressured Jaiyeola to withdraw an  
2 EEO complaint against Laxminarayanan. *Id.*

3 Waibel<sup>3</sup>

4 Waibel was a Manager in the Apple Employee Relations Department during Jaiyeola’s  
5 employment and the EEO Investigator that heard most of Jaiyeola’s EEO complaints. *Id.* ¶ 18.  
6 Jaiyeola alleges that Waibel ignored facts in his complaints and repeatedly engaged in adverse  
7 employment actions including: telling Jaiyeola that she could not determine the fairness in his  
8 performance reviews because they involved engineering issues; telling Jaiyeola that she could not  
9 guarantee that Laxminarayanan would not continue to change one-on-one meeting agendas  
10 abruptly and without informing Jaiyeola; and telling Jaiyeola that Bujtor’s presence at the May 4  
11 meeting was proper and Bujtor affirmed the negative performance review that Laxminarayanan  
12 did on Jaiyeola. *Id.* ¶ 19.

13 Termination

14 On August 8, 2023, Laxminarayanan terminated Jaiyeola’s employment with Apple, citing  
15 to his failure to meet the deliverables specified in the DC. *Id.* ¶ 26.

16 **B. Procedural Background**

17 Jaiyeola filed his original complaint on July 12, 2023. ECF No. 1. Since then, the Parties  
18 have engaged in significant motions practice relevant to this Order, as summarized below.

19 **1. Ex Parte Applications for Temporary Restraining Orders and Appeals**

20 Shortly after filing his original complaint, Jaiyeola filed an ex parte application for a  
21 temporary restraining order, seeking to enjoin Apple from harassing or terminating him. ECF No.  
22 6. The Court denied Jaiyeola’s request, finding in part that Jaiyeola failed to show that he is likely  
23 to succeed on the merits of the claims asserted in his first complaint. Order Den. Ex Parte Appl.  
24 For Temp. Restraining Order (“First TRO Order”), ECF No. 12. Specifically, the Court found that  
25 Jaiyeola relied solely on his supervisor’s remarks to demonstrate success on the merits, but the  
26

27 \_\_\_\_\_  
28 <sup>3</sup> The FAC does not identify a second name for Waibel.

1 remarks did not evidence any discriminatory or retaliatory intent, and Jaiyeola did not present any  
2 evidence for the Court to infer that such intent played a role in causing those remarks. *Id.* at 4–5.

3 Approximately two weeks later, Jaiyeola filed his second ex parte application for a  
4 temporary restraining order after receiving notice that his employment was being terminated,  
5 seeking an order immediately returning him to work and an order prohibiting Apple from any  
6 further retaliation. ECF No. 18. The Court denied Jaiyeola’s second request, finding that Jaiyeola  
7 again failed to provide any evidence that would permit the Court to infer that this adverse  
8 employment action was the result of discriminatory or retaliatory intent. Order Den. Second Ex  
9 Parte Appl. For Temp. Restraining Order (“Second TRO Order”).

10 Jaiyeola appealed the Second TRO Order to the Ninth Circuit the day after the Order was  
11 entered. ECF No. 26. The Ninth Circuit denied Jaiyeola’s motion for injunctive relief and  
12 subsequent motion for reconsideration. ECF Nos. 38, 59. The remainder of the appeal is pending.  
13 *See* ECF No. 59.

14 After filing his appeal, Jaiyeola also filed in this Court a motion for relief from the Second  
15 TRO Order. ECF No. 35. The Court denied Jaiyeola’s motion, and the next day Jaiyeola  
16 appealed that Order as well. ECF Nos. 46, 52. This appeal is also still pending.

17 **2. Motions to Dismiss and Amended Complaints**

18 Apple filed its first motion to dismiss on August 7, 2023. ECF No. 15. Approximately  
19 one month later, and after the Court’s two orders denying his TRO applications, Jaiyeola filed his  
20 FAC, invoking Federal Rule of Civil Procedure 15(a)(1)(B). ECF No. 31. However, Jaiyeola’s  
21 deadline to amend as a matter of course had already lapsed, and Jaiyeola failed to seek the Court’s  
22 leave to file an amended complaint or opposing party’s written consent. Fed. R. Civ. P. 15(a)(2).  
23 The Court found that the FAC was untimely but excused the untimeliness “in th[at] instance  
24 only,” granting Jaiyeola leave to amend and terminating Apple’s motion to dismiss as moot. ECF  
25 No. 40. In its Order allowing the filing, the Court explicitly admonished Jaiyeola and directed him  
26 “to comply with the federal and local rules of civil procedure for all future filings, including  
27 seeking the Court’s leave or opposing counsel’s consent to any further amendments.” *Id.* at 1.

1 Apple filed its second and present motion to dismiss soon after, and two days later,  
2 Jaiyeola filed his SAC, again without leave from the Court in violation of federal and local rules  
3 and the Court’s explicit prior order. ECF No. 45. The Court struck the SAC, admonishing  
4 Jaiyeola once again, and allowed Jaiyeola to refile with opposing counsel’s consent or an  
5 accompanying motion for leave to amend. ECF No. 49. The same day as the Court’s Order,  
6 Jaiyeola filed the present motion for leave to file a second amended complaint. Mot. for Leave.

7 **II. LEGAL STANDARD**

8 A complaint must contain “a short and plain statement of the claim showing that the  
9 pleader is entitled to relief.” Fed. Rule Civ. Pro. 8(a)(2). While a plaintiff need not offer detailed  
10 factual allegations to meet this standard, she is required to offer “sufficient factual matter . . . ‘to  
11 state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
12 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In other words, a complaint must  
13 (1) “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing  
14 party to defend itself effectively[,]” and (2) “plausibly suggest an entitlement to relief, such that it  
15 is not unfair to require the opposing party to be subjected to the expense of discovery and  
16 continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The court must  
17 generally accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. at 664.  
18 The court also must construe the alleged facts in the light most favorable to the plaintiff. *See*  
19 *Retail Prop. Trust v. United Bd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir.  
20 2014) (“[The court] must accept as true all factual allegations in the complaint and draw all  
21 reasonable inferences in favor of the nonmoving party.”). However, “courts are not bound to  
22 accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678.

23 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
24 *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106  
25 (1976)). But still, even pro se pleadings “must meet some minimum threshold in providing a  
26 defendant with notice of what it is that it allegedly did wrong” and how they are entitled to relief.  
27 *Brazil v. U.S. Dep’t of Navy*, 66 F.3d 193, 199 (9th Cir. 1995).



1 If the court concludes that a 12(b)(6) motion should be granted, the “court should grant  
2 leave to amend even if no request to amend the pleading was made, unless it determines that the  
3 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d  
4 1122, 1127 (9th Cir. 2000) (en banc) (quotation omitted).

5 **III. DISCUSSION**

6 **A. Judicial Notice**

7 As an initial matter, Jaiyeola requests that the Court take judicial notice of (1) a separate  
8 lawsuit Jaiyeola filed in this Court against Apple and other defendants, Opp’n to MTD 17–18, and  
9 (2) and a recent settlement between Apple and the U.S. Department of Justice (“DOJ”) arising out  
10 of alleged hiring discrimination, Req. for Judicial Notice, ECF No. 57.

11 Courts may consider materials outside a complaint where such materials are incorporated  
12 by reference or subject to judicial notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998  
13 (9th Cir. 2018). Judicial notice is proper if the facts requested to be noticed are “not subject to  
14 reasonable dispute” because they “can be accurately and readily determined from sources whose  
15 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). In granting requests for judicial  
16 notice, the Court may only take notice as to the existence of these cases “and the facts contained  
17 therein, not as to the (disputed) inferences that Defendant [may] seek[] to draw from them.”  
18 *Darensburg v. Metro. Transp. Comm’n*, No. 5-CV-01597-EDL, 2006 WL 167657, at \*3 (N.D.  
19 Cal. Jan. 20, 2006); *Khoja*, 899 F.3d at 999 (“But a court cannot take judicial notice of disputed  
20 facts contained in such public records.”).

21 The Court will address each of Jaiyeola’s requests in turn.

22 **1. *Jaiyeola v. AT&T Inc., T-Mobile US, and Verizon Communications, Inc.*,  
23 **5:23-cv-05182 (N.D. Cal. October 11, 2023)****

24 First, in his opposition to the motion to dismiss, Jaiyeola requested that the Court take  
25 judicial notice of a separate action initiated by Jaiyeola currently before this Court in *Jaiyeola v.*  
26 *AT&T Inc., T-Mobile US, and Verizon Communications, Inc.*, 5:23-cv-05182 (N.D. Cal. October  
27 11, 2023) (“AT&T action”). Opp’n to MTD 17–18.



1            “As a general rule, a court in one case will not take judicial notice of its own records in  
2 another and distinct case even between the same parties, unless the prior proceedings are  
3 introduced into evidence.” *Lowe v. McDonald*, 221 F.2d 228, 230 (9th Cir. 1955). There are two  
4 exceptions to this rule: (1) where the prior action is brought into the pleadings in the case on trial,  
5 or (2) where the two cases represent related litigation. *Id.* Neither exception is available here.

6            While Jaiyeola and Apple are both parties in the AT&T action, there is little to no overlap  
7 between the facts and causes of action such that the AT&T action can be considered a “related  
8 litigation” to the instant action. The AT&T action alleges false advertising of the iPhone 15 Pro  
9 pursuant to 15 U.S.C. § 1125(a). Although Jaiyeola alleges that he discovered information giving  
10 rise to his false advertising claim while employed at Apple, and that his extensive work on the  
11 iPhone 16 exemplifies that his poor performance reviews in this action were inaccurate, the AT&T  
12 action does not involve the alleged discriminatory conduct giving rise to the current claims.

13            Therefore, the Court **DENIES** Jaiyeola’s request for judicial notice of the AT&T action.

14            **2. DOJ Settlement**

15            Second, in a separate request filed on November 13, 2023, Jaiyeola requests that the Court  
16 take notice of a \$25 million settlement between Apple and the DOJ whereby DOJ alleged that  
17 Apple engaged in a pattern of discriminating against U.S. citizens in its hiring practices. Req. for  
18 Judicial Notice, ECF No. 57.

19            The Court will take notice of the DOJ settlement as a public document whose accuracy  
20 cannot reasonably be challenged. However, the Court will not take notice of the disputed facts  
21 contained therein. *See Khoja*, 899 F.3d at 999; *Darensburg*, No. 5-CV-01597-EDL, 2006 WL  
22 167657, at \*3.

23            Therefore, the Court **GRANTS** Jaiyeola’s request for judicial notice of the DOJ  
24 settlement.

25            **B. Motion to Dismiss**

26            Apple argues that Jaiyeola’s claims for discrimination based on his race or national origin  
27 under Counts I–V fail due to his inability to plead facts establishing a prima facie case of

1 discrimination based on his protected class. Apple also argues that Jaiyeola’s claim for retaliation  
2 under Count VI fails due to his inability to plead facts sufficient to show that he experienced an  
3 adverse employment action or a causal connection between any complaints and an adverse  
4 employment action. The Court will address each argument in turn.

5 **1. Discrimination Claims under Section 1981, Title VII, and FEHA**

6 The FAC alleges that Apple discriminated against Jaiyeola based on race and national  
7 origin in violation of 42 U.S. § 1981, Title VII, and FEHA. Jaiyeola identifies himself as African  
8 American, Black, and Nigerian. FAC ¶ 2.

9 Section 1981 provides in relevant part that “[a]ll persons within the jurisdiction of the  
10 United States shall have the same right in every State and Territory to make and enforce contracts .  
11 . . and to the full and equal benefit of all laws and proceedings for the security of persons and  
12 property as is enjoyed by white citizens.” 42 U.S.C. § 1981. To prevail on a Section 1981 claim,  
13 “a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered  
14 the loss of a legally protected right.” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140  
15 S. Ct. 1009, 1019 (2020).

16 The federal antidiscrimination statute in Title VII and California’s FEHA include identical  
17 text making it “an unlawful employment practice for an employer . . . to discriminate against any  
18 individual with respect to his compensation terms, conditions, or privileges of employment,  
19 because of such individual’s . . . race, color . . . or national origin.” 42 U.S.C. § 2000e-2(a)(1);  
20 Cal. Gov’t Code § 12940(a).

21 As the Court explained in its TRO Orders, a common requirement to prevail on claims  
22 arising under Section 1981, Title VII, and FEHA, is presenting facts directly showing  
23 discrimination or facts by which a court may infer discrimination, i.e., that similarly situated  
24 individuals were treated more favorably. First TRO Order 4 (citing *Harrison v. Wells Fargo*  
25 *Bank*, 2020 WL 1322921, at \*3 (N.D. Cal. Mar. 20, 2020) (“Section 1981 prohibits racial  
26 discrimination in the making and enforcement of private contracts . . . but ‘reaches only *purposeful*  
27 *discrimination.*’”) (emphasis added); *Abdul-Haqq v. Kaiser Emergency in San Leandro*, 2017 WL

28 Case No.: [5:23-cv-03462-EJD](#)

ORDER GRANTING MOTION TO DISMISS; DENYING MOTION FOR LEAVE TO AMEND

1 550235, at \*7 (N.D. Cal. Feb. 10, 2017) (“To establish a prima facie case of [Title VII or FEHA]  
2 discrimination based on race, plaintiff must allege that . . . (4) *similarly situated individuals*  
3 *outside the protected class were treated more favorably*, or other circumstances surrounding the  
4 adverse employment action that give rise to an inference of discrimination.”) (emphasis added);  
5 *Landucci v. State Farm Ins. Co.*, 65 F. Supp. 3d 694, 703 (N.D. Cal. 2014) (“The elements for a  
6 claim of hostile environment under FEHA are: . . . (2) the plaintiff was subjected to unwelcome  
7 harassment *because of being a member of that group.*”) (emphasis added); *Voellger v. Dignity*  
8 *Health*, 2020 WL 13505419, at \*2 (N.D. Cal. Dec. 21, 2020) (“To establish a prima facie case of  
9 retaliation under FEHA, a plaintiff must show (1) he or she engaged in a protected activity, (2) the  
10 employer subjected the employee to an adverse employment action, and (3) a *causal link existed*  
11 *between the proposed activity and the employer’s action.*”) (emphasis added)); *see also* Second  
12 TRO Order 2–3.

13 Apple argues that the FAC fails to plead facts linking the employment actions Jaiyeola  
14 identifies (e.g., termination, performance management, alleged lack of agenda for phone calls) to  
15 his race or national origin. MTD 9–11. The Court agrees.

16 The Court finds that the FAC is devoid of facts connecting the alleged conduct to  
17 Jaiyeola’s race or national origin. As the Court explained in its TRO Orders, the remarks to which  
18 Jaiyeola cites do not show any discriminatory intent by their language alone, and the additional  
19 facts pled in Jaiyeola’s FAC do not cure the deficiencies previously identified. *See* First TRO  
20 Order 3–5; Second TRO Order 2–3. For example, Jaiyeola newly alleges that on December 6,  
21 2022, Laxminarayanan discriminated against him and Afolabi, another colleague who is Black and  
22 Nigerian, by inviting three employees that were “White and American,” “Asian and Chinese,” and  
23 “Asian and Indian” into a meeting without Jaiyeola and Afolabi. FAC ¶ 31. However, Jaiyeola  
24 fails to allege facts to allow the Court to infer that he was not invited into the meeting because of  
25 his race or nationality, i.e., what occurred in this meeting, what department hosted this meeting,  
26 whether a person in Jaiyeola’s role would ordinarily be involved in this meeting, etc. A blanket  
27 observation of the ethnicities of attendees without more is insufficient to state a claim. Jaiyeola

1 also newly alleges his belief that Mandepudi told Rolling that Rolling “was hired because he is  
2 White,” and Mandepudi willfully delayed Afolabi’s permanent resident application. *Id.* However,  
3 neither of these allegations show an inference of race or national origin discrimination *toward*  
4 *Jaiyeola* or have any relation to the conduct alleged. While facts generally depicting a  
5 discriminatory work environment within Apple could potentially aid the Court in finding an  
6 inference that Apple’ conduct directed toward Jaiyeola was based on his race or national origin,  
7 these two allegations alone do not rise to meet the Rule 8 pleading standards.

8 The Court will also note that the DOJ settlement, which it took judicial notice of above,  
9 does not change this analysis. The DOJ settlement arises out of allegations that Apple  
10 discriminated against U.S. citizens in its hiring process, instead preferring to hire workers holding  
11 temporary employment visas for PERM related positions. Jaiyeola Decl., Ex. A, ECF No. 57-1, at  
12 4–10. Jaiyeola, though a U.S. citizen, does not allege that he was discriminated against in the  
13 hiring process based on his status as a U.S. citizen—he alleges that he was discriminated against  
14 throughout his employment because of his race and Nigerian nationality. The judicially noticed  
15 fact that the Apple entered a \$25 million settlement with the DOJ over hiring discrimination is not  
16 enough for the Court to infer discriminatory conduct to Jaiyeola based on race and nationality.

17 Therefore, the Court **GRANTS** Apple’s motion for dismiss Counts I–V.

18 **2. Retaliation Claim under FEHA**

19 The FAC also alleges that Apple retaliated against Jaiyeola for raising discrimination  
20 complaints in violation of FEHA. In addition to prohibiting discrimination, FEHA also prohibits  
21 terminating an employee that has “opposed any practice forbidden” under FEHA. Cal. Gov. Code  
22 § 12940(h). “To state a claim for unlawful retaliation under FEHA, a plaintiff must show that ‘(1)  
23 he or she engaged in a protected activity, (2) the employer subjected the employee to an adverse  
24 employment action, and (3) a causal link existed between the protected activity and the employer's  
25 action.’” *Abel Lugo v. Performance Transportation, LLC*, 2020 WL 7034336, at \*3 (C.D. Cal.  
26 Oct. 5, 2020) (quoting *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042 (2005)).

27 Apple argues that Jaiyeola has failed to allege facts sufficient to show a causal link

1 between Jaiyeola’s protected activity and any adverse employment action. MTD 12–13. The  
2 Court agrees.

3 The Court finds that the Jaiyeola has failed to plead facts giving rise to a FEHA retaliation  
4 claim. The FAC alleges that Jaiyeola filed several complaints with Apple’s EEO office over the  
5 course of his employment against Laxminarayanan, Mandepudi, Bruni, and Botsford; however,  
6 Jaiyeola failed to allege facts to show any causal connection between his various complaints and  
7 any adverse employment action that followed. As the Court noted in its Second TRO Order, this  
8 is particularly true given that Jaiyeola’s long and continuous history of filing EEO complaints  
9 against various actors may attenuate those complaints’ causal connection to, for example, his  
10 termination in August 2023. Second TRO Order 3.

11 The only allegations specifically calling out conduct related to Jaiyeola’s EEO filings are  
12 that Bujtor pressured Jaiyeola to withdraw his EEO complaint, and Bruni pressured Jaiyeola not to  
13 file the EEO complaints against Laxminarayanan. FAC ¶¶ 15, 17. But notably missing from these  
14 allegations are any facts regarding, for example, how Bujtor and Bruni exerted pressure (i.e.,  
15 statements, threats, etc.), how this pressure constituted an adverse employment action, or which  
16 EEO complaint caused their conduct.

17 Therefore, the Court **GRANTS** Apple’s motion to dismiss Count VI.

18 **C. Motion for Leave to File Amended Complaint**

19 District courts are instructed to “freely give leave to amend when justice so requires.” Fed.  
20 R. Civ. Pro 15(a)(2). Nevertheless, a court may deny leave to amend “due to ‘undue delay, bad  
21 faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
22 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of  
23 the amendment, [and] futility of amendment.’” *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d  
24 522, 532 (9th Cir.2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Where, as here,  
25 “the plaintiff has previously been granted leave to amend and has subsequently failed to add the  
26 requisite particularity to its claims, the district court's discretion to deny leave to amend is  
27 particularly broad.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009),

1 *as amended* (Feb. 10, 2009) (quotations omitted) (cleaned up).

2 The Court finds it appropriate to deny leave to amend in this instance given the prior  
3 opportunity to cure and the apparent futility of future amendments.

4 While this is the Court’s first order on a motion to dismiss in this case, it is not the Court’s  
5 first time informing Jaiyeola of the deficiencies in his claims. Prior to filing his FAC, Jaiyeola had  
6 the benefit of the Court’s two prior TRO Orders identifying largely the same deficiencies  
7 identified here, as well as the benefit of reviewing Apple’s first motion to dismiss, which Apple  
8 filed just before Jaiyeola filed his untimely superseding FAC without leave. *See* First TRO Order  
9 3–5; Second TRO Order 2–3. Indeed, Jaiyeola’s opposition and motion for leave to file an  
10 amended complaint show that Jaiyeola is well-versed in the legal standard he is required to meet;  
11 but when given the opportunity to amend, ECF No. 40, Jaiyeola still failed to allege new facts to  
12 state a claim.

13 The futility of future amendments is further evident upon review of the SAC. The SAC  
14 largely mirrors the FAC, including the deficiencies identified in the Court’s TRO Orders and the  
15 findings in this Order, with the only notable additions being facts regarding Jaiyeola’s experience,  
16 education, and job performance on the iPhone 14, 15, and 16, and the relative diminished abilities  
17 of his colleagues. *See, e.g.*, Jaiyeola Decl., Ex. A, ¶¶ 60-62, ECF No. 50-1. These new allegations  
18 still are not enough to infer a causal link between the conduct pled and Jaiyeola’s race or  
19 nationality, or the alleged retaliatory conduct and Jaiyeola’s complaints of discrimination. In other  
20 words, upon review of the SAC, it is clear that the deficiencies at issue have “persisted in every  
21 iteration of the complaint.” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1072  
22 (9th Cir. 2008).

23 Notably, as a pro se plaintiff, the Court has shown Jaiyeola procedural leniency and has  
24 construed his pleadings liberally. *See* ECF No. 40. However, while Jaiyeola is a self-represented  
25 litigant, he is an experienced, educated, and frequent litigant who has filed dozens of cases in  
26 federal district courts and appellate courts across the country, including the Sixth, Ninth, and  
27 Tenth Circuits. *See, e.g.*, *Jaiyeola v. Garmin Int’l, Inc.*, No. 20-CV-2068-EFM, 2022 WL

28 Case No.: [5:23-cv-03462-EJD](#)  
ORDER GRANTING MOTION TO DISMISS; DENYING MOTION FOR LEAVE TO AMEND

1 16833253 (D. Kan. Nov. 9, 2022), *aff'd*, No. 22-3245, 2023 WL 4417480 (10th Cir. July 10, 2023)  
2 (found a vexatious litigant); *Jaiyeola v. Toyota Motor N. Am.*, No. 1:17-CV-562, 2021 WL  
3 6061897, at \*1 (W.D. Mich. Dec. 10, 2021), *aff'd sub nom. Jaiyeola v. Toyota Motor Corp.*, No.  
4 21-1812, 2022 WL 17819776 (6th Cir. June 16, 2022) (found a vexatious litigant). Given his  
5 extensive litigation experience as well as the Court's prior notice of deficiencies and opportunity  
6 to amend, the Court does not believe that further amendment would yield new facts sufficient to  
7 state a claim.

8 Therefore, the Court **DENIES** Jaiyeola's motion for leave to file an amended complaint.

9 **IV. CONCLUSION**

10 Based on the foregoing, the Court **GRANTS** Apple's motion to dismiss and **DENIES**  
11 Jaiyeola's motion for leave to amend. This case is **DISMISSED** with prejudice. The Clerk of  
12 Court is instructed to close this file.

13 **IT IS SO ORDERED.**

14 Dated: March 27, 2024



EDWARD J. DAVILA  
United States District Judge