UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DISTRICT

JEHAN ZEB MIR, Plaintiff, v. KENNETH BECK, MD, et al., Defendants.	No. SA CV 12-1629-RGK (SH) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California. For reasons stated below, Defendants' Motions to Dismiss should be granted, and the First Amended Complaint should be dismissed without leave to amend.

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BACKGROUND

Pro se Plaintiff Jehan Zeb Mir, a former physician, filed his original Complaint ("Cpt.") on September 26, 2012. Plaintiff filed a First Amended Complaint on January 22, 2013. Plaintiff asserts seven claims alleging violation of his civil rights, the Racketeer Influenced and Corrupt Organization Act ("RICO"), and state tort law, against twenty-three defendants. These claims arise from the termination of Plaintiff's vascular surgery privileges at Pomona Valley Hospital Medical Center in 2000, and the revocation of his license to practice medicine by the Medical Board of California in 2006. [First Amended Complaint ("FAC") ¶¶ 53, 160.] Specifically, Plaintiff asserts the following seven claims:

(1) Intentional interference with right to practice a profession in violation of his civil rights pursuant to 42 U.S.C. § 1983;

(2) RICO violation;

(3) Conspiracy to violate civil rights pursuant to 42 U.S.C. §§ 1981, 1985, and 1986;

(4) Intentional interference with prospective economic advantage;

(5) Defamation;

(6) Intentional infliction of emotional distress, and;

(7) Malicious prosecution.

[FAC ¶¶ 219-329.] Plaintiff sues: (1) Kenneth B. Deck, MD; (2) Jerry D. Wu, MD; (3) Joshua A. Bardin, MD; (4) Cesar A. Aristeiguita, MD; (5) Steve Alexander; (6) Stephen Richard Corday, MD; (7) Shelton J. Duruisseau, MD; (8) Mary Lynn Moran, MD; (9) Barbara Yaroslovsky; (10) Gary Gitnock, MD; (11) Janet Salomonson, MD; (12) Gerrie Schipske; (13) Ronald Wender, MD; (14) Frank Vram Zerunyan; (15) Hedy L. Chang; (16) Eric Esrailian, MD; (17) Sharon Lee Levine, MD; (18) Reginald Low, MD; (19) Mary Agnes Veronica Matys Zewski; (20) Vinod Kumar Garg, MD; (21) Lew Bradley Disney, MD; (22) Harold Damuth, Jr., MD, and; (23) Pomona Valley Hospital, a California Corporation. [FAC 1.] Plaintiff seeks compensatory and punitive damages,

costs and attorney's fees. [FAC 80.][1]

Defendants have filed five motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). In a minute order dated March 19, 2013, the court granted Plaintiff's *ex parte* motion to consolidate all motions to dismiss and to extend time to file oppositions until March 27, 2013. The motions are briefed, as follows:

(1) On February 14, 2013, defendants Deck, Alexander, Wu, Bardin, Corday, Moran, Yaroslavsky, Gitnick, Salomonson, Schipske, Wender, Zerunyan, Chang, Esrailian, and Levine filed a motion to dismiss ("Deck MTD"). On March 19, 2013, Plaintiff filed an opposition to the Deck motion to dismiss ("Deck Opp.") and the Deck defendants filed a reply on April 3, 2013.

(2) On February 14, 2013, defendants Pomona Valley Hospital Medical Center, Garg, Disney, and Damuth, Jr., filed a motion to dismiss ("PVH MTD"). On March 19, 2013, Plaintiff filed an opposition ("PVH Opp."), and the Pomona Valley Hospital defendants filed a reply on April 3, 2013.

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[1] As noted below, the California Court of Appeal declared Plaintiff a vexatious litigant in Mir v. Pomona Valley Hosp. Medical Center, 2003 WL 403301, *2-*6 (Cal. App. Feb. 24, 2003), and the Ninth Circuit affirmed a sanction award against Plaintiff for filing and maintaining frivolous and harassing litigation in Mir v. Little Company of Mary Hospital, 844 F.2d 646, 653 (9th Cir. 1988). During the pendency of the present lawsuit, the Southern District of California issued an opinion on May 8, 2013, dismissing Plaintiff's similar action filed against the Medical Board of California and two of its executives concerning alleged constitutional violations arising from the same investigation and administrative hearing procedures leading to the revocation of Plaintiff's medical license here. See Mir v. Medical Board of California, 2013 WL 1932935 (S. D. Cal. May 8, 2013). Also currently pending in the Eastern Division of the Central District of California, Plaintiff sues yet another hospital and eighteen physicians at that hospital after his staff privileges there were terminated in 2000 based on patient quality of care issues. See Mir v. San Antonio Community Hospital, Case No. EDCV 12-1791-GW.

(3) On February 15, 2013, defendant Matyszewski filed a motion to dismiss ("Mat. MTD"). Defendant Matyszewski filed a reply on April 3, 2013.

(4) On February 27, 2013, defendants Duruisseau and Low filed a motion to dismiss ("Low MTD").

(5) On March 12, 2013, defendant Aristeiguita filed a motion to dismiss ("Ar. MTD").

The Pomona Valley Hospital defendants filed a Request for Judicial Notice ("PVH RJN") on February 13, 2013. The Deck defendants filed a Request for Judicial Notice ("Deck RJN") on February 14, 2013. Defendant Matyszewski filed a request for judicial notice ("Mat. RJN") on February 15, 2013. Plaintiff filed a Request for Judicial Notice ("Pl. RJN") on March 19, 2013, and on that same date, Plaintiff filed Objections to the Deck defendants' Request for Judicial Notice and a Declaration in Support of Objections to All of the Defendants' Requests for Judicial Notice. On March 27, 2013, Plaintiff filed Objections to defendant Matyszewski's Request for Judicial Notice ("Pl. Obj. Mat. RJN"), and a Declaration in Support of those objections. On March 27, 2013, Plaintiff filed an opposition to defendant Matyszewski's request for judicial notice ("Pl.Opp.Def.Mat.RJN"). On April 3, 2013, the Pomona Valley Hospital defendants filed a Response to Plaintiff's Objections to Request for Judicial Notice ("PVH Resp. to Obj. to RJN").

DISCUSSION

A. MOTION TO DISMISS STANDARD

Defendants' Motions to Dismiss, asserted under Fed. R. Civ. P. 12(b)(6) test the legal sufficiency of a statement of claim for relief. "In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).

"A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare System, 534 F.3d 1116, 1121 (9th Cir. 2008)(quoting Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984) (citing 2A Moore's Federal Practice ¶ 12.08).

Under Fed. R. Civ. P. 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court has explained the pleading requirements of Rule 8(a)(2) and the requirements for surviving a Rule 12(b)(6) motion to dismiss in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)("Iqbal"), Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)(per curiam), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) ("Twombly"); see also Moss v. U.S. Secret Service, 572 F.3d 962 (9th Cir. 2009).

The pleading standard of Rule 8 does not require "detailed factual allegations." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555); see also Erickson, 551 U.S. at 93; Moss, 572 F.3d at 968. However, a complaint does not meet the pleading standard if it contains merely "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

Instead, to comply with the requirements of Rule 8(a)(2) and survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556). This plausibility standard is not a probability requirement, but does ask for more than mere possibility; if a complaint pleads facts "merely consistent with" a

theory of liability, it falls short of "the line between possibility and plausibility." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).

The Supreme Court has set out a two-pronged approach for reviewing possible failure to state a claim. Iqbal, 556 U.S. at 678-79; see also Moss, 572 F.3d at 969. First, the reviewing court may identify those statements in a complaint that are actually conclusions, even if presented as factual allegations. Iqbal, 556 U.S. at 678-79. Such conclusory statements (unlike proper factual allegations) are not entitled to a presumption of truth. Id. In this context, it is the conclusory nature of the statements (rather than any fanciful or nonsensical nature) "that disentitles them to the presumption of truth." Id. at 679. Second, the reviewing court presumes the truth of any remaining "well-pleaded factual allegations," and determines whether these factual allegations and reasonable inferences from them plausibly support a claim for relief. Id. at 679; see also Moss, 572 F.3d at 969.

If the court finds that a complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez, 203 F.3d at 1126-30. Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1107-11; see also Moss, 572 F.3d at 972.

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B. ALLEGATIONS OF THE COMPLAINT

Plaintiff alleges the following facts.[2]

1. A Patient Develops Gangrene Resulting In An Above-the-Knee Amputation

In 2000, Plaintiff was a provisional member of the medical staff at Pomona Valley Hospital ("PVH"). [FAC ¶ 6.] On June 8, 2000, Plaintiff treated an 81-year-old female patient with a history of essential hypertension, arteriosclerotic and hypertensive heart disease, tachyarrhythmia, and chronic renal failure by an embolectomy. [FAC ¶¶ 7, 20.] Two days later, Plaintiff performed a second embolectomy and a femoro-popliteal bypass. [FAC ¶¶ 25-26, 29-30.] On June 12, 2000, Plaintiff performed inter-operative angiograms below the patient's right knee, another embolectomy, and another femoro-popliteal bypass. [FAC ¶¶ 39-40, 42.] On June 14, 2000, the patient's leg developed gangrene and Plaintiff performed an above-the-knee amputation. [FAC ¶ 45.]

2. PVH Terminates Plaintiff from its Hospital Staff and Reports him to the California Medical Board; Plaintiff Sues PVH, Loses, and is Declared a Vexatious Litigant

In September 2000, PVH removed Plaintiff from proctoring for general and thoracic surgery. [FAC ¶ 48.] In November 2000, PVH suspended Plaintiff's vascular surgery privileges. [FAC ¶ 53.] Subsequently, PVH terminated Plaintiff from its medical staff and reported Plaintiff to the California Medical Board under California Business & Professions Code § 805, which requires health care facilities to report actions against a physician's staff privileges or employment taken for medical disciplinary reasons. [FAC

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[2] The following summary of the facts alleged derives from: defendant Matyszewski's Motion to Dismiss at pp. 2-5; the Deck defendants' Motion to Dismiss at pp. 3-7; the PVH defendants' Motion to Dismiss at pp. 3-4, and; the Low Motion to Dismiss at pp. 2-6. The court has thoroughly reviewed the First Amended Complaint and finds this amalgamation of defendants' summaries of the facts to be accurate. Where necessary, the court has edited or supplemented the summary.

¶¶ 55, 60.] See Cal. Bus. & Prof. Code § 805(b).

Plaintiff then twice sued PVH for injunctive relief and damages. [FAC ¶¶ 54, 56.] The superior court denied relief on both occasions, and Plaintiff appealed. [FAC ¶¶ 54, 59; Mat. RJN, Ex. A (Mir v. Pomona Valley Hosp. Medical Center, 2003 WL 403301, *2-*6 (Cal. App. Feb. 24, 2003).] The court of appeal affirmed the superior court judgments against Plaintiff, dismissed his appeal, and determined that Plaintiff was a vexatious litigant [Mat. RJN, Ex. A.] The court of appeal observed that Plaintiff had a long history of filing and maintaining frivolous and harassing litigation including Mir v. Little Company of Mary Hospital, 844 F.2d 646, 653 (9th Cir. 1988), where the Ninth Circuit affirmed a sanction award for Plaintiff's frivolous filings in litigating a hospital's denial of staff privileges for over nine years. [Mat. RJN, Ex. A.]

3. The Medical Board Files an Accusation Against Plaintiff; Plaintiff Appeals, and Litigation Ensues

In 2003, the Medical Board filed an Accusation against Plaintiff which charged him, among other charges, with gross negligence and incompetence in connection with his care of the PVH patient. [FAC ¶¶ 67-68.][3] Defendant Matyszewski was the deputy

[3] During the investigation that led to the 2003 Accusation by the Medical Board, Plaintiff alleges that defendants Wu, Garg, Damuth, Disney, Bardin, and Deck conducted several interviews and issued opinions which were improper. Specifically, on September 10, 2002, defendant Jerry Wu, M.D., an investigator with the Medical Board, interviewed Plaintiff in conjunction with the PVH complaint. [FAC, ¶ 61.] According to Plaintiff, during the investigation and afterwards, Dr. Wu, among other things, never provided a correct diagnosis, never investigated Plaintiff's proctor, defendant Vinod Garg, M.D., improperly suspected an embolism, and improperly questioned why Plaintiff did not perform an intraoperative angiogram. [FAC, ¶¶ 232-233.] Dr. Wu also improperly questioned if proximal aorta or iliac arteries were evaluated during arteriogram for possible site of embolism and improperly noted that the patient should not have the benefit of simple minimal surgery of removing clots and instead noted that the patient should have had "a most traumatic, gruesome and permanently debilitating amputation." [FAC, ¶ 234.] Plaintiff claims Dr. Wu arrived at this opinion to annoy, vex, and harass

(continued...)

attorney general who represented the Medical Board in the prosecution against Plaintiff's medical license. [FAC ¶¶ 159, 263; Mat. RJN, Ex. B at B-2.][4]

There was a lengthy administrative hearing before an Administrative Law Judge of the Office of Administrative Hearings between October 2004 and April 2005. [FAC ¶ 72; Mat. RJN, Ex. B at B-2.][5] After the conclusion of the administrative hearing, a Second Amended Accusation was filed against Plaintiff for making false statements, which

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[3] (...continued)
him and to protect the interests of "co-conspirators" PVH, and Drs. Damuth, Disney and Garg. [FAC, ¶ 236.] Plaintiff further alleges that Dr. Wu later referred the matter to "co-conspirators" defendants Joshua Bardin, M.D., and Kenneth B. Deck, M.D., for expert consultations to support his position and to cause the eventual filing of an Accusation by the Medical Board, even though he knew Plaintiff had done nothing wrong. [FAC, ¶ 238.] According to Plaintiff, on November 22, 2002, Dr. Bardin provided an expert consultation in bad faith without, among other things, examining the patient, or performing or witnessing the surgery, made a false and fraudulent diagnosis, made a bad faith charge against Plaintiff, and falsely wrote a note to the investigator that he had seen the angiograms. [FAC, ¶¶ 243-246.]

[4] As to defendant Matyszewski, Plaintiff alleges that she was the "prosecutor" in the administrative proceeding, who fabricated then destroyed an"admission note," filed an Accusation charging Plaintiff with fabricating that "admission note," introduced false testimony, and filed the Second Accusation in 2005. [FAC ¶¶ 150-51, 159, 263-66, 267, 271, 272, 275-78, 279-80.]

[5] Among his complaints regarding the administrative hearing process, Plaintiff alleges that Dr. Deck, one of two Medical Board expert witnesses, falsified his *curriculum vitae* and testified falsely in an effort to rehabilitate the testimony of Dr. Bardin. [FAC, ¶ 77, 79.] Plaintiff also alleges that Dr. Deck was prejudiced against him because of his religion and national origin and testified falsely against him to injure his reputation and professional practice and protect the PVH defendants. [FAC, ¶ 262.] He levels a similar allegation against Dr. Bardin. [See FAC, ¶ 254.]

charges Plaintiff alleges were unfounded.[6] [FAC, ¶ 150.] This Second Amended Accusation was allegedly based on the testimony of witnesses at the administrative hearing. [FAC ¶¶ 150-51.] In May 2006, the Medical Board issued a Decision revoking Plaintiff's medical license; he requested reconsideration, which was granted, and then the Medical Board issued a Decision in December 2006 revoking Plaintiff's license effective January 2007. [FAC ¶ 160; Mat. RJN, Exs. B and C.][7]

Plaintiff challenged the Medical Board's decision by filing a petition for writ of mandamus in the California superior court. [FAC ¶ 161.] The superior court granted the petition and remanded the matter to the Medical Board to reconsider the issue of penalty. [FAC ¶ 171.] Dissatisfied, Plaintiff also filed a petition for writ relief with the court of appeal, which was summarily denied. [FAC ¶ 173.] In 2008, the Medical Board issued a Corrected Decision on Remand which again determined that Plaintiff's surgeon's certificate should be revoked. [FAC ¶¶ 174, 177-181; Mat. RJN, Ex. D.][8] Plaintiff again filed a petition for writ of mandate in the superior court. [FAC ¶ 182.] Ultimately, the court of appeal determined that the Medical Board had erred because it issued its decision

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[6] Plaintiff alleges, in part, that Defendants prosecuted the false and fraudulent charge of "mis-diagnosis," and skipped over evidence produced on cross examination by the Board's own witnesses demonstrating that Plaintiff made the correct diagnosis. [FAC, ¶ 285.] He further alleges that Defendants conducted a "sham" administrative hearing, committed extrinsic fraud by denying Plaintiff a trial on the "Second Amended Accusation," and made a finding of repeated and gross negligence and repeated and gross incompetence contrary to California law. [FAC, ¶¶ 286-290.]

[7] Plaintiff alleges that defendant Duruisseau, along with other Medical Board members, participated in the deliberations that resulted in the Board's decision to revoke his medical license. [FAC ¶ 159.]

[8] Plaintiff alleges that the Medical Board, then allegedly consisting of Defendants Dr. Gitnick, Dr. Salomonson, Gerry Shipske, Dr. Wender, Barbara Yaroslavsky, and Frank Zerunyan, "recycled word by word, paragraph by paragraph, page by page" its 2006 Decision as its 2008 Decision and again revoked Plaintiff's license. [FAC, ¶¶ 174, 294-295.]

on remand without allowing for oral argument. [FAC ¶¶ 193-94; Mat. RJN, Ex. E (Mir v. Superior Court, 2010 WL 602512 at *4, *7 (Cal. App. Feb. 22, 2010).]

The Medical Board issued a decision after remand which upheld the revocation but stayed it and placed Plaintiff on probation for five years upon certain specified terms. [FAC ¶¶ 202-09.][9] Plaintiff filed another petition for writ of mandate, which resulted in the superior court determining that one of the probation conditions, for psychological evaluation, should be stricken. [FAC ¶¶ 210-11; Mat. RJN, Ex. F at F-2.] Accordingly, the Medical Board corrected its decision after remand, striking the psychological evaluation condition but otherwise leaving intact the remaining terms and conditions of Plaintiff's probation. [Mat. RJN, Ex. F at F-2, F-30 through F-35.] In August 2012, the Medical Board revoked Plaintiff's medical license for failure to comply with the conditions of his probation. [FAC ¶ 218.]

C. CLAIMS ASSERTED IN THE FAC ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS AND BY ABSOLUTE IMMUNITY

"A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only when 'the running of the statute is apparent on the face of the complaint.'" Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir.2010)(quoting Huynh v. Chase Manhattan Bank, 465 F.3d 992, 997 (9th Cir.2006)). "'[A] complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim.'" Von Saher, 592 F.3d at 969 (quoting Supermail Cargo, Inc. v. U.S., 68 F.3d 1204, 1206 (9th Cir.1995)). "[W]here the issue of limitations requires determination of when a claim

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[9] Plaintiff alleges that, on September 27, 2010, defendants Chang, Esrailian, Levine, Low, Moran, and Schipske, in contempt of court orders, issued a Decision which "word by word, paragraph by paragraph, page by page copy of twice previously set aside and vacated 2006 and 2008 Decisions [sic]." [FAC ¶ 198.] Plaintiff further alleges that these defendant in bad faith and in contempt, intentionally, wilfully, and knowingly, disobeyed court orders, fraudulently inserting findings of gross and repeated negligence and repeated gross incompetence. [FAC ¶¶ 199-200.]

begins to accrue, the complaint should be dismissed only if the evidence is so clear that there is no genuine factual issue and the determination can be made as a matter of law." Sisseton–Wahpeton Sioux Tribe v. United States, 895 F.2d 588, 591 (9th Cir.1990); In re Swine Flu Prod. Liab. Litig., 764 F.2d 637, 638 (9th Cir.1985); Lundy v. Union Carbide Corp., 695 F.2d 394, 397–98 (9th Cir.1982).

1. Pomona Valley Hospital Defendants Motion to Dismiss

a. Statute of Limitations:

Federal law determines when a claim accrues, and "[u]nder federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action." Maldonado v. Harris, 370 F.3d 945, 955 (9th Cir. 2004); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999).

The PVH defendants (Pomona Valley Hospital Medical Center, Kumar Garg, MD, Lew Bradley Disney, MD, and Harold Damuth, Jr., MD), assert, inter alia, that the statute of limitations has run on each of the seven claims asserted against them. [PVH MTD 5-8.] The PVH defendants contend that Plaintiff's claims that they unfairly and unlawfully terminated Plaintiff's medical staff privileges at PVH accrued in 2000, when his privileges were terminated. Further, construing liberally Plaintiff's allegations regarding conspiracy with the Medical Board of California, the PVH defendants contend that those claims accrued at the conclusion of the hearing during which Plaintiff alleges the PVH defendants falsely testified. That hearing concluded on April 6, 2005. Even if Plaintiff's claims did not accrue until the Medical Board issued its decision resulting from the administrative hearing, that decision was issued on December 6, 2006. [PVH MTD 6.]

Plaintiff contends that his claims involving the PVH defendants' conspiracy and intentional interference with his right to practice a profession and to "defraud him of his medical license" started in November 2000 and did not end until August 19, 2012. [Pl. Opp. PVH MTD 4.] He further asserts that even if the claims accrued on April 6, 2005 or December 6, 2006, state tolling statutes apply to toll the accrual of all of his claims. [Id.] Finally, Plaintiff argues that the PVH defendants are equitably estopped from asserting the

statute of limitations defense because of their own conduct, "which prevented Plaintiff from taking earlier action for their repeated refusal to obey the order, writ and judgment of the superior court on writ petition to determine penalty consistent with the findings of the court which the defendants could not lawfully do and instead twice recycled its twice set aside and vacated Decisions by the California courts in order to delay, harass and revoke then claiming statutes of limitations as a bar." [Pl. Opp. PVH MTD 6.]

1. Accrual:

Plaintiff attempts to bring all of his claims against the PVH defendants within the limitations period by alleging a long-running conspiracy that did not end until August, 2012. However, the allegations of the FAC do not state a cognizable claim of conspiracy involving the PVH defendants and the Medical Board defendants because Plaintiff does not allege "the existence of an agreement or 'meeting of the minds' to violate constitutional rights." Mendocino Environmental Center v. Mendocino County, 192 F.3d 1283, 1301 (9th Cir. 1999); see also Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001). "'To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy.'" Franklin, 312 F.3d at 441 (quoting United Steel Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1541 (9th Cir. 1989)).

Plaintiff makes only conclusory allegations about a grand conspiracy that somehow connects the conduct of the PVH defendants prior to the termination of Plaintiff's privileges at PVH in 2000, to the Medical Board proceedings which resulted in the revocation of his medical license in 2006, and final revocation in 2012. Absent specific allegations regarding a meeting of the minds with regard to a common objective, Plaintiff has not stated a claim of conspiracy. Mendocino, 192 F.3d at 1301; Franklin, 312 F.3d at 441.

Furthermore, accrual of civil conspiracies for statute of limitations purposes is determined in accordance with the last overt act doctrine, under which "injury and damage in a civil conspiracy action flow from the overt acts, not from 'the mere continuance of a

conspiracy.'" Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986) (internal brackets omitted). Consequently, the cause of action runs separately from each overt act that is alleged to cause damage to the plaintiff, and separate conspiracies may not be characterized as a single grand conspiracy for procedural advantage. Id. (citation and internal quotations omitted). Accordingly, a plaintiff may recover only for the overt acts that are specifically alleged to have occurred within the statute of limitations period. Id. In cases in which the alleged wrongful conduct is continuing in nature, such that no single incident can fairly or realistically be identified as the cause of significant harm, the statute of limitations does not begin to run until the wrongful conduct ends. Flowers v. Carville, 310 F.3d 1118, 1126 (9th Cir. 2002)(citation omitted). However, "discrete" acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, 344 F.3d 822, 828 (9th Cir. 2003)(citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 113, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002)). "A continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation." Ward v. Caulk, 650 F.2d 1144, 1147 (9th Cir. 1981)(citation omitted). Accordingly, the accrual of Plaintiff's claims against the PVH defendants based on their conduct occurring prior to 2000, and in 2004 and 2005, is not extended by virtue of being part of a conspiracy.

Nor is the limitations period on the claims against the PVH defendants tolled by the pendency of administrative proceedings in connection with the ultimate revocation of Plaintiff's medical license. The authorities cited by Plaintiff in this regard are inapplicable here because there is no exhaustion requirement in connection with Plaintiff's claims against the PVH defendants, who are a private hospital and individual physicians who simply testified during the proceeding, not the governing body with authority over medical licenses.

For similar reasons, the PVH defendants are not equitably estopped from asserting the statute of limitations defense. In § 1983 actions, federal courts also apply the forum state's law regarding equitable tolling, except to the extent such law is inconsistent with

federal law. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004). California courts apply equitable tolling in carefully considered situations to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice. Lantzy v. Centex Homes, 31 Cal. 4th 363, 370, 2 Cal. Rptr. 3d 655 (2003)(collecting cases in which equitable tolling applied). The California Supreme Court has described equitable tolling as "a judge-made doctrine which operates independently of the literal wording of the Code of Civil Procedure to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness." Id. (citations and internal quotation marks omitted). Under California law, a plaintiff must meet three conditions to equitably toll a statute of limitations: (1) defendant must have had timely notice of the claim; (2) defendant must not be prejudiced by being required to defend the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable and in good faith. Fink v. Shedler, 192 F.3d 911, 916 (9th Cir. 1999)(citation omitted). For example, equitable tolling is appropriate when a plaintiff, possessing several legal remedies, reasonably and in good faith pursues one designed to lessen the extent of his injuries or damage, thereby allowing the statutory period to run. Guerrero v. Gates, 442 F.3d 697, 706 (9th Cir. 2006). The effect of equitable tolling is that the limitations period stops running during the tolling event, and begins to run again only when the tolling event has concluded. Lantzy, 31 Cal. 4th at 370, 2 Cal. Rptr. 3d 655. As a consequence, the tolled interval, no matter when it took place, is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling event previously occurred. Id. at 370-71. As with other general equitable principles, application of the equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the limitations statute. Id. at 371(citation and internal quotation marks omitted); Jones v. Blanas, 393 F.3d at 928. Plaintiff alleges no conduct by the PVH defendants that delayed or prevented him from filing his claims against them in a timely manner. The conduct to which Plaintiff does refer involves the administrative proceeding and subsequent court

challenges. The PVH defendants certainly had no control over those proceedings, nor, based on the facts alleged, were they even participants in large portions of the proceedings. Accordingly, there is no fairness justification for equitable tolling here.

Based on the foregoing, Plaintiff's claims against the PVH defendants in connection with the termination of his privileges at PVH accrued when he became aware of the injury which is the basis for the action--in November of 2000, when his staff privileges at PVH were terminated. With regard to Plaintiff's claims of false testimony and improper investigation against the PVH defendants in connection with the Medical Board proceeding, those claims accrued when the Medical Board revoked Plaintiff's license in December of 2006, and he became aware of the injury allegedly caused by the actions of the PVH defendants. The foregoing findings are apparent from the face of Plaintiff's FAC, based on the undisputed facts alleged, as a matter of law. See Sisseton–Wahpeton Sioux Tribe, 895 F.2d at 591.

2. Civil rights claims:

Because § 1983 contains no specific statute of limitation, federal courts should apply the forum state's statute of limitations for personal injury actions. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004); Maldonado, 370 F.3d at 954; Fink, 192 F.3d at 914. State personal injury limitations periods also apply to actions under 42 U.S.C. §§ 1981, 1985 and 1986. See McDougal v. County of Imperial, 942 F.2d 668, 673-74 (9th Cir. 1991). California's statute of limitations for personal injury actions was extended from one year to two years effective January 1, 2003. The two-year statute of limitations does not apply retroactively to claims that accrued prior to January 1, 2003. Cal. Civ. Proc. Code § 335.1 (West 2007); Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954–55. When Plaintiff filed his original Complaint on September 26, 2012, the applicable statutes of limitations had already expired. Specifically, Plaintiff's claim of intentional interference with Plaintiff's right to practice a profession founded on the PVH defendants' conduct in connection with terminating his staff privileges at PVH accrued in November of 2000, and applying the then-applicable one-year statute of limitations, the limitations

period on that claim expired in November of 2001. As to Plaintiff's conspiracy and discrimination claims under §§ 1981, 1983, 1985, and 1986, those claims accrued when Plaintiff's license was revoked in December of 2006 and the limitations period expired in December of 2008, almost four years prior to the filing of his federal complaint on September 26, 2012. Based on the foregoing, Plaintiff's civil rights claims against the PVH defendants are subject to dismissal as time-barred.

3. RICO claims:

There is a four-year statute of limitations on bringing civil RICO claims. Pincay v. Andrews, 238 F.3d 1106, 1108 (9th Cir. 2001). That four-year clock begins running once the plaintiff has either actual or constructive notice of the injury, meaning the plaintiff "knows or should know of the injury that underlies his cause of action." Id. at 1109 (quoting Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996)). Assuming the latest possible date for accrual of Plaintiff's RICO claims--December 2006--the limitations period expired in December 2010. Plaintiff did not file this action until almost two years later. Accordingly, Plaintiff RICO claims against the PVH defendants are subject to dismissal as time-barred.

4. State law claims:

Plaintiff asserts claims of defamation, intentional infliction of emotional distress, and malicious prosecution against the PVH defendants. In California, the limitations periods for defamation and for intentional infliction of emotional distress are one year. Cal. Code Civ. Pro. §§ 340(c), 340(3). The limitations period for malicious prosecution is two years. Cal. Code Civ. Pro. § 335.1. Therefore, giving Plaintiff the benefit of the doubt and assuming an accrual date of December, 2006, the limitations periods on Plaintiff's state law claims against the PVH defendants expired in December of 2007 and 2008. Consequently, Plaintiff's state law claims against these defendants are subject to dismissal as untimely.

b. Conclusion

Based on the foregoing discussion, it is plain from the face of the FAC that all of Plaintiff's claims asserted against the PVH defendants are barred by the applicable statutes of limitations. Therefore, the court need not address the remaining arguments in support of dismissal at this time. The Motion to Dismiss filed by the PVH defendants should be granted, and Plaintiff's claims against the PVH defendants should be dismissed without leave to amend.

2. Deck Defendants' Motion to Dismiss

The Deck defendants also move to dismiss on the ground that Plaintiff's claims against them are barred by the applicable statutes of limitations. This group of defendants consists of members of the Medical Board of California who were involved in the administrative proceedings against Plaintiff in 2004 and 2005, which resulted in the revocation of his medical license in 2006.

a. Civil rights claims against defendants Wu Bardin, and Deck:

Defendant Wu was an investigator with the Medical Board, who Plaintiff alleges interviewed him on September 10, 2002, and allegedly conducted an improper investigation during the time period surrounding the interview. Defendants Bardin and Deck were expert witnesses who provided evaluations which led to the filing of an Accusation by the Medical Board on August 21, 2003. Plaintiff also alleges that defendants Bardin and Deck provided false testimony, delayed proceedings, and harassed Plaintiff during the hearings between October 2004 and April 2005. It appears that Plaintiff alleges no conduct by defendants Wu, Bardin, or Deck after the 2004-2005 administrative proceeding.

As discussed above, California's two-year personal injury limitations period applies to Plaintiff's claims under 42 U.S.C. §§ 1981, 1983, 1985 and 1986. Cal. Civ. Proc. Code § 335.1 (West 2007); Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954–55. Plaintiff's claims accrued when he knew or had reason to know of his injury. Maldonado, 370 F.3d at 955. At the very latest, Plaintiff would have become aware of his injury resulting from defendants' alleged improper investigation, false testimony, delay, and

harassment, when the Medical Board issued it Decision revoking his license on December 6, 2006. Therefore, he had until December, 2008 to timely file his civil rights claims against these defendants. As discussed above, Plaintiff's contention in opposition that defendants' participation in a grand conspiracy that ended with the final revocation of his license in 2012, extends the accrual date for his claims, should be rejected. Plaintiff has alleged no overt acts to indicate that defendants Wu, Bardin, or Deck participated in a conspiracy. See Franklin, 312 F.3d at 441. Nor would the accrual date for statute of limitations purposes be extended to 2012, even if there were specific overt acts alleged. See Carpinteria Valley Farms, Ltd., 344 F.3d at 828; Gibson, 781 F.2d at 1340. Since Plaintiff did not file his Complaint until September 26, 2012, it is plain from the face of Plaintiff's pleadings that his §§ 1981, 1983, 1985, and 1986 claims against defendants Wu, Bardin, and Deck are time-barred and should be dismissed.

b. RICO claims against defendants Wu, Bardin, and Deck:

Applying the four-year limitations period to Plaintiff's RICO claims, Plaintiff's RICO claims against defendants Wu, Bardin, and Deck are also time-barred. Plaintiff's claims based on defendants' conduct surrounding the 2003 through 2005 investigation and hearings accrued when his license was revoked in December 2006. Therefore, when he filed his RICO claims on September 26, 2012, the statute of limitations had expired almost two years earlier in December 2010. Accordingly, Plaintiff's RICO claims against defendants Wu, Bardin, and Deck should be dismissed as time-barred.

c. Civil rights claims against defendants Alexander, Corday, Moran, Yaroslavsky, Gitnick, Salomonson, Schipske, Wender, Zerunyan, Chang, Esrailian, and Levine:

These Medical Board defendants contend that Plaintiff's §§ 1981, 1983, 1985, and 1986 claims against them accruing prior to September 26, 2010, are time-barred. [Deck MTD 10-11.] Plaintiff alleges that, in November, 2006, at the conclusion of oral arguments by counsel, defendants Alexander, Corday, Moran, and Yaroslavsky went into closed session, then a month later, issued a Decision revoking Plaintiff's license. When

Plaintiff's action was on remand to the Medical Board in 2008, Plaintiff alleges that defendants Gitnick, Salomonson, Schipske, Wender, Yaroslavsky, and Zerunyan "recycled word by word, paragraph by paragraph, page by page" their 2006 Decision as the Medical Board's June 13, 2008 Decision, and again revoked his license. On September 27, 2010, Plaintiff alleges that defendants Chang, Esrailian, Levine, Moran, and Schipske "recycled" the Medical Board's 2006 and 2008 Decisions, adding gross negligence and repeated gross incompetence, and placed Plaintiff on probation, including the conditions to undergo a psychiatric consultation and not to engage in the solo practice of medicine. While Plaintiff alleges that the Medical Board then revoked his license in August, 2012, for violating the terms of his probation, he does not specifically allege conduct by any of the defendants in connection with that final revocation.

Applying the two-year statute of limitations, Plaintiff's civil rights claims against defendants Alexander, Corday, Moran, and Yaroslavsky, based on the 2006 Decision were untimely unless filed by December, 2008. Plaintiff's civil rights claims against defendants Gitnick, Salomonson, Schipske, Wender, Yaroslavsky, and Zerunyan based on the June 13, 2008 Decision were untimely unless filed by June 13, 2010. Accordingly, it is apparent from the face of the FAC that the foregoing claims are time-barred and should be dismissed. Plaintiff's civil rights claims against defendants Chang, Esrailian, Levine, Moran, and Schipske based on the September 27, 2010 Decision however, are not time-barred because Plaintiff filed his original Complaint within two years, on September 26, 2012.[10]

d. RICO claims:

The four-year statute of limitations on bringing civil RICO claims bars claims brought against any of the Medical Board defendants for conduct prior to September 26, 2008. See Pincay, 238 F.3d at 1108. Thus, Plaintiff's claims against Alexander, Corday,

[10] Nevertheless, as discussed below, Plaintiff's claims against all Medical Board defendants are subject to dismissal on the ground of absolute immunity applicable to Medical Board members acting in their official capacities.

Moran, Gitnick, Salomonson, Schipske, Wender, Yaroslavsky, and Zerunyan based on conduct in connection with the December, 2006 and June 13, 2008 Decisions are time-barred and subject to dismissal. Plaintiff's RICO claims against defendants Chang, Esrailian, Levine, Moran, and Shipske based on the September 27, 2010 Decision however, are not time-barred because Plaintiff filed his original Complaint within four years, on September 26, 2012.

e. Absolute Immunity

The Deck defendants contend that defendants Alexander, Corday, Moran, Yaroslavsky, Gitnick, Salomonson, Schipske, Wender, Zerunyan, Chang, Esrailian, and Levine are absolutely immune for their quasi-judicial acts performed as members of the Medical Board. [Deck Def. MTD 11-12.]

"Absolute immunity is generally accorded to judges and prosecutors functioning in their official capacity." Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 922 (9th Cir. 2004)(citing Stump v. Sparkman, 435 U.S. 349, 364, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Imbler v. Pachtman, 424 U.S. 409, 430-31, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976)). "This immunity reflects the long-standing 'general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" Olsen, 363 F.3d at 922 (quoting Bradley v. Fisher, 80 U.S. 335, 13 Wall. 335, 347, 20 L. Ed. 646 (1871)); see also Mishler v. Clift, 191 F.3d 998, 1003 (9th Cir. 1999)("The essential rationale is that, without protection from retaliatory suits, a judge would lose 'that independence without which no judiciary can be either respectable or useful.' A prosecutor's entitlement to absolute immunity flows from the performance of activities that are intimately associated with the judicial process.")(citations omitted).

Courts employ a functional approach to determine whether or not an official is entitled to absolute immunity. Mishler, 191 F.3d at 1003. "'Essentially, the court examines the function performed by the official and determines whether it is similar to a

function that would have been entitled to absolute immunity when Congress enacted § 1983.'" Id. (quoting Buckley v. Fitzsimmons, 509 U.S. 259, 268, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993)). If the official functions as the equivalent of a judge or a prosecutor, the official will likely be entitled to absolute immunity for any acts committed in that role. Olsen, 363 F.3d at 923 ("We must consider whether the actions taken by the official are 'functionally comparable' to that of a judge or a prosecutor.")(citations omitted).

The Supreme Court, in Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978), identified the following non-exclusive factors that "embody characteristics of the judicial process" and aid in determining whether to grant absolute immunity: "(a) the need to assure that the official can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal." Cleavinger v. Saxner, 474 U.S. 193, 202, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985)(citing Butz, 438 U.S. at 512).

Two Ninth Circuit decisions have held that state medical boards and their officers enjoy absolute immunity for the non-ministerial acts that they commit in performing their duties. First, in Mishler v. Clift, the Ninth Circuit found that members of the Nevada State Medical Board were absolutely immune from liability for acts they committed during a disciplinary hearing. Mishler, 191 F.3d at 1005-08. The Mishler court also stated that an individual board member's act of filing an allegedly false disciplinary complaint against a physician was likewise entitled to immunity. Id. at 1009. Second, in Olsen v. Idaho State Board of Medicine, the Ninth Circuit, relying on Mishler, found that the Idaho State Medical Board and its members could not be sued for the quasi-judicial and quasi-prosecutorial actions they took in adjudicating a disciplinary dispute. Olsen, 363 F.3d at 928-29.

Here, as in Mishler and Olsen, the Butz factors weigh in favor of applying absolute

immunity to the Medical Board defendants' alleged acts of using and making false accusations in revoking Plaintiff's license to practice medicine in California. First, the Medical Board in California, like the state medical boards in Mishler and Olsen, must function without harassment in order to further its purpose of protecting the public. See Cal. Bus. & Prof. Code § 2001.1. Section 2001.1 specifies, "Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions." Id. The Medical Board could not accomplish this purpose absent the power to revoke existing licenses where necessary. Such actions, however, are likely to lead to countless lawsuits by disgruntled physicians, like Plaintiff. See Mishler, 191 F.3d at 1005(concurring with the First Circuit's observation "that disciplinary proceedings and the revocation of a physician's license are acts that are likely to stimulate numerous damages actions")(citing Bettencourt v. Board of Registration in Medicine of Com. of Mass., 904 F.2d 772, 783 (1st Cir. 1990)). Accordingly, as in Mishler, promoting the goal of protecting the public requires that the Medical Board operate without "the threat of harassment or intimidation." Mishler, 191 F.3d at 1005.

Second, the state provides safeguards that reduce the need for private damages actions. As noted by the Ninth Circuit in its decision regarding the challenged revocation of a physician's license by the Medical Board, California provides a "meaningful opportunity" for aggrieved physicians to challenge the Medical Board's decisions. See Kenneally v. Lungren, 967 F.2d 329, 333 (9th Cir. 1992)(stating that California's "statutory framework provides a meaningful opportunity for [physicians] to present [their] constitutional claims for independent review prior to the Board's decision becoming effective."). Thus, California's statutory scheme adequately reduces the need for private damages actions. See Cleavinger, 474 U.S. at 202(citing Butz, 438 U.S. at 512).

Third, the structure of the Medical Board insulates it from political influences. The Medcial Board has twenty-one members, nine of whom are non-physicians or "public" members. Cal. Bus. & Prof. Code § 2001. The presence of these public members minimizes the possibility that the remaining Medical Board members might act out of

self-interest in revoking a license to practice in California. See Mishler, 191 F.3d at 1006-07 (noting that "risk of Board Members acting out of their own self-interest is further diminished" because of presence of three public members on nine-person board); Olsen, 363 F.3d at 925 (finding that presence of two public members on seven-person Board lessened possibility that Board members would act out of self-interest). Moreover, the Governor of California appoints nineteen individuals to the Medical Board, who then must be confirmed by the State Senate. Cal. Bus. & Prof.Code § 2001. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the two remaining Board members, both of whom are public members. Id. Once confirmed, the Medical Board members serve a four-year term. Cal. Bus. & Prof.Code § 2010. Medical Board members can be removed by the appointing power only for neglect of duty, incompetency, or unprofessional conduct. Cal. Bus. & Prof. Code § 2011. Furthermore, no person may serve as a Board member if he or she "owns any interest in any college, school, or institution." Cal. Bus. & Prof. Code § 2007. Additionally, no more than four Board members may hold full-time appointments to the faculties of any approved medical school in the state of California. Id. Aside from the nine public members, only licensed physicians and surgeons may serve as Board members. Id. Finally, no one can serve on the Board unless he or she has been a citizen of California for at least five years. Cal. Bus. & Prof. Code § 2007. Citing similar safeguards, both the Mishler and the Olsen courts found that state medical board members were insulated from political pressures. There is no reason to reach a different conclusion here.

The remaining Butz factors also weigh in favor of finding the Medical Board's members absolutely immune. First, California's statutory scheme provides that the Medical Board's decisions may be designated as precedential decisions when they contain "a significant legal or policy determination" generally applicable in likely recurring situations. Cal. Code Regs., tit. 16, § 1364.40(a) (2000). Although the Medical Board may reverse such a designation, it can do so only after serving public notice of its intent. Cal. Code Regs., tit. 16, § 1301(d) (2001). Second, as the Olsen court observed,

disciplinary hearings are necessarily adversarial. See Olsen, 363 F.3d at 925 (stating that "the Board's proceedings are clearly adversarial"). Finally, as described above, California provides for appeals from the Medical Board's decisions, first through a Board hearing and then through the state court process.

Based on the foregoing review of California's statutory scheme governing the Medical Board and its procedures, it is clear that the Medical Board and its members, including the Deck Defendants, "function in a sufficiently judicial and prosecutorial capacity to entitle them absolute immunity." Olsen, 363 F.3d at 926.

"[T]he protections of absolute immunity reach only those actions that are judicial or closely associated with the judicial process." Mishler, 191 F.3d at 1007. Thus, in Mishler, the Ninth Circuit explained that acts committed during a disciplinary hearing process fall within the scope of absolute immunity. Id. at 1008. Here, Plaintiff alleges that the Deck Defendants interviewed, investigated, provided evaluations, gave false testimony, delayed proceedings, recycled prior Decisions, and harassed Plaintiff, all of which were directly and intimately connected with the Medical Board investigation and administrative hearing resulting in the revocation of Plaintiff's medical license. Assuming the truth of Plaintiff allegations, the actions taken against him all were taken in connection with revoking Plaintiff's license to practice medicine in California, and were inseparable from the Medical Board's ultimate decision to revoke Plaintiff's license. Therefore, the Deck Defendants' actions fall squarely within the scope of absolute immunity. Plaintiff's claims against all of the Deck Defendants are thus subject to dismissal on the ground of absolute immunity.

The Deck defendants' Motion to Dismiss should therefore be granted. Plaintiff's claims against all of the Deck defendants should be dismissed without leave to amend.

3. Defendant Matyszewski's Motion to Dismiss

Defendant Matyszewski moves to dismiss on the grounds that, inter alia, she has absolute prosecutorial immunity from suit, and Plaintiff's claims are time-barred. [Mat.

MTD 6-7, 9-10.] Defendant Matyszewski's contentions have merit.

As discussed above, under the applicable law, the nature of the Medical Board proceeding at issue here warrants absolute immunity for the Board members and prosecutor for their quasi-judicial acts. See Olsen, 363 F.3d at 922; Mishler, 191 F.3d at 1007. Plaintiff alleges that Defendant Matyszewski acted as "prosecutor" (see FAC ¶¶ 159, 263), in the following manner: she refused his request to drop the Accusation against him (FAC ¶ 263); fabricated an "admission note," which she then charged Plaintiff with fabricating (FAC ¶¶ 150-51, 263-66, 267, 271, 272); introduced false testimony at the administrative hearing (FAC ¶¶ 275-78), and; filed the second Accusation against Plaintiff in 2005 (FAC ¶¶ 279-80). The foregoing conduct falls squarely within the scope of prosecutorial acts covered by absolute immunity. Moreover, Plaintiff's suggestion that Defendant Matyszewski's alleged improper motives somehow vitiate her immunity, has been rejected by the Ninth Circuit as a way around absolute immunity. See Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986)(stating that even allegations of bribery or unlawful conspiracy should not abrogate judicial or prosecutorial immunity when the functions being performed are judicial or prosecutorial); see also Lacey v. Maricopa County, 693 F.3d 896, 937 (9th Cir. 2012)(citing Rehberg v. Paulk, ___ U. S. ___, 132 S. Ct. 1497, 1506, 182 L. Ed. 2d 593 (2012)). Therefore, Defendant Matyszewski is absolutely immune from Plaintiff's claims against her, and those claims should be dismissed.

In addition, Plaintiff's claims against Defendant Matyszewski are time-barred. The conduct Plaintiff alleges involving defendant Matyszewski occurred in 2003, 2004, and 2005, in connection with the Medical Board administrative hearing. [See FAC ¶¶ 67, 71, 150-51, 263, 264-78, 282.] Therefore, Plaintiff's claims accrued when he knew or should have known of his injury in 2005, and at the very latest, on December 6, 2006, when the Decision revoking his medical license was issued. See Maldonado, 370 F.3d at 955. California's two-year personal injury limitations period applies to Plaintiff's claims under 42 U.S.C. §§ 1981, 1983, 1985 and 1986. Cal. Civ. Proc. Code § 335.1 (West 2007);

Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954–55. Therefore, when Plaintiff filed his original complaint on September 26, 2012, the limitations period on those claims had expired almost four years earlier. The four-year statute of limitations on bringing civil RICO claims bars Plaintiff's RICO claims brought against defendant Matyszewski. See Pincay, 238 F.3d at 1108. Finally, Plaintiff's state law claims for defamation, intentional infliction of emotional distress, and malicious prosecution are clearly time-barred as well. See Cal. Code Civ. Pro. § 340(c)(defamation, one year limitation period); Cal. Code Civ. Pro. § 340(3)(intentional infliction of emotional distress, one year limitations period); Cal. Code Civ. Pro. § 335.1 (malicious prosecution, two year limitations period).

Based on the foregoing, defendant Matyszewski's Motion to Dismiss should be granted. The entirety of Plaintiff's claims against defendant Matyszewski should be dismissed without leave to amend.

4. Low and Aristeiguita Motions to Dismiss

Defendants Low and Duruisseau, and defendant Aristeiguita, move to dismiss, inter alia, because they are entitled to absolute immunity for their quasi-judicial actions performed in connection with Medical Board proceedings, and because Plaintiff's claims against them are time-barred. [Low MTD 1-2, 7-8, 9-11; Aristeiguita MTD 7-11.] Defendants Low, Duruisseau, and Aristeiguita were members of the Medical Board of California during the time which Plaintiff alleges they violated his rights. Plaintiff alleges that defendants Duruisseau and Aristeiguita, along with other Medical Board members, participated in the deliberations that resulted in the Board's decision to revoke his medical license on December 6, 2006. [FAC ¶ 159.] As to defendant Low, Plaintiff alleges that, on September 27, 2010, defendants Chang, Esrailian, Levine, Low, Moran, and Schipske, in contempt of court orders, issued a Decision which "word by word, paragraph by paragraph, page by page copy of twice previously set aside and vacated 2006 and 2008 Decisions [sic]." [FAC ¶ 198.]

As discussed above, the members of the Medical Board who were involved in the administrative proceeding against Plaintiff are entitled to absolute immunity for their

quasi-judicial functions performed in connection with the hearing. See Olsen, 363 F.3d at 922; Mishler, 191 F.3d at 1003. The conduct Plaintiff alleges against defendants Low, Duruisseau, and Aristeiguita clearly involves their quasi-judicial roles as decision-making Medical Board members during the proceedings which resulted in the revocation of Plaintiff's license. That conduct falls within the scope of absolute immunity. Therefore, all of Plaintiff's claims against these defendants are subject to dismissal on the ground of absolute immunity.

In addition, Plaintiff's claims against defendants Duruisseau and Aristeiguita are time-barred.[11] Plaintiff alleges only conduct by defendants Duruisseau and Aristeiguita related to the December 6, 2006 Decision. Therefore, Plaintiff's claims against defendant Duruisseau and Aristeiguita accrued on that date. Plaintiff's civil rights claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986 are barred by the two-year statute of limitations. See Cal. Civ. Proc. Code § 335.1 (West 2007); Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954–55. Plaintiff's RICO claims are barred by the four-year statute of limitations. See Pincay, 238 F.3d at 1108. Plaintiff's state law claims are barred by the applicable one and two-year statutes of limitations. See Cal. Code Civ. Pro. § 340(c)(defamation, one year limitation period); Cal. Code Civ. Pro. § 340(3)(intentional infliction of emotional distress, one year limitations period); Cal. Code Civ. Pro. § 335.1 (malicious prosecution, two year limitations period).

Defendant Low and Duruisseau's Motion to Dismiss should be granted. Defendant Aristeiguita's Motion to Dismiss should also be granted. Plaintiff's claims against defendants Low, Duruisseau, and Aristeiguita should be dismissed without leave to amend.

RECOMMENDATION

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[11] Because Plaintiff alleges defendant Low's involvement in the September 27, 2010 Decision, the court cannot find from the face of the pleading that Plaintiff's claims against him are time-barred. They are, however, subject to dismissal on the ground of absolute immunity.

Accordingly, the Magistrate Judge recommends that the court issue an order: (1) accepting this Report and Recommendation; (2) granting Defendants' Motions to Dismiss, and; (3) dismissing the First Amended Complaint without leave to amend.

DATED: July 10, 2013

STEPHEN J. HILLMAN
United States Magistrate Judge