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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>SAMUEL W. GIBBS III, Plaintiff, v. SAN DIEGO COUNTY, Defendant.</p>	<p>Case No. 14-cv-2541 DMS (BLM) ORDER GRANTING MOTION TO DISMISS</p>
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Pending before the Court is Defendant County of San Diego’s motion to dismiss. Plaintiff Samuel W. Gibbs III filed an opposition,¹ and Defendant filed a reply. For the reasons stated below, Defendant’s motion is granted.

**I.
BACKGROUND**

On October 24, 2014, Plaintiff, proceeding *pro se*, initially filed a Complaint against the San Diego Child Support Services and Shari Kugler. After a series of motions and hearings, Plaintiff filed a First Amended Complaint (“FAC”) against San Diego County on May 2, 2017, alleging civil rights violations under 42 U.S.C.

¹ Plaintiff has also filed a surreply, which the Court considered in resolving the present motion.

1 §§ 1981 & 1985. On September 20, 2017, Defendant filed a motion to dismiss the
2 FAC for failure to state a claim, which the Court granted with leave to amend. On
3 November 28, 2017, Plaintiff filed a Second Amended Complaint (“SAC”).
4 Defendant filed the present motion to dismiss the SAC on December 11, 2017.

5 II.

6 DISCUSSION

7 Defendant moves to dismiss the SAC on grounds that Plaintiff has failed to
8 allege a short and plain statement showing he is entitled to relief under Federal Rule
9 of Civil Procedure 8(a), has failed to state a claim under Federal Rule of Civil
10 Procedure 12(b)(6), and has failed to file a timely claim under California
11 Government Code § 945.4.

12 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the
13 claims asserted in the complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
14 Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only “a short and
15 plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R.
16 Civ. P. 8(a)(2). While Rule 8 does not require detailed factual allegations, at a
17 minimum, a complaint must allege enough specific facts to provide “fair notice” of
18 both the particular claim being asserted and “the grounds upon which [that claim]
19 rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (citation and
20 quotation marks omitted); *see also Iqbal*, 556 U.S. at 678 (Rule 8 pleading standard
21 “demands more than an unadorned, the-defendant-unlawfully-harmed-me
22 accusation”) (citing *Twombly*, 550 U.S. at 555).

23 In deciding a motion to dismiss, all material factual allegations of the
24 complaint are accepted as true, as well as all reasonable inferences to be drawn from
25 them. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 338 (9th Cir. 1996). A court,
26 however, need not accept all conclusory allegations as true. Rather, it must
27 “examine whether conclusory allegations follow from the description of facts as
28 alleged by the plaintiff.” *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992)

1 (citation omitted); *see Benson v. Ariz. St. Bd. of Dental Exam'rs*, 673 F.2d 272, 275–
2 76 (9th Cir. 1982) (court need not accept conclusory legal assertions). A motion to
3 dismiss should be granted if a plaintiff's complaint fails to contain “enough facts to
4 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A
5 claim has facial plausibility when the plaintiff pleads factual content that allows the
6 court to draw the reasonable inference that the defendant is liable for the misconduct
7 alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

8 Pro se complaints are held to a less stringent standard than formal pleadings
9 by lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). A pro se plaintiff's
10 complaint must be construed liberally to determine whether a claim has been stated.
11 *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). However, a pro se
12 litigant's pleadings still must meet some minimum threshold in providing the
13 defendant with notice of what it is that it allegedly did wrong. *See Brazil v. U.S.*
14 *Dep't of Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *see also Ghazali v. Moran*, 46 F.3d
15 52, 54 (9th Cir. 1995) (“Although we construe pleadings liberally in their favor, pro
16 se litigants are bound by the rules of procedure.”).

17 The Court previously advised Plaintiff as to the deficiencies in the FAC and
18 has liberally granted leave to amend. Nevertheless, Plaintiff's SAC fails to cure the
19 noted deficiencies. For example, like the FAC, the SAC does not satisfy the minimal
20 notice pleading requirements of Rule 8 as it fails to give Defendant a short and plain
21 statement as to Plaintiff's claims. Plaintiff has also failed to sufficiently state a
22 legally cognizable claim upon which relief could be granted as the SAC is almost
23 entirely devoid of factual allegations. Moreover, although the SAC purports to assert
24 civil rights violations under 42 U.S.C. §§ 1981 & 1985, the factual allegations
25 pertain to a prior child support order issued by the Superior Court of California,
26 County of San Diego in 1996. The Court, however, informed Plaintiff in the prior
27 order granting Defendant's motion to dismiss the FAC that to the extent Plaintiff
28 seeks to challenge the prior state-court judgment, the *Rooker-Feldman* doctrine bars

1 such action. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 901 (9th Cir. 2003)
2 (“Rooker–Feldman bars any suit that seeks to disrupt or ‘undo’ a prior state-court
3 judgment, regardless of whether the state-court proceeding afforded the federal-
4 court plaintiff a full and fair opportunity to litigate her claims.”).

5 The Court has cautioned Plaintiff that if the SAC does not cure the pleading
6 deficiencies, his claims will be dismissed with prejudice and without further leave
7 to amend. Because Plaintiff has not been able to provide a short and plain statements
8 of the claims or to state a claim, the Court finds that any amendment would be futile.
9 Accordingly, Defendant’s motion is granted without leave to amend. *See, e.g.,*
10 *Chaset v. Flee/Skybox Int’l*, 300 F.3d 1083, 1088 (9th Cir. 2002) (no need to
11 prolong the litigation by permitting further amendment where the “basic flaw” in the
12 underlying facts as alleged cannot be cured by amendment); *Lipton v. Pathogenesis*
13 *Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) (“Because any amendment would be
14 futile, there was no need to prolong the litigation by permitting further
15 amendment.”).

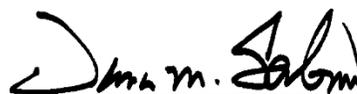
16 **III.**

17 **CONCLUSION**

18 For the foregoing reasons, Defendant’s motion to dismiss is granted without
19 leave to amend. This case is dismissed in its entirety with prejudice.

20 **IT IS SO ORDERED.**

21 Dated: January 12, 2018

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23 Hon. Dana M. Sabraw
24 United States District Judge