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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PIERRE ANTHONY,

12 Plaintiff,

13 v.

14 GREYSTAR REAL ESTATE
15 PARTNERS, et al.,

16 Defendants.

Case No.: 23cv960-LL-BLM

**ORDER DISMISSING COMPLAINT
WITHOUT LEAVE TO AMEND**

[ECF No. 4]

17
18 Plaintiff Pierre Anthony (“Plaintiff”), an individual proceeding pro se, filed a
19 Complaint against Defendants Greystar Real Estate Partners, Lofts 677 HoldCo, LLC, and
20 Kimball, Tirey & St. John LLP (collectively “Defendants”). ECF No. 1. On June 23, 2023,
21 the Court issued an Order Granting Plaintiff’s Motion to Proceed In Forma Pauperis and
22 Dismissing Plaintiff’s Complaint without prejudice for failure to state a claim pursuant to
23 28 U.S.C. § 1915(e)(2). ECF No. 3, Order. In the Order, the Court provided Plaintiff leave
24 to file an amended complaint. *Id.* at 6. On July 18, 2023, Plaintiff filed an amended
25 complaint. ECF No. 4, Amended Complaint (“Amended Compl.”).

26 For the following reasons, upon the Court’s screening of the Amended Complaint
27 pursuant to 28 U.S.C. § 1915(a), the Court **DISMISSES** the Amended Complaint
28 **WITHOUT LEAVE TO AMEND.**

1 **I. LEGAL STANDARD**

2 A complaint filed by a plaintiff proceeding IFP is subject to mandatory screening by
3 the court in which the complaint is brought. *See* 28 U.S.C. § 1915(e)(2)(B); *see also*
4 *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. §
5 1915(e)(2)(B) are not limited to prisoners.”). Under 28 U.S.C. § 1915(e)(2), the court must
6 dismiss a case if the court determines that the action: (i) is frivolous or malicious; (ii) fails
7 to state a claim, or (iii) seeks monetary relief against persons immune from suit. *See* 28
8 U.S.C. § 1915(e)(2).

9 To determine whether the action must be dismissed under the second ground, a
10 failure to state a claim, the court applies “the familiar standard of Federal Rule of Civil
11 Procedure 12(b)(6).” *Rosati v. Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015). Under this
12 standard, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a
13 claim to relief that is plausible on its face.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
14 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Further, the court has an
15 obligation where the plaintiff “is pro se, particularly in civil rights cases, to construe the
16 pleadings liberally and to afford the [plaintiff] the benefit of any doubt.” *Hebbe v. Pliler*,
17 627 F.3d 338, 342 n.7 (9th Cir. 2010) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1
18 (9th Cir. 1985)). The court, however, “may not supply essential elements of the claim that
19 were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268
20 (9th Cir. 1982). Moreover, “[v]ague and conclusory allegations of official participation in
21 civil rights violations are not sufficient.” *Id.*

22 Additionally, complaints must comply with Federal Rule of Civil Procedure 8,
23 which requires that “a pleading that states a claim for relief must contain: (1) a short and
24 plain statement of the grounds for the court’s jurisdiction . . . ; (2) a short and plain statement
25 of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief
26 sought[.]” Fed. R. Civ. P. 8(a). Rule 8 ensures that each defendant has “fair notice of what
27 the plaintiff’s claim is and the grounds upon which it rests.” *Dura Pharms., Inc. v. Broudo*,
28 544 U.S. 336, 346 (2005).

1 **III. DISCUSSION**

2 The Court has reviewed the allegations of Plaintiff’s Amended Complaint. The
3 allegations of Plaintiff’s Amended Complaint are largely unchanged from the allegations
4 of the original complaint. Plaintiff continues to contend that Defendants are liable for
5 damages under Title III of the ADA, HIPAA, 18 U.S.C. § 249, 18 U.S.C. § 242, 18 U.S.C.
6 § 245, 18 U.S.C. § 241, and 42 U.S.C. § 3631, because Defendants engaged in unlawful,
7 discriminatory, and retaliatory offenses and are in the process of evicting Plaintiff from a
8 residence. Amended Compl. ¶¶ 1–5. The Amended Complaint differs from the original
9 complaint in that Plaintiff adds a Rehabilitation Act claim. *Id.* ¶¶ 1, 265. However, as
10 discussed below, the Court finds that Plaintiff’s amendment to the complaint does not
11 remedy the deficiencies outlined in the Court’s prior order.

12 **A. ADA Claim**

13 Title III of the ADA allows claims against private individuals against private
14 individuals or entities for denial of access to public accommodations run by those
15 individuals “on the basis of disability.” 42 U.S.C. § 12182(a). Courts have consistently
16 held that private dwelling units like “apartments and condominiums do not constitute
17 public accommodations within the meaning of the Act.” *Indep. Housing Servs. of S.F. v.*
18 *Fillmore Ctr. Assocs.*, 840 F. Supp. 1328, 1344 (N.D. Cal. 1993). However, areas within
19 an apartment or condominium complex, such as leasing offices, may be covered by the
20 ADA “[i]f made available to the general public for rental or use.” *Trostenetsky v. Keys*
21 *Condo. Owners Ass’n*, 2018 WL 2234599, at *2 (N.D. Cal. May 16, 2018).

22 Here, the events that Plaintiff alleges in the Amended Complaint have not taken
23 place in a public accommodation or areas made available to the general public for rental or
24 use. Plaintiff has repeatedly stated that the “7th and G” complex where Plaintiff resides is
25 a residential apartment complex, which is not a place of public accommodation under Title
26 III of the ADA. *See* Amended Compl. ¶¶ 4–5, 14, 82. Further, while Plaintiff does allege
27 that he entered the company’s office once on June 16, 2022, to talk to Defendants,
28 Plaintiff’s ADA accommodation claims are unrelated to the access of Defendants’ leasing

1 office or other public areas. *See id.* ¶ 102. Accordingly, Plaintiff's Amended Complaint
2 fails to state an ADA claim upon which relief may be granted.

3 **B. Rehabilitation Act Claim**

4 In the Amended Complaint, Plaintiff adds a Rehabilitation Act claim, arguing that
5 Defendants violated his right under section 504 of the Rehabilitation Act of 1973. *See id.*
6 ¶¶ 1, 265. Section 504 of the Rehabilitation Act of 1973 provides that “[n]o otherwise
7 qualified individual with a disability in the United States . . . shall, solely by reason of her
8 or his disability, be excluded from the participation in, be denied the benefits of, or be
9 subjected to discrimination under any program or activity receiving Federal financial
10 assistance.” 29 U.S.C. § 794(a). As “[t]here is no significant difference in analysis of the
11 rights and obligations created by the ADA and the Rehabilitation Act,” the Court analyzes
12 the ADA and Rehabilitation Act claims identically. *Zukle v. Regents of Univ. of Cal.*, 166
13 F.3d 1041, 1045 n.11 (9th Cir. 1999). Because Plaintiff's Amended Complaint fails to state
14 an ADA claim upon which relief may be granted, Plaintiff's Amended Complaint also fails
15 to state a Rehabilitation Act claim upon which relief may be granted.

16 **B. HIPAA Claims**

17 Plaintiff further alleges that Defendants violated his rights under the Health
18 Insurance Portability and Accountability Act (“HIPAA”). Amended Compl. ¶¶ 1, 266, 268.
19 However, HIPAA does not provide a cause of action for a private litigant. *See Webb v.*
20 *Smart Document Sols. LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007) (“HIPAA itself provides
21 no private right of action.”). Because HIPAA provides no private right of action, Plaintiff
22 cannot bring a HIPAA claim.

23 **C. Additional Claims**

24 Plaintiff further alleges that Defendants violated his rights under 18 U.S.C. § 249,
25 18 U.S.C. § 242, 18 U.S.C. § 245, 18 U.S.C. § 241, and 42 U.S.C. § 3631. Amended Compl.
26 ¶¶ 1, 269–273. Plaintiff's allegations in the Amended Complaint regarding these causes of
27 action are almost identical to the those plead in the original complaint. Even liberally
28 construing Plaintiff's Amended Complaint, these allegations are still insufficient to survive

1 dismissal. As this Court has already stated in its previous Order, Plaintiff’s Amended
2 Complaint does not contain sufficient factual matter to state a claim to relief that is
3 plausible on its face and the Amended Complaint is comprised of the same incoherent
4 assertions that fail to allege his entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678
5 (2009) (“the pleading standard Rule 8 announces does not require ‘detailed factual
6 allegations,’ but it demands more than . . . ‘labels and conclusions’ or a ‘formulaic
7 recitation of the elements of a cause of action”). In addition, this Court may not supply
8 essential elements of a claim that Plaintiff has not pled. *See Ivey v. Bd. of Regents of the*
9 *Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

10 Further, Plaintiff requests the same countless forms of relief, including “[a]llow[ing]
11 for a comprehensive family vacation which will support healing and recovery,” allowing
12 for private hypobaric and cryogenic treatment therapy, and “order[ing] the Defendant to
13 pay \$75,000,000 in punitive damages,” but Plaintiff again has not explained the grounds
14 on which he is entitled to this relief from the Court. Amended Compl. ¶¶ 288, 293–294,
15 298. Accordingly, the Court dismisses Plaintiff’s Amended Complaint for failing to state
16 a claim upon which relief may be granted and failure to comply with Rule 8.

17 **D. Leave to Amend**

18 “A pro se litigant must be given leave to amend his . . . complaint, and some notice
19 of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could
20 not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).
21 Here, the Amended Complaint represents Plaintiff’s second attempt to state his claims as
22 Plaintiff has already been given guidance from the Court regarding what was deficient in
23 his Complaint. ECF No. 4. However, the allegations of the Amended Complaint are largely
24 identical to the original complaint other than the addition of a Rehabilitation Act claim.
25 The Amended Complaint fails to correct the deficiencies outlined in the Court’s prior
26 Order. Accordingly, the Court finds that further leave to amend would be futile. *See, e.g.,*
27 *Foman v. Davis*, 371 U.S. 178, 182 (1962).

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1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiff’s Complaint is **DISMISSED WITHOUT**
3 **LEAVE TO AMEND**. Additionally, because the Court dismisses Plaintiff’s operative
4 complaint without leave to amend, the Court also **DENIES AS MOOT** Plaintiff’s Request
5 for Amendment¹ [ECF No. 5] and Motion to Compel Certification [ECF No. 6]. The Clerk
6 of Court shall close this file.

7 **IT IS SO ORDERED.**

8 Dated: March 26, 2024



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11 Honorable Linda Lopez
12 United States District Judge
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26 ¹ Plaintiff states that his Request for Amendment is “[t]o request, both, an increase in
27 damages, punitive and otherwise, and compliance with current regulations and timelines
28 associated with facilitating disability related reasonable accommodations and procedural
federal processes.” ECF No. 5 at 1. Yet again, Plaintiff’s proposed amendments do not
attempt to correct the deficiencies in the original complaint and the Amended Complaint.