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

CORNELIUS OLUSEYI OGUN SALU, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> SWEETWATER UNION HIGH SCHOOL DISTRICT, <i>et al.</i> , <p style="text-align: right;">Defendants.</p>	Case No. 17-cv-01535-BAS-MDD ORDER: (1) GRANTING MOTION FOR LEAVE TO FILE EXCESS PAGES (ECF No. 11) AND (2) GRANTING MOTION TO DISMISS (ECF No. 8)
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20 Plaintiff Cornelius Oluseyi Ogunsalu files this lawsuit against Sweetwater
21 Union High School District (“SUHSD”) alleging that the school district
22 discriminated against him based on age and race when it refused to re-hire him as a
23 substitute teacher. (Complaint, ECF No. 1.) He further sues Jennifer Carbuccia,
24 general counsel for SUHSD, alleging that she conspired to have his teaching
25 credentials revoked and his California Clear Credential application denied at an
26 administrative law hearing. (Complaint ¶¶ 76, 77, 107, 108.)

27 Both defendants move to dismiss claiming they are immune from suit. (ECF
28 No. 8.) Ogunsalu responds, agreeing that, under *Belanger v. Madera School Dist.*,

1 963 F.2d 248 (9th Cir. 1992), “[t]his court has no jurisdiction over Sweetwater Union
2 High School District because it is an arm of the State” and immune from suit under
3 the Eleventh Amendment. (ECF No. 10.)¹ Based on this concession, the Court
4 **GRANTS** SUHSD’s Motion to Dismiss with prejudice. (ECF No. 8.)

5 Carbuccia further moves to dismiss on the grounds that the single cause of
6 action against her for civil conspiracy lacks requisite specificity. (ECF No. 8). The
7 Court agrees. Therefore, the Court **GRANTS** Carbuccia’s Motion to Dismiss with
8 leave to amend. (ECF No. 8.)

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10 **I. STATEMENT OF FACTS—CLAIMS AGAINST CARBUCCIA**

11 According to the Complaint, at “an Office of Administrative Hearings (OAH)
12 hearing” on November 14-15, 2016, “various false and contrived testimonies where
13 [sic] rendered before Administrative Law Judge Adam L. Berg” which resulted in
14 Ogunsalu losing his teaching credential and being denied his Clear Credential
15 application. (Complaint ¶¶ 76-79.) Ogunsalu apparently blames this result on
16 SUHSD general counsel Jennifer Carbuccia, who he alleges conspired to have his
17 teaching credentials revoked and his California Clear Credential application denied.
18 (Complaint ¶¶106, 107.) Ogunsalu brings one count of “Civil Conspiracy in
19 Violation of U.S.C. § 1983 against Jennifer Carbuccia” and Does 1-30. (Complaint
20 at 17-18.)

21 In the Motion to Dismiss, Defendants request that the Court take judicial notice
22 of various documents including the Memorandum of Decision revoking Ogunsalu’s
23 teaching credential (“Administrative Law Decision”) (ECF No. 8-2 at Ex. A.). (ECF
24 No. 8-3). Ogunsalu does not oppose.

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27 ¹ Ogunsalu files a forty-nine-page response in violation of both the local rules and
28 this Court’s chamber rules. However, Ogunsalu also simultaneously files a motion
for leave to file a response with excess pages. (ECF No. 11.) Because Ogunsalu is
acting pro per, the Court **GRANTS** the motion for leave to file excess pages.

1 Courts may not usually consider material outside the complaint when ruling
2 on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d
3 1542, 1555 n.19 (9th Cir. 1990) (superseded by statute on other grounds). However,
4 documents specifically identified in the complaint whose authenticity is not
5 questioned by parties may also be considered. *Fecht v. Price Co.*, 70 F.3d 1078, 1080
6 n.1 (9th Cir. 1995). Moreover, the court may consider the full text of those
7 documents even when the complaint quotes only selected portions. *Id.* It may also
8 consider material properly subject to judicial notice without converting the motion
9 into one for summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).

10 Because Ogunsalu does not oppose and because Ogunsalu’s allegations are
11 based on the Administrative Law Decision which is specifically identified in the
12 Complaint, the Court **GRANTS** the request to take judicial notice of Administrative
13 Law Decision. (ECF No. 8-2 at Ex. A.)

14 The Administrative Law Decision states that the administrative law hearing
15 was prosecuted by the Executive Director of California Commission on Teacher
16 Credentialing, who was represented by a Deputy Attorney General (not Carbuccia).
17 (ECF No. 8-2 at 4.) It further states that Ogunsalu did not appear and the matter
18 proceeded as a default. (*Id.*) The Administrative Law Judge concluded in the
19 decision that revocation was proper based on allegations that Ogunsalu “engaged in
20 unprofessional and immoral conduct” while employed at San Diego Unified School
21 District (not SUHSD) and based on testimony by principals of Bell Middle School,
22 a campus police officer assigned to Bell Middle School, the Vice Principal of Bell
23 Middle School, and a student and the father of the student at Bell Middle School.
24 Bell Middle School is in the San Diego Unified School District, not SUHSD. (*Id.*)
25 Carbuccia’s name is not referenced in the Administrative Law Decision.

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1 **II. ANALYSIS**

2 **A. Standard**

3 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
4 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R.
5 Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court
6 must accept all factual allegations pleaded in the complaint as true and must construe
7 them and draw all reasonable inferences from them in favor of the nonmoving party.
8 *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). To avoid a
9 Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations,
10 rather, it must plead “enough facts to state a claim to relief that is plausible on its
11 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial
12 plausibility when the plaintiff pleads factual content that allows the court to draw the
13 reasonable inference that the defendant is liable for the misconduct alleged.”
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).
15 “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s
16 liability, it stops short of the line between possibility and plausibility of ‘entitlement
17 to relief.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

18 “In civil rights cases where the plaintiff appears pro se, the court must construe
19 the pleadings liberally and must afford plaintiff the benefit of any doubt.” *Karim-*
20 *Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). Nonetheless,
21 “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
22 requires more than labels and conclusions, and a formulaic recitation of the elements
23 of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v.*
24 *Allain*, 478 U.S. 265, 286 (1986). A court need not accept “legal conclusions” as
25 true. *Iqbal*, 556 U.S. at 678. Despite the deference the court must pay to the
26 plaintiff’s allegations, it is not proper for the court to assume that “the [plaintiff] can
27 prove facts that [he or she] has not alleged or that defendants have violated the . . .

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1 laws in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc.*
2 *v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

3 As a general rule, a court freely grants leave to amend a complaint that has
4 been dismissed. Fed. R. Civ. P. 15(a). “A pro se litigant must be given leave to
5 amend his or her complaint unless it is absolutely clear that the deficiencies of the
6 complaint could not be cured by amendment.” *Karim-Panahi*, 839 F.2d at 623.
7 However, leave to amend may be denied when “the court determines that the
8 allegation of other facts consistent with the challenged pleading could not possibly
9 cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
10 1393, 1401 (9th Cir. 1986).

11 **B. Civil Conspiracy**

12 “Section 1983 imposes two essential proof requirements upon a claimant: (1)
13 that a person acting under color of state law committed the conduct at issue, and (2)
14 that the conduct deprived the claimant of some right, privilege, or immunity protected
15 by the Constitution or laws of the United States.” *Leer v. Murphy*, 844 F.2d 628,
16 632-633 (9th Cir. 1988). “To establish liability for conspiracy, a plaintiff must
17 demonstrate existence of ‘an agreement or meeting of the minds to violate
18 constitutional rights.’” *E.F. v. Delano Joint Union High Sch. Dist.*, No. 16-cv-1166,
19 2016 WL 5846998, at *4 (E.D. Cal. Oct. 6, 2016) (quoting *United Steelworkers of*
20 *Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-51 (9th Cir. 1989) (en banc)). “A
21 plaintiff must allege specific facts to support the existence of the claimed
22 conspiracy.” *Id.* (citing *Olsen v. Idaho Bd. of Med.*, 363 F.3d 916, 929-30 (9th Cir.
23 2004). “A mere allegation of conspiracy without factual specificity is insufficient.”
24 *Id.* (quoting *Karim-Panahi*, 839 F.2d at 626).

25 Carbuccia argues that she is immune from liability under California
26 Government Code § 821.6. This may be true, but the Court is simply unable to
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1 determine immunity because it is unclear from the face of the Complaint what
2 Ogunsalu is alleging that Carbuccia did that makes her liable.

3 First, Ogunsalu fails to identify how any conduct of Carbuccia deprived him
4 of any right protected by the Constitution or laws of the United States. The fact that
5 his teaching credentials were revoked is insufficient. He must allege how this
6 revocation violated a constitutional right. Second, plaintiff fails to allege how any
7 agreement Carbuccia had with any other individuals allegedly violated his
8 constitutional rights. And finally, plaintiff fails to allege any specific facts that
9 support the existence of this agreement.

10 These failures are particularly noticeable because the Administrative Law
11 Decision revoking Ogunsalu's teaching credentials lists all the witnesses and
12 evidence justifying its decision and there is no reference to Carbuccia in the decision.
13 It is not clear what Ogunsalu is alleging Carbuccia's role was in the administrative
14 law hearing.

15 Furthermore, in his Response in Opposition to the Motion to Dismiss (ECF
16 No. 10), Ogunsalu argues that his cause of action for conspiracy states a claim against
17 Carbuccia with the requisite specificity, but he goes on for eight and a half pages
18 detailing numerous wrongful actions by San Diego Unified School District and its
19 general counsel (not by the defendants in this case). (Opp'n at 18-28.) The only
20 allegation he makes against Carbuccia that he claims makes her liable for conspiracy
21 is that "Sweetwater Union High School District personnel (including Jennifer
22 Carbuccia) have been aware of EVERYTHING going on with plaintiff." (Opp'n at
23 25) (emphasis in original). Simply alleging that Carbuccia was aware of wrong-
24 doing is insufficient.

25 If Ogunsalu intends to allege a cause of action for conspiracy against
26 Carbuccia, he must outline how his constitutional or federal statutory rights were
27 violated, how Carbuccia's actions makes her liable for this violation or what
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1 agreement she had to violate these rights, and what specific facts support the
2 existence of this alleged agreement.

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4 **III. CONCLUSION**

5 The Court **GRANTS WITHOUT LEAVE TO AMEND** SUHSD's Motion
6 to Dismiss. (ECF No. 8.) Ogunsalu concedes that SUHSD is immune from these
7 claims under the Eleventh Amendment. Counts One and Two, as well as all claims
8 for Declaratory Relief, are dismissed with prejudice. The Court **GRANTS WITH**
9 **LEAVE TO AMEND** Carbuccia's Motion to Dismiss. (ECF No. 8.) If Ogunsalu
10 chooses to file an amended complaint, he must do so **no later than December 14,**
11 **2017.** Ogunsalu is cautioned that he may not add any new causes of action or
12 additional defendants without leave of the Court. Fed. R. Civ. P., Rul 15(a)(2).

13 **IT IS SO ORDERED.**

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15 **DATED: November 21, 2017**


16 **Hon. Cynthia Bashant**
17 **United States District Judge**