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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EDWARD MAHONEY, an individual,
and RACHEL PERRY, an individual,

Plaintiffs,

v.

CITY OF PASCO, a Municipality; TRI
CITIES ANIMAL SHELTER AND
CONTROL SERVICES, a Department of
the City of Pasco; TRI CITIES ANIMAL
SHELTER AND CONTROL SERVICES
DIRECTOR ANGELA ZILAR in her
official capacity as well as her individual
capacity and her spouse, JOHN DOE
ZILAR individually; TRI CITIES
ANIMAL SHELTER AND CONTROL
SERVICES OFFICER WILLIAM SUHR
in his official capacity as well as his
individual capacity and his spouse JANE
DOE SUHR individually; and TRI CITIES
ANIMAL SHELTER AND CONTROL
SERVICES OFFICER REBECCA
HOWARD in her official capacity as well
as her individual capacity and her spouse
JOHN DOE HOWARD individually; and
Does 1-10.

Defendants.

No. 4:16-cv-05101-SAB

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS; REMANDING CASE
TO FRANKLIN COUNTY
SUPERIOR COURT**

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS;
REMANDING CASE TO FRANKLIN COUNTY SUPERIOR COURT ~ 1**

1 Before the Court is Defendants’ Motion to Dismiss for Failure to State a
2 Claim, ECF No. 6. The motion was heard without oral argument. Plaintiffs are
3 represented by Jeffrey Johnson. Defendants Tri Cities Animal Shelter and Control
4 Services (“TCAS”) and its employees are represented by Eron Zachary Cannon.
5 Defendant City of Pasco is represented by Kenneth Harper.

6 The following facts are taken from Plaintiff’s Complaint:

7 In 2014, Defendant City of Pasco’s Municipal Code made it unlawful for
8 any person to knowingly refuse to redeem an animal. Pasco Municipal Codes §
9 8.02.130(2). A violation of this provision was a gross misdemeanor crime
10 punishable up to one year in jail and/or a \$5,000 fine.¹ The Code directs TCAS
11 Officers, when impounding an animal, to identify the animal’s owner and provide
12 written notice of impound to such owner when feasible. PMC 8.02.060. Once the
13 animal’s owner is determined, there is a time period upon which the determined
14 owner must redeem the dog. If not redeemed, the determined owner is charged
15 criminally. PMC 8.02.010; 8.02.060-080.

16 Plaintiff Edward Mahoney and Plaintiff Rachel Perry were criminally
17 charged by the City of Pasco under these provisions. Plaintiff Edward Mahoney
18 was contacted about a dog that was located by TCAS. He told the TCAS officer
19 that his family gave the dog away about four years prior. Regardless, Defendant
20 TCAS Officer William Suhr served Plaintiff Mahoney an impound notice
21 declaring him the owner and stating if the dog was not redeemed in three days, it
22 would be sold, adopted or destroyed. The notice did not provide any process for
23 contesting the declaration nor did it provide any warning of criminal prosecution
24 for failure to redeem.

25
26 _____
27 ¹ This provision was amended in January, 2016. The amendment made a first
28 offense violation a civil infraction and subsequent offense remains criminal.

1 Plaintiff Mahoney did not redeem the animal and he was criminally charged
2 by Defendant City of Pasco. His case was set for trial. The City offered to settle by
3 having him enter into a contract where he would pay TCAS restitution—the
4 amount determined by TCAS—and the charge would eventually be dismissed.
5 Plaintiff Mahoney rejected the offer. On the eve of trial, the City dismissed the
6 charge without explanation.

7 Similar events happened to Rachel Perry. There was a problem with a dog in
8 her neighborhood and TCAS officers were called. Plaintiff Perry told the TCAS
9 officer that she was not the owner of the dog, but she was watching the dog for a
10 few hours while her friend was in school, and she also explained that her friend
11 found the sick dog in a ditch and was making efforts to find the owner. That said,
12 the TCAS served Plaintiff Perry with a notice of impound declaring her the owner
13 and stating if the dog was not redeemed within six days, it would be sold, adopted
14 or destroyed. Again, the notice did not provide any process for contesting the
15 declaration nor did it provide any warning of criminal prosecution for failure to
16 redeem.

17 Neither Plaintiff Perry nor her friend redeemed the dog. Plaintiff Perry was
18 criminally charged by Defendant City of Pasco. She rejected Defendant's offer to
19 enter into a contract where she would pay TCAS restitution—the amount to be
20 determined by TCAS—and the charge would eventually be dismissed. On the eve
21 of trial, the City dismissed the charge without explanation.

22 Plaintiffs brought suit in Franklin County Superior Court alleging
23 (1) Procedural Due Process Violations; (2) PDP/Void for Vagueness doctrine; (3)
24 Abuse of Criminal Process; and (4) violation of Substantive Due Process.
25 Plaintiffs are seeking economic and noneconomic damages, including damage to
26 reputation and are also seeking injunctive and declaratory relief. Defendants
27 removed the action to the Eastern District of Washington and are asking the Court
28 to dismiss the action.

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1 **MOTION STANDARD**

2 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to
3 seek dismissal of a complaint that “fail[s] to state a claim upon which relief can be
4 granted.” Fed. R. Civ. P. 12(b)(6). The court should not dismiss the complaint if
5 the plaintiff has stated “enough facts to state a claim to relief that is plausible on
6 its face.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial
7 plausibility when the plaintiff pleads factual content that allows the court to draw
8 reasonable inferences that the defendant is liable for the misconduct alleged.
9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). The court accepts all factual
10 allegations in the complaint as true and construes them in the light most favorable
11 to the nonmoving party, except the court is not required to accept legal
12 conclusions cast in the form of factual allegations if those conclusions cannot be
13 reasonably drawn from the facts alleged. *Id.*

14 The court must consider the complaint in its entirety, as well as other
15 sources courts ordinarily examine when ruling on a 12(b)(6) motion to dismiss, i.e.
16 documents incorporated into the complaint by reference, and matters of which a
17 court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551
18 U.S. 308, 322 (2007).

19 **42 U.S.C. § 1983**

20 To state a claim under section 1983, Plaintiffs must establish two essential
21 elements: (1) that a right secured by the Constitution or laws of the United States
22 was violated; and (2) that the alleged violation was committed by a person acting
23 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frey*,
24 789 F.3d 1030, 1035 (9th Cir. 2015). Section 1983 “is not itself a source of
25 substantive rights,” but merely provides “a method for vindicating federal rights
26 elsewhere conferred.” *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979). The
27 first step in any such claim, then, is to identify the specific constitutional right
28 allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

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1 **Analysis**

2 Plaintiff is asserting federal causes of actions rooted in the due process
3 clause of the Fourteenth Amendment. The Due Process provides “a guarantee of
4 fair procedure in connection with any deprivation of life, liberty, or property” by
5 the government. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992).

6 At the heart of Plaintiffs’ procedural due process claim is that there are no
7 procedures for challenging the ownership of the dog prior to being criminally
8 charged for failure to redeem the dog. In order to succeed with their procedural
9 due process claim, Plaintiffs must allege two elements: (1) a protectable liberty or
10 property interest; and (2) a denial of adequate procedural protections. *Thornton v.*
11 *City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005). There is a strong
12 presumption that an individual is entitled to notice and an opportunity to be heard
13 at a meaningful time and in a meaningful manner before being deprived of a
14 liberty or property interest. *Orloff v. Cleland*, 708 F.2d 372, 379 (9th Cir. 1983);
15 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

16 Here, Plaintiffs have not shown they have a property interest at stake. They
17 deny ownership of the dogs, so there is no protected property at issue. Even if the
18 dogs were owned by Plaintiffs, however, they have not alleged a procedural due
19 process violation. Plaintiffs believe they are entitled to notice and opportunity to
20 be heard after they received the impound notice so they could challenge the
21 finding that they were the dog owners. However, a person does not have a liberty
22 interest in not being falsely charged with being a dog owner. The receipt of the
23 notice and being charged with a crime does not result in any significant pretrial
24 restraint of liberty, and thus, no procedural due process protections.

25 Additionally, Plaintiffs were afforded the process to which they were due.
26 They challenged the impound and criminal process by proceeding to trial, which
27 provided an avenue to litigate all the issues, including the ownership of the dog in
28

1 question. The fact that the charges were dismissed demonstrates that the process
2 worked for them.

3 Also, the facts alleged do not suggest the TSCA officers were arbitrarily
4 enforcing this provision against unsuspecting persons. With respect to Plaintiff
5 Mahoney, the TSCA officers utilized the information contained in the chip
6 implanted in the dog, and with respect to Plaintiff Perry, she admitted to temporary
7 possession of the dog. These facts provided probable cause for TSCA officers to
8 proceed against Plaintiffs.

9 Plaintiffs have not alleged facts that implicate substantive due process. The
10 protections of substantive due process have been, for the most part, accorded to
11 matters relating to marriage, family, procreation, and the right to bodily integrity.
12 *Albright v. Oliver*, 510 U.S. 266, 272 (1994). The Court declines to extend
13 substantive due process protections to dog owners against a municipality's
14 enforcement of its dog impound ordinances. *Id.* (explaining that courts should be
15 reluctant to expand the concept of substantive due process).

16 Plaintiffs do not have standing to challenge the newly amended ordinance
17 on the basis that the ordinance is void for vagueness. Article III of the Constitution
18 limits the exercise of federal judicial power to actual cases and controversies. *Los*
19 *Angeles v. County of Kern*, 581 F.3d 841, 845 (9th Cir. 2009). Litigants are
20 required to demonstrate a "personal stake in the outcome" of a case to guarantee
21 the "concrete adverseness which sharpens the presentation of issues" necessary for
22 proper resolution of constitutional questions. *Baker v. Carr*, 369 U.S. 186, 204
23 (1962). To the extent Plaintiffs are bringing a pre-enforcement challenge to the
24 amended ordinance, they have not alleged sufficient facts for their claim to
25 proceed. In such a case, the Court needs to consider: (1) whether Plaintiffs have
26 failed to allege a reasonable likelihood that the Government will enforce the
27 challenged law against them; (2) whether Plaintiffs have failed to allege, with
28 some degree of concrete detail, that they intend to violate the challenged law; and

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1 (3) whether the challenged law is inapplicable to Plaintiffs, either by its terms or
2 as interpreted by the Government. See *Lopez v. Candaele*, 630 F.3d 775, 785 (9th
3 Cir. 2010). Plaintiffs have not alleged a credible threat of adverse state action
4 sufficient to establish standing.

5 Plaintiffs have failed to allege sufficient facts showing that their
6 constitutional rights were violated. As such, all of Plaintiffs' federal claims are
7 dismissed, and the Court declines to exercise supplemental jurisdiction over the
8 remaining state law claim. See 28 U.S.C. § 1367(c)(3).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendants' Tri Cities Animal Shelter et al.'s Motion to Dismiss for
11 Failure to State a Claim, ECF No. 6, is **GRANTED**.

12 2. Plaintiffs' Motion for Summary Judgment, ECF No. 9, is **DENIED**, as
13 moot.

14 3. The above-captioned case is **remanded** to Franklin County Superior
15 Court.

16 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
17 and forward copies to counsel.

18 **DATED** this 17th day of October, 2016.



22 

23 Stanley A. Bastian

24 United States District Judge