NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1362

SOLOMON A. JONES,
Appellant

v.

EDUCATIONAL TESTING SERVICE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3:23-cv-20326)
District Judge: Honorable Michael A. Shipp

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 4, 2026

Before: KRAUSE, RESTREPO, and PORTER, *Circuit Judges*

(Opinion filed: September 8, 2026)

OPINION[*]

[*] This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Solomon Jones appeals pro se from the District Court's decision dismissing his second amended complaint ("SAC") in this civil action that he brought against his former employer, Educational Testing Service ("ETS"). We will affirm that judgment.

I.

Jones was employed by ETS from February 2015 to November 2021. SAC 5.[1] Throughout his time at ETS, he worked as a "Rater" in connection with the following testing programs administered by ETS: (1) the California Assessment of Student Performance and Progress ("CAASPP"); and (2) the Badger program. *Id.* Within those two programs, Jones worked "under the sub-program CAASPP-Mathematics and the sub-program Badger-Mathematics." *Id.* at 11. The hourly wage for Raters working under the CAASPP-Mathematics program ($13) "was the lowest among all Rater-like positions," and it was $2 lower than the hourly wage for "the average [R]ater." *Id.* Jones's hourly wage in 2015 was the same as his hourly wage in 2021. *Id.*

Jones "applied internally to several similar Rater positions throughout his employment with [ETS]," but he "was not accepted to any position he applied [for]." *Id.* at 6. In March 2021, at the start of the CAASPP seasonal grading period, he twice emailed the CAASPP program's director, "inquiring about the criteria for an SL position,

[1] Because this case was adjudicated at the motion-to-dismiss stage, "[w]e accept as true all factual allegations in the [operative pleading] and view those facts in the light most favorable to the plaintiff." *Xi v. Haugen*, 68 F.4th 824, 832 (3d Cir. 2023).

asking why he [(Jones)] has never seen the SL position posted as an open position and why he was never asked if he was interested in applying for [that] position." *Id.* at 11. "SL" stands for Scoring Leader, which "is one level above a Rater." *Id.* at 5. The director responded by "stating that there was a sufficient amount of SLs returning," and "that the increased number of works being graded by automated processes had eliminated the need to promote any Raters to SLs." *Id.* at 11-12.

In November 2021, at the end of the CAASPP grading period, ETS sent Jones an email terminating his employment. *Id.* at 12.[2] That email included "an undisclosed list of supposedly terminated employees." *Id.* It also "included a small time-window to apply to a similar position with another company." *Id.* at 14. But that email "was coincidently sent when [Jones] was in the hospital," so he was not able "to apply to the replacement position with the designated other company." *Id.*

In September 2023, Jones initiated this pro se civil action against ETS in the District Court. The SAC, which was the operative pleading in this case, raised claims under 42 U.S.C. § 1981, Titles VI and VII of the Civil Rights Act of 1964, the Fair Labor Standards Act ("FLSA"), the Age Discrimination in Employment Act of 1967 ("ADEA"), the Age Discrimination Act of 1975 ("ADA"), the New Jersey Conscientious Employee Protection Act ("NJCEPA"), and the New Jersey Law Against Discrimination

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[2] Although, in prior years, Jones's employment for "seasonal grading period[s] would recycle," he was not given an opportunity to renew his contract at the end of the 2021 seasonal grading period. SAC 12.

("NJLAD"). The SAC also included an "[u]nrelated" claim, alleging that 18 U.S.C. § 3006A — a statute that is generally about the representation of defendants in criminal cases — "is unconstitutional because it creates a financial conflict of interest between a public defender and the prosecutor." SAC 15 (emphasis omitted). Except for the § 3006A claim, Jones's claims generally revolved around allegations that ETS had "discriminated against [him] in a retaliatory way and in an ageist way," *id.* at 14,[3] and because he is an African American male, *see id.* at 12.

ETS moved to dismiss the SAC pursuant to Federal Rule of Civil Procedure 12(b)(6). On February 3, 2026, the District Court granted that motion and dismissed the SAC with prejudice. This timely appeal followed.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's February 3, 2026 decision. *See Talley v. Wetzel*, 15 F.4th 275, 286 n.7 (3d Cir. 2021).

In dismissing the SAC with prejudice, the District Court explained that (1) Jones's § 1981 and Title VI claims "fail[ed] to plead facts sufficient to establish even an inference of discrimination," Dist. Ct. Mem. Op. entered Feb. 3, 2026, at 8, (2) his FLSA and NJLAD claims "d[id] not allege facts supporting an inference of a causal link between his inquiry about a promotion to SL in March 2021 and his termination at the

[3] Jones's age was 39 years and four months at the time of his termination. SAC 8.

end of the grading period in November 2021," *id.* at 11, (3) his NJCEPA claim "fail[ed] to allege facts regarding any purported whistle-blowing activity," *id.* at 12,[4] (4) the District Court had, earlier in the case, dismissed his Title VII, ADEA, and ADA claims with prejudice for failure to exhaust his administrative remedies, *see* Dist. Ct. Mem. Op. entered Sept. 13, 2024, at 5-7, (5) he lacked standing to bring a § 3006A claim, "which is unrelated to the facts of this case," Dist. Ct. Mem. Op. entered Feb. 3, 2026, at 5 n.8, and (6) "permitting [him] any additional opportunities to amend would be futile," *id.* at 13 n.12.

For those reasons, we agree with the District Court's February 3, 2026 decision to dismiss the SAC with prejudice.[5] We have carefully considered the various arguments raised by Jones in his lengthy appellate briefing, and we conclude that none warrants reaching a different result. For example, Jones has not established that, in reaching its February 3, 2026 decision, the District Court "ignored [his] factual allegations," Jones's Opening Br. 8,[6] or "applied an improper heightened standard," *id.* at 16. To the extent

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[4] NJCEPA "protects workers who blow the whistle on their employers' illegal, fraudulent, or otherwise improper activities that implicate the health, safety, and welfare of the public." *D'Annunzio v. Prudential Ins. Co. of Am.*, 927 A.2d 113, 114 (N.J. 2007).

[5] We need not address ETS's alternative arguments for why the SAC was subject to dismissal.

[6] The SAC included a list of 45 redacted names of individuals who, according to Jones, "were either non-African-American or non-African-American males" and "held a position of [SL]." SAC 9. The District Court addressed this list in its February 3, 2026 decision, stating that Jones "failed to allege that any of these individuals were promoted

that Jones faults the District Court for not treating his § 1981 claim as including allegations of discrimination *and* retaliation (as opposed to only an allegation of discrimination), he has failed to show that this treatment prejudiced him. *See generally* 28 U.S.C. § 2111 ("On the hearing of any appeal . . ., the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.").[7]

In view of the above, we will affirm the District Court's judgment.[8]

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to the position of SL over [Jones] specifically." Dist. Ct. Mem. Op. entered Feb. 3, 2026, at 7. As the District Court observed, "the list itself appears to contain information on individuals: (1) who were promoted from Rater to SL . . . well before [Jones] raised the inquiry of an SL promotion in 2021; (2) who were *demoted* from SL to Rater; and (3) who began employment with [ETS] as an SL [(a year or more before Jones's March 2021 inquiries)] and did not start as a Rater." *Id.* We agree with the District Court that this list "is not sufficient to adequately allege that [ETS] intentionally discriminated against [Jones] by failing to promote him." *Id.*

[7] As mentioned earlier, the District Court dismissed Jones's FLSA and NJLAD claims because he "d[id] not allege facts supporting an inference of a causal link between his inquiry about a promotion to SL in March 2021 and his termination at the end of the grading period in November 2021." Dist. Ct. Mem. Op. entered Feb. 3, 2026, at 11. That lack of a causal link would doom a retaliation claim under § 1981 as well. *See Castleberry v. STI Grp.*, 863 F.3d 259, 267 (3d Cir. 2017).

[8] To the extent that Jones's "Notice of Judicial Review" asks us to take judicial notice of "official federal financial assistance records" that he believes supports his contention that "a primary objective of the federal financial assistance received by . . . ETS[] was to provide employment," 3d Cir. Dkt. No. 15-3, at 1, 3, that request is denied, for our resolution of this appeal in no way hinges on the nature of any federal financial assistance that ETS might receive.