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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GERALDINE KIRK-HUGHES,

Plaintiff(s),

v.

STATE BAR OF NEVADA, et al.,

Defendant(s).

Case No. 2:16-CV-2381 JCM (GWF)

ORDER

Presently before the court is the State Bar of Nevada (“Bar”) and David A. Clark’s (“Clark”) motion to dismiss. (ECF No. 20). Stanley Hunterton (“Hunterton”) joined the Bar and Clark’s (collectively “defendants”) motion to dismiss on February 10, 2017. (EFC No. 25). Geraldine Kirk-Hughes (“plaintiff”) filed a response (ECF No. 28), to which defendants replied (ECF No. 29).

I. Facts

This case involves plaintiff’s pending appeal to the Supreme Court of Nevada in response to the Southern Nevada Disciplinary Board’s recommended six-year suspension, and her concurrent claims filed in federal court. (ECF Nos. 11, 20-4).

On August 2, 2013, the Bar submitted an amended complaint against plaintiff, an attorney admitted to the Nevada Bar on December 3, 1987, for two alleged counts of misconduct that warranted the “imposition of professional discipline.” (ECF No. 20-1 at 2–3). The Bar’s two counts against plaintiff claimed that: (1) plaintiff, up to December 1, 2010, “had stolen \$598,282 of [Joseph] Keane’s money” placed in plaintiff’s trust fund account for safekeeping; and (2) plaintiff had misappropriated \$69,355.38 of \$121,636.68 awarded to Charles Walker following a wrongful foreclosure action, which plaintiff held in trust. (Id. at 9–10).

1 On August 14, 2013, the Bar submitted an additional complaint against plaintiff, which
2 alleged that she had failed to pay four medical liens on behalf of Mark Jaget. (ECF No. 20-2).
3 Summons for all three allegations were issued “in and about . . . May and June, 2015,” and
4 plaintiff’s “[d]isciplinary [h]earing was concluded on July 25, 2015.” (ECF No. 11 at 12). The
5 Southern Nevada Disciplinary Board’s formal hearing panel recommended, based on the facts
6 presented, that plaintiff’s conduct “warranted at least a significant suspension,” and “voted for a
7 suspension of six (6) years” as an appropriate sanction. (ECF No. 20-3 at 36). The panel issued
8 its findings of fact, conclusions of law and recommendation on January 14, 2016. (ECF No. 20-
9 4).

10 On appeal, plaintiff submitted an opening brief to the Supreme Court of Nevada on August
11 10, 2016, which claimed that the Bar had violated a number of constitutional rights in pursuant to
12 the Fourth, Fifth, Sixth, and Fourteenth Amendments, along with a “disparity of treatment” based
13 on her race. (Id. at 51).

14 On October 12, 2016, plaintiff filed her original complaint in this court (ECF No. 1), which
15 was amended on January 6, 2017, (ECF No. 11). Plaintiff seeks claims of relief pursuant to: (1)
16 equal protection and due process, specifically regarding the Fourth, Sixth, and Fourteenth
17 Amendments; (2) 12 U.S.C. § 3405 as to obtaining financial records; (3) Nevada Revised Statute
18 (“NRS”) § 239A as to disclosing financial records to government agencies; (4) 42 U.S.C. § 2000e
19 (“Title VII”); (5) 18 U.S.C. § 1962(b) as to control of an enterprise engaged in a pattern of
20 racketeering; (6) 18 U.S.C. § 1962(c) as to being employed by an enterprise engaged in a pattern
21 of racketeering; (7) “intentional interference with prospective economic advantage”; (8)
22 “intentional interference with contractual relations”; (9) negligence; and (10) “failure to adequately
23 train, supervise, discipline, and/or screen.” (ECF No. 11 at 11–30). Plaintiff also seeks injunctive
24 relief. (Id.).

25 **II. Legal Standard**

26 The court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief
27 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and
28 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

1 Although rule 8 does not require detailed factual allegations, it does require more than labels and
2 conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, a formulaic
3 recitation of the elements of a cause of action will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662,
4 677 (2009) (citation omitted). Rule 8 does not unlock the doors of discovery for a plaintiff armed
5 with nothing more than conclusions. *Id.* at 678–79.

6 To survive a motion to dismiss, a complaint must contain sufficient factual matter to “state
7 a claim to relief that is plausible on its face.” *Id.* A claim has facial plausibility when the plaintiff
8 pleads factual content that allows the court to draw the reasonable inference that the defendant is
9 liable for the misconduct alleged. *Id.* When a complaint pleads facts that are merely consistent
10 with a defendant’s liability, and shows only a mere possibility of entitlement, the complaint does
11 not meet the requirements to show plausibility of entitlement to relief. *Id.*

12 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
13 when considering a motion to dismiss. *Id.* First, the court must accept as true all of the allegations
14 contained in a complaint. However, this requirement is inapplicable to legal conclusions. *Id.*
15 Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.*
16 at 678. Where the complaint does not permit the court to infer more than the mere possibility of
17 misconduct, the complaint has “alleged – but not shown – that the pleader is entitled to relief.” *Id.*
18 at 679. When the allegations in a complaint have not crossed the line from conceivable to
19 plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

20 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
21 1216 (9th Cir. 2011). The *Starr* court held:

22 First, to be entitled to the presumption of truth, allegations in a complaint or
23 counterclaim may not simply recite the elements of a cause of action, but must
24 contain sufficient allegations of underlying facts to give fair notice and to enable
25 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

26 *Id.*

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1 **III. Discussion**

2 **A. Fourth, Sixth, and Fourteenth Amendments and Title VII**

3 Plaintiff alleges that defendants violated her rights under the Fourth, Sixth, and Fourteenth
4 Amendments, as well as under Title VII. (ECF No. 11). In her motion on appeal submitted to the
5 Supreme Court of Nevada, plaintiff alleged that these same rights had been violated. (ECF No.
6 20-4 at 16, 24, 46, 51). Defendants argue that all of plaintiff’s claims should be dismissed pursuant
7 to the Younger abstention doctrine. (ECF No. 20 at 7).

8 Under Younger, federal courts have adopted a “strong federal policy against federal-court
9 interference with pending state judicial proceedings” *Middlesex Cnty. Ethics Comm. v.*
10 *Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). “The policies underlying Younger are fully
11 applicable to noncriminal judicial proceedings when important state interests are involved.” *Id.*
12 If there are “disciplinary proceedings” brought in court, they are considered “judicial in character.”
13 *Hirsh v. Justices of the Supreme Court*, 67 F.3d 708, 712 (9th Cir. 1995). To determine whether
14 Younger abstention applies in a case, a court should consider the following four elements:

- 15 (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates
16 important state interests; (3) the federal plaintiff is not barred from litigating
17 federal constitutional issues in the state proceeding; and (4) the federal court
action would enjoin the proceeding or have the practical effect of doing so, i.e.,
would interfere with the state proceeding in a way that Younger disapproves.

18 *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546
19 F.3d 1087, 1092 (9th Cir. 2008); see also *Logan v. U.S. Bank N.A.*, 722 F.3d 1163, 1167 (9th Cir.
20 2013).

21 Conducting the Younger analysis, the court concludes that abstention is warranted.

22 First, plaintiff, in response to the Bar’s disciplinary panel recommending a six-year
23 suspension, appealed the panel’s decision to Nevada’s Supreme Court. (ECF No. 20-4). Thus,
24 given that there is no indication that the Nevada Supreme Court has yet to make any determination
25 in regards to the merit of plaintiff’s appeal, the matter appears to still be pending. See (ECF Nos.
26 20-4, 20-5).

1 Second, “states traditionally have exercised extensive control over the professional conduct
2 of attorneys” and “[have] an extremely important interest in maintaining and assuring the
3 professional conduct of the attorneys it licenses.” *Middlesex*, 457 U.S. at 432–33.

4 Third, plaintiff is not barred from bringing federal constitutional issues in state court
5 because she filed claims pursuant to her Fourth, Sixth, and Fourteenth Amendment constitutional
6 rights, as is indicated in her appeal to the Nevada Supreme Court.

7 Fourth, plaintiff’s requested relief would “enjoin the proceeding or have the practical effect
8 of doing so” *City of San Jose*, 546 F.3d at 1092. Plaintiff filed the same claims alleging
9 constitutional violations in this court as she did in her appeal to the Nevada Supreme Court. (ECF
10 No. 20-4). Thus, if this court were to rule on plaintiff’s claims pursuant to her constitutional rights,
11 it would inevitably interfere with the proceedings in state court. (ECF No. 20-4 at 16, 24, 46, 51).

12 Though defendants argue that all of plaintiff’s claims should be dismissed pursuant to the
13 Younger abstention doctrine, this court will refrain from adjudicating plaintiff’s claims as to
14 violations of her Fourth, Sixth, and Fourteenth Amendment constitutional rights, as well as Title
15 VII, because they are the only claims pending in the Nevada Supreme Court. (ECF No. 20-4).
16 Accordingly, the court dismisses these claims.

17 **B. Remaining federal claims**

18 Plaintiff additionally filed claims against defendants—the Bar; Clark, individually; and
19 Hunterton, individually and in his capacity as bar counsel—pursuant to 12 U.S.C. § 3405 as to
20 obtaining financial records and 18 U.S.C. § 1962 (b) and (c) in regards to racketeering activity.
21 (ECF No. 11 at 14, 20, 22). Defendants argue that all of plaintiff’s claims should be barred by
22 Eleventh Amendment immunity. (ECF No. 20 at 12–13). The court agrees, in part.

23 “[U]nder the eleventh amendment a state or its agencies cannot be sued in federal court
24 without its consent.” *O’Connor v. State of Nev.*, 686 F.2d 749, 750 (9th Cir. 1982). The state of
25 Nevada has expressly refused to generally waive its immunity provided by the Eleventh
26 Amendment. Nev. Rev. Stat. § 41.031(3). “[T]he State Bar of Nevada [i]s the investigative
27 arm of the Supreme Court of Nevada . . . and as such an agency, it too is immune from suit in
28 federal court under the eleventh amendment.” *O’Connor*, 686 F.2d at 750. Additionally, “[a]n

1 official sued in his official capacity has the same immunity as the state, and is entitled to eleventh
2 amendment immunity.” *Pena v. Gardner*, 976 F.2d 469, 473 (9th Cir. 1992).

3 Here, plaintiff’s claims in pursuance of violations of 12 U.S.C. § 3405 and 18 U.S.C. §
4 1962 (b) and (c), against the Bar and Hunterton “in his capacity as Bar Counsel of the State Bar of
5 Nevada,” are barred by Eleventh Amendment immunity. See (ECF No. 11); *O’Connor*, 686 F.2d
6 at 750 (stating that the Bar is immune from being sued in federal court); *Pena*, 976 F.2d at 473
7 (stating that people sued in their official capacity enjoy the same immunity as the state). Thus,
8 they cannot be adjudicated before the court and are dismissed.

9 However, plaintiff’s claims against Hunterton and Clark in their individual capacities
10 cannot be barred by Eleventh Amendment immunity because the Eleventh Amendment does not
11 “bar claims against the state officials in their personal capacities.” *Pena*, 976 F.2d at 472
12 (emphasis omitted).

13 Though not barred from bringing suit by Eleventh Amendment immunity, plaintiff is still
14 barred from bringing a suit against defendants pursuant to 12 U.S.C. § 3405. Plaintiff claimed, in
15 accordance with § 3405, that defendants violated her financial right to privacy when they “cause[d]
16 [her] banking records and/or other financial documents, records, statements or the like to be
17 unlawfully obtained” (ECF No. 11 at 14). Section 3405’s scope is limited to “government
18 authorit[ies],” which are “any agency or department of the United States, or any officer, employee,
19 or agent thereof.” 12 U.S.C. § 3401(3). Clark and Hunterton, in their individual capacities, are
20 not “officer[s], employee[s], or agent[s]” and do not qualify as government authorities in
21 accordance to the definition specified in 12 U.S.C. § 3401(3), which is necessary to fall under the
22 scope of 12 U.S.C. § 3405. Accordingly, plaintiff’s claim pursuant to 12 U.S.C. § 3405 against
23 all defendants is dismissed.

24 Plaintiff additionally brought claims against Clark and Hunterton, in their individual
25 capacities, pursuant to 18 U.S.C. §1962(b) and (c), the Racketeer Influenced and Corrupt
26 Organization Act (“RICO”). (ECF No. 11). “RICO authorizes any person injured in his business
27 or property by reason of a violation of section 1962” resulting from a pattern of racketeering
28 activity “to sue for treble damages in federal court.” *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S.

1 258, 278 (1992) (citations omitted). A pattern of racketeering activity “requires at least two acts
2 of racketeering activity . . . the last of which occurred within ten years . . . after the commission of
3 a prior act of racketeering activity.” 18 U.S.C. §1961(5).

4 Plaintiff’s complaint fails to provide a “short and plain statement of the claim showing that
5 [she] is entitled to relief.” See Fed. R. Civ. P. 8(a)(2). Rather, in her fifth and sixth claims of
6 relief, plaintiff has restated conclusory elements of a claim for a relief as specified in 18 U.S.C. §
7 1962(b) and (c) without providing any substantive and supportive facts. Allegations supporting
8 her fifth claim of relief pursuant to U.S.C. § 1962(b) are as follows:

9 63. During the ten (10) calendar years preceding January 1, 2016, all Defendants
10 did cooperate jointly and severally in the commission of two (2) or more of the
RICO predicate acts that are itemized in the RICO laws at 18 U.S.C 1962.

11 62. Plaintiff further alleges that all Defendants did commit two (2) or more of the
12 offenses so itemized in such a manner which they intentionally calculated and
premediated so that their respective racketeering activities would be a continuing
threat to Plaintiff, also in violation of the RICO law at 18 U.S.C. 1962 (b).

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14 67. The conduct of Defendants as herein alleged was willful, oppressive,
malicious and done with a wanton and reckless disregard for the rights of Plaintiff
hereby warranting the imposition of punitive damages in an amount to be proven
at Trial.

15 (ECF No. 11 at 20–21). Plaintiff’s allegations in her sixth claim of relief pursuant to U.S.C.
16 § 1962(c) are analogous to those which are alleged in the fifth. (Id. at 22-23).

17 A “formulaic recitation of the elements of a cause of action will not suffice.” *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 677 (2009) (citation omitted). Thus, plaintiff’s claims against all defendants
19 in accordance with 18 U.S.C. § 1962(b) and (c) are dismissed.

20 **C. State law claims**

21 Under 28 U.S.C. § 1367, district courts “may decline to exercise supplemental jurisdiction
22 over [related claims] if . . . the district court has dismissed all claims over which it has original
23 jurisdiction.” 28 U.S.C. § 1367(c)(3).

24 Because the court has resolved the federal claims, and they are the only claims over which
25 the court has original jurisdiction, the court declines to exercise supplemental jurisdiction over
26 plaintiffs’ remaining state law claims. See, e.g., *Wade v. Reg’l Credit Ass’n*, 87 F.3d 1098, 1101
27 (9th Cir. 1996) (holding that “where a district court dismisses a federal claim, leaving only state
28 claims for resolution, it should decline jurisdiction over the state claims and dismiss them without

1 prejudice”); see also *Zelaya v. Cty. of Los Angeles*, 628 F. App’x 535, 537 (9th Cir. 2016)
2 (instructing that a district court could consider dismissal pursuant to 28 U.S.C. § 1367(c)(3) after
3 resolving federal claims through summary judgment). As mentioned above, “[s]tates traditionally
4 have exercised extensive control over the professional conduct of attorneys.” *Middlesex*, 457 U.S.
5 at 432–33.

6 Thus, the court will refrain from adjudicating the state claims in order to avert any potential
7 interference with the pending appeal to the Supreme Court of Nevada. Accordingly, plaintiffs’
8 remaining state law claims are dismissed.

9 **D. Injunctive relief**

10 Finally, plaintiff filed a claim requesting injunctive relief. (ECF No. 11 at 28). The court
11 follows the well-settled rule in that a claim for “injunctive relief” standing alone is not a cause of
12 action. See, e.g., *In re Wal-Mart Wage & Hour Emp’t Practices Litig.*, 490 F. Supp. 2d 1091,
13 1130 (D. Nev. 2007); *Tillman v. Quality Loan Serv. Corp.*, No. 2:12-CV-346 JCM RJJ, 2012 WL
14 1279939, at *3 (D. Nev. Apr. 13, 2012) (finding that “injunctive relief is a remedy, not an
15 independent cause of action”); *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201
16 (E.D. Cal. 2010) (“A request for injunctive relief by itself does not state a cause of action.”).

17 Accordingly, plaintiff’s claim for injunctive relief is dismissed.

18 **IV. Conclusion**

19 In sum, defendants’ motion to dismiss will be granted, without prejudice, as to those claims
20 brought pursuant to the Fourth, Sixth, and Fourteenth Amendments, Title VII, 18 U.S.C. 1962(b)
21 and (c), and 12 U.S.C. § 3405. The court declines to exercise its supplemental jurisdiction over
22 the remaining state law claims, and those remaining claims will also be dismissed without
23 prejudice.

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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion to dismiss (ECF No. 20) be, and the same hereby is, GRANTED, without prejudice.

DATED June 8, 2017.


UNITED STATES DISTRICT JUDGE