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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

WILLIAM FABRICIUS,

 Plaintiff,

 vs.

TULARE COUNTY, *et al.*,

 Defendant.

Case No. 1:15-cv-01779-EPG

**ORDER DISMISSING SECOND
AMENDED COMPLAINT WITH LEAVE
TO AMEND**

**THIRTY DAY DEADLINE TO FILE AN
AMENDED COMPLAINT**

(ECF No. 71)

On May 1, 2017, *pro se* and *in forma pauperis* Plaintiff William Fabricius (hereinafter, “Plaintiff”) filed a Second Amended Complaint (“2AC”) (ECF No. 71), which is now before the Court for screening. Plaintiff’s 2AC is 56 pages long, names as defendants “Tulare County of: All Principals Agents and Employees,” and describes a myriad of complaints stemming from the seizure of dogs from his property.

For the reasons described below, this Court dismissed Plaintiff’s complaint with leave to amend. Plaintiff may file an amended complaint within 30 days *limited to twenty pages total* and must name specific individuals as defendants and contain a short and plan statement showing that Plaintiff is entitled to relief. If Plaintiff fails to either file an amended complaint or comply with the order regarding such a statement, the Court will dismiss his case.

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1 **I. BACKGROUND**

2 On November 24, 2015, Plaintiffs Wendy Jones, William Fabricius and Brian Jones filed
3 their original complaint in this case. (ECF No. 1) Although Plaintiffs were represented by an
4 attorney, Christine Louise Garcia, they moved to proceed *in forma pauperis*, which was granted.
5 (ECF No. 8). A First Amended Complaint was filed on May 13, 2016. (ECF No. 17.) After
6 Plaintiff Brian Jones was voluntarily dismissed on May 16, 2016 (ECF No. 18), Wendy Jones and
7 William Fabricius remained as Plaintiffs.

8 On July, 5, 2016, Defendants responded to the First Amended Complaint by filing a
9 motion to dismiss pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.
10 (ECF No. 34.) The Court held a motion hearing on October 7, 2016. (ECF No. 50.) Defendants
11 were represented by counsel, and Plaintiffs Wendy Jones and William Fabricius personally
12 appeared with their counsel.

13 Defendants’ motion to dismiss was granted on December 1, 2016. (ECF No. 58.) The
14 Court found that it was without jurisdiction to hear Plaintiff Wendy Jones’ claims in the First
15 Amended Complaint because it was apparent that she was challenging the outcome of adverse
16 state court decisions on the California state trial and appellate court level, and under the *Rooker-*
17 *Feldman* doctrine, only the Supreme Court of the United States could possibly have jurisdiction
18 to hear an appeal from an adverse state court decision. (ECF No. 58, pp. 14-15.) Plaintiff Wendy
19 Jones’ claims were dismissed without leave to amend. (*Id.* at 19.)

20 The motion to dismiss was also granted as to Plaintiff William Fabricius, but with leave to
21 amend. (*Id.* at 15-17.) Although there were facts suggesting that Fabricius litigated similar issues
22 in state court, it was not entirely clear whether *Rooker-Feldman* also eliminated this Court’s
23 jurisdiction to hear Fabricius’ claims in the First Amended Complaint. (*Id.*) Regarding Plaintiff
24 Fabricius’ claims, the Court examined the extensive state court record in which Plaintiff
25 challenged seizure of his dogs, including a complaint in County Superior Court and appeal from
26 an administrative hearing. It appeared that an appeal had ultimately been granted in Plaintiff’s
27 favor, finding that his dogs were not in fact dangerous, but that “evidence was provided which
28 raised serious concerns over Mr. Fabricius and his ability to care for, handle and maintain the

1 animals.” It appeared from the Court records that Mr. Fabricius was permitted to receive his dogs
2 back so long as he complied with health and safety codes. The state court’s opinion concluded by
3 explaining that “judicial review of a decision of the Director of Administrative Services made
4 after a hearing pursuant of this section shall be pursuant to section 1094.6 of the California Code
5 of Civil Procedure” Additionally, the Court noted that the Superior Court of California case
6 covering these issues appeared to be pending. The Court thus dismissed the case with leave to
7 amend because it appeared that Mr. Fabricius was raising claims that were the subject of state
8 court proceedings, but the Court could not adequately determine the issue due in part of confusion
9 regarding what exactly Plaintiff was seeking and how it related to those proceedings. (ECF No.
10 58, pp. 8-9.)

11 Ultimately, the Court concluded that the First Amended Complaint (“FAC”), as
12 structured, was too unorganized and vague for it to reach a firm conclusion as to whether Plaintiff
13 Fabricius, like Wendy Jones, was bringing an impermissible appeal of an adverse state court
14 decision to the federal district court. The Court concluded:

15 This confusion is compounded by the fact that the legal allegations in the
16 FAC are nearly incomprehensible. . . . The Court is unable to decipher which
17 allegations pertain only to Mr. Frabricius and what exactly those allegations are.
18 Thus, the allegations in the FAC, as presently structured, do not comport with Rule
19 8 of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 8(a)(2); *see also*
20 *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964, 167 L. Ed. 2d 929 (“Federal Rule of
21 Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim
22 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair
23 notice of what the ... claim is and the grounds upon which it rests,’ *Conley v.*
24 *Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).”)

25 For all of these reasons, the Court will dismiss the FAC as to Mr. Fabricius
26 with leave to amend, and permit him thirty days in which to file a Second
27 Amended Complaint. Plaintiff Fabricius’ Second Amended Complaint, if he
28 chooses to file one, shall omit all allegations as to Ms. Jones and further comport
with the guidance in this order. It shall include a description of why he did not
receive his animals following the appellate administrative proceeding, and shall
describe with particularity what rights were violated by which specific defendants,
as well as what relief he now seeks.

(ECF No. 58, pp. 15-16.)

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1 **II. Plaintiff Fabricius’ Second Amended Complaint**

2 Plaintiff filed his second amended complaint, after multiple extensions of time, on May 1,
3 2017. (ECF No. 71). It is 59 pages long. It lists as defendants: “Tulare County of: All
4 Principals, Agents and Employees.” It appears to have 13 causes of action. Some claims have
5 labels and some do not. Almost all of the counts appear to assert violations of the criminal code,
6 such as “First Dog Taken, violation of Title 18—Crimes and Criminal Procedure Sec. 241.
7 Conspiracy against rights and/or 242. Deprivation of rights under color of law.”

8 The 2AC contains a number of factual assertions that appear to relate primarily to a
9 seizure of Plaintiff’s animals and an arrest that occurred while the animals were being seized.
10 Plaintiff also repeatedly complains about post-seizure events related to the administrative
11 hearings concerning his animals and requests for records from local officials. Plaintiff’s 2AC
12 contains the following introduction:

13 William’s [Plaintiff] Fundamental federal questions is; Whether a District of
14 Columbia political subdivision of the government of the United States that
15 receives federal funding from the District of Columbia passing through the
16 corporate State of California and ending with corporate Tulare County Of: is
17 subject to 100% compliance with laws of the United States and the established
18 court cases of the federal government, United States Supreme Court, and/or Courts
19 of Appeals with respect to the federal requirements to adhere to the following
20 federal questions in accordance with the First Amendment unalienable due process
21 right of notice and opportunity to be heard under federal law. Since the political
22 subdivisions receive federal funding; receipt of federal funding requires and
23 mandates the political subdivisions to 100% adherence to federal requirements
24 especially in the following issues and question;

25 William raises the issue(s) in this case by federal questions. There are several
26 federal questions that Williams raises. These deal with:

- 27 a. ONE; Certified audiotapes and certified transcripts
28 b. TWO: Trespassing on federally protected land patented private land;
 c. THREE: Unlawful/no warrants without sworn affidavits; Miranda Rights;
 d. FOUR: Miranda rights upon arrest; Due Process [part of Bp
 e. /THREE]/Fraud voids/No sheriff present.

1 f. FIVE: Freedom of Information Act [FOIA]:/ Political subdivisions subject
2 to federal FOIA requirements; [part of a/]

3 g. SIX: MISC: Fraud/Rooker-Feldman does not apply when fraud was
4 committed; / Fraud of not following federal law and Constitution vitiates any
5 action/no oath to constitution/Constitutional violations/Lack of Vigorous
6 representation/Spoliation of the Record/Code Violations/Due process/No Oath to
7 Constitution-Treason-No Authority to Act/

8 (ECF No. 71, pp. 2-3.)

9 Plaintiff's allegations appear to stem from Tulare County's seizure of Plaintiff's animals.
10 In one section of the 2AC, Plaintiff alleges that on April 27, 2013, Tulare Animal control seized
11 eight of Plaintiff's dogs. Plaintiff claims that the warrant was invalid. Plaintiff claims that he is
12 permitted to have 25 dogs. Plaintiff alleges that he sat on the front bumper of the police car for
13 over an hour, which exacerbated certain medical ailments. He alleges that the handcuffs
14 restricted his blood flow and caused him pain. He repeatedly alleges that he was not given
15 Miranda rights.

16 Plaintiff alleges that his animals should be returned to him. He claims "[b]ased upon the
17 hearsay evidence and/or a defective warrant and/or fraudulent testimony and/or no Miranda rights
18 given and/or no audiotapes given, this case is void, null and the County of Tulare should be
19 estopped from proceeding in this instant case due to Lack of jurisdiction and/or want of
20 jurisdiction and/or due to fraud upon the court by the court by court officers." (ECF No. 71, p.
21 53.)

22 **III. Legal Standard**

23 Under 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the Complaint
24 to determine whether it "state[s] a claim on which relief may be granted," is "frivolous or
25 malicious," or "seek[s] monetary relief against a defendant who is immune from such relief." If
26 the Court determines that the Complaint fails to state a claim, it must be dismissed. *Id.* Leave to
27 amend may be granted to the extent that the deficiencies of the Complaint can be cured by
28 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

A complaint must contain "a short and plain statement of the claim showing that the
pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not

1 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
2 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
3 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
4 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
5 at 663, quoting *Twombly*, 550 U.S. at 555. While factual allegations are accepted as true, legal
6 conclusions are not. *Id.* at 678.

7 **IV. Discussion**

8 **a. Requirement of a Short and Plain Statement**

9 Federal pleading standards require only “a short and plain statement of the claim showing
10 that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). *See also Iqbal*, 556 U.S. at 663,
11 citing *Twombly*, 550 U.S. at 555.

12 Plaintiff bears the burden of separately setting forth his legal claims and for each claim,
13 briefly and clearly providing the facts supporting the claim so that the Court and Defendants are
14 readily able to understand the claims. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 840-41 (9th
15 Cir. 2000).

16 This Court finds that Plaintiff’s 2AC violates Rule 8. Plaintiff’s complaint is excessive in
17 length. It is difficult to understand. It combines various legal rules, many of which do not apply,
18 with scripture, various facts, and many defendants. It is not clear exactly who Plaintiff alleges
19 violated what right and why. It is not enough that Plaintiff describe a situation where Plaintiff’s
20 dogs were taken and then ask this Court to sort out who may have violated a valid constitutional
21 right.

22 This is especially true in light of the first motion to dismiss.¹ This Court dismissed the
23 first amended complaint because Plaintiff already challenged the seizure of his dogs in California
24 state court, and appears to have won his appeal. As discussed in that order and above, this Court
25 is not an appellate court over state court proceedings. It is also not within this Court’s jurisdiction
26 to determine if the County complied with its own local health codes. The Court needs to

27 ¹ In its December 1, 2016 order, the Court directed Plaintiff to “include a description of why he did not receive his
28 animals following the appellate administrative proceeding,” and directed Plaintiff to “describe with particularity what
rights were violated by which specific defendants, as well as what relief he now seeks.” (ECF No. 58, p. 16.)

1 understand exactly what Plaintiff is claiming in order to determine whether this is a proper federal
2 case rather than an improper appeal over a state court action or other non-federal dispute.

3 Moreover, the Court needs to understand what Plaintiff is requesting in light of the decision that
4 Plaintiff could have his dogs returned so long as he complied with local health and safety codes.

5 Accordingly, the Court will give Plaintiff one more chance to file a complaint that states
6 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
7 Civ. P. 8(a). The Third Amended Complaint, if Plaintiff files one, is limited to 20 pages total. It
8 can summarize the facts about the arrest and seizure of the dogs. Then it should list each claim
9 against each individual person stating what that person did that violated Plaintiff’s legal rights. It
10 should then say what Plaintiff requests. *See Miller v. California Dept. of Corrections and*
11 *Rehabilitation*, No. 1:12-CV-00353-LJO, 2013 WL 5954803, at *3 (E.D. Cal., Nov. 6, 2013)
12 (“Rule 8(a) is one of the Federal Rules of Civil Procedure. Thus, the federal court has the
13 authority to dismiss a complaint for violation of Rule 8(a) and to set a reasonable limitation on the
14 page length of a pleading. . . . Therefore, the court does not find the Magistrate Judge’s dismissal
15 of Plaintiff’s Complaint for violation of Rule 8(a), with leave to file an amended complaint not
16 exceeding 25 pages, erroneous or contrary to law.”).

17 Additionally, many of Plaintiff’s causes of action are not legally proper. The Court will
18 explain these issues and also provide the legal standards Plaintiff can use in filing a Third
19 Amended Complaint, if he chooses to file one. But if Plaintiff again chooses to file a Third
20 Amended Complaint that is longer than 20 pages or lists a mix of facts, defendants, and laws
21 altogether in a way that does not make clear who violated what legal right and why, the Court will
22 dismiss the case in full.

23 **b. Appropriate Defendants**

24 Plaintiff’s allegations must link the actions or omissions of each named defendant to a
25 violation of his rights; there is no *respondeat superior* liability under section 1983. *Iqbal*, 556
26 U.S. at 676–77; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir.2010); *Ewing*
27 *v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones*, 297 F.3d at 934. “[A] local
28 government may not be sued under § 1983 for an injury inflicted solely by its employees or

1 agents.” *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-
2 38, 56 L. Ed. 2d 611 (1978). “Instead, it is when execution of a government's policy or custom,
3 whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent
4 official policy, inflicts the injury that the government as an entity is responsible under § 1983.”

5 *Ibid.*

6 Plaintiff must present factual allegations against each individual defendant alleged to have
7 violated his constitutional rights sufficient to state a plausible claim for relief and place each
8 individual defendant on notice of the claim against them. *Iqbal*, 556 U.S. at 678–79; *Moss v. U.S.*
9 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short
10 of meeting this plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

11 **c. Plaintiff Cannot Sue under Criminal Laws**

12 Plaintiff attempts to bring all of his claims pursuant to Title 18, United States Code,
13 Sections 241 & 242, which are criminal statutes for the federal criminal offenses of “conspiracy
14 against rights” and “deprivation of rights under color of law.” *See* 18 U.S.C. §§ 241, 242. These
15 are criminal laws. In other words, these are laws that a criminal prosecutor, such as a United
16 States Attorney or District Attorney, could use to bring a criminal case against someone. But
17 they are not laws that can be enforced by private persons, such as Plaintiff. *Aldabe v. Aldabe*, 616
18 F.2d 1089, 1092 (9th Cir. 1980) (“Appellant also claimed relief under 18 U.S.C. §§ 241 and 242.
19 These criminal provisions, however, provide no basis for civil liability.”).

20 In addition to 18 U.S.C. §§ 241-242, Plaintiff also repeatedly cites to: 1) *Brady v.*
21 *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); 2) the Fourth Amendment
22 exclusionary rule; 3) the fruit of the poisonous tree doctrine; 4) *Nardone v. United States*, 308
23 U.S. 338, 339, 60 S. Ct. 266, 267, 84 L. Ed. 307 (1939); 5) 18 U.S.C. § 4; and 6) ineffective
24 assistance of counsel. These areas of law are almost exclusively applicable to criminal
25 proceedings and thus, not applicable in the context of a civil lawsuit. For example, if the
26 government brought a criminal case against Plaintiff for violating a criminal law, for example
27 theft, Plaintiff could try to stop the government from using certain evidence against him under
28 these theories. But they do not apply to this sort of case (i.e. a civil lawsuit).

1 Private persons, such as Plaintiff, may sue under 18 U.S.C. § 1983 for violations of their
2 civil rights. Section 1983 provides a cause of action for the violation of Plaintiff's constitutional
3 or other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
4 1087, 1092 (9th Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.
5 2006); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

6 **d. Failure to Give Miranda Warnings Not Actionable in this Context**

7 Throughout the 2AC, Plaintiff complains that his rights were violated by Tulare officers'
8 failure to read him his "Miranda" rights. But the failure to recite the rights referred to as
9 "Miranda" does not itself violate Plaintiff's constitutional rights. Rather (with certain
10 exceptions), the government cannot use statements by a Plaintiff after an arrest against Plaintiff in
11 a criminal proceeding unless *Miranda* warnings were given. *Miranda v. Arizona*, 384 U.S. 436,
12 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). In other words, if police officers fail to advise a person
13 of his or her Miranda rights, they do not automatically violate that person's constitutional rights.
14 However, the government will be restricted from using statements from that person to convict that
15 person of a crime.

16 If Plaintiff believes that his constitutional rights were violated related to the failure to be
17 advise of his *Miranda* rights, he needs to explain how the government later used his statements
18 against him in a criminal case despite failing to provide a *Miranda* warning. *See Chavez v.*
19 *Martinez*, 538 U.S. 760, 770, 123 S. Ct. 1994, 2003, 155 L. Ed. 2d 984 (2003) (citing *Michigan v.*
20 *Tucker*, 417 U.S. 433, 444, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974)). In other words, because
21 *Miranda* is a procedural mechanism designed to protect a constitutional right, the failure to give
22 *Miranda* warnings, in and of itself, does not necessarily violate an arrestee's Constitutional rights
23 and cannot form the grounds for a § 1983 action. *See Chavez*, 538 U.S. at 772, 123 S. Ct. at 2004,
24 155 L. Ed. 2d 984 (citing *Connecticut v. Barrett*, 479 U.S. 523, 528, 107 S.Ct. 828, 93 L.Ed.2d
25 920 (1987) (*Miranda*'s warning requirement is "not itself required by the Fifth Amendmen[t] ...
26 but is instead justified only by reference to its prophylactic purpose"); *Tucker*, 417 U.S. at 444, 94
27 S. Ct. 2357, 41 L. Ed. 2d 182 (*Miranda*'s safeguards "were not themselves rights protected by the
28

1 Constitution but were instead measures to insure that the right against compulsory self-
2 incrimination was protected”)).

3 **e. Denial of Requests for Information from County Officials Not Actionable**

4 Plaintiff repeatedly complains in the 2AC that he requested “audiotapes,” “transcripts,”
5 and other information from the defendants, but he was unable to obtain the information from the
6 county officials. The mere failure to provide the audiotapes and transcripts requested does not
7 implicate a federal cause of action for violation of a federal right and is not actionable in a
8 Section 1983 case.

9 Even if Plaintiff made his requests pursuant to the California Public Records Act
10 (“CPRA”), an alleged wrongful denial of such of a request would not equate to a violation of his
11 Constitutional rights. *See Houchins v. KQED, Inc.*, 438 U.S. 1, 15, 98 S. Ct. 2588, 2597, 57 L.
12 Ed. 2d 553 (1978) (“Neither the First Amendment nor the Fourteenth Amendment mandates a
13 right of access to government information or sources of information within the government's
14 control.”). In any case, Plaintiff’s sole remedy for denial of a proper CPRA request “is to file a
15 writ of mandamus in state court and money damages are not an available remedy.” *Brooks v.*
16 *Vallejo City Unified Sch. Dist.*, No. 2:12-CV-1466-GEB-EFB, 2013 WL 943460, at *4 (E.D. Cal.
17 Mar. 11, 2013) (citing Cal. Gov’t Code §§ 6258, 6259(d)), *report and recommendation adopted*
18 *sub nom. Brooks v. Vallejo City Unified Sch. Dist.*, No. 2:12-CV-1466-GEB, 2013 WL 1330516
19 (E.D. Cal. Mar. 29, 2013).

20 A violation of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, could state a
21 federal claim. *See* 5 U.S.C. § 552(f). *See also Applegate v. California Dep’t of Corr.*, No. 1:13-
22 CV-01787-AWI, 2013 WL 6623822, at *2 (E.D. Cal. Dec. 16, 2013) (citing *St. Michael's*
23 *Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir. 1981) (FOIA “does not
24 encompass state agencies or bodies”); *Kerr v. United States Dist. Court for N. Dist. Of California*,
25 511 F.2d 192, 197 (9th Cir. 1975) (explaining the purpose of FOIA was “to expand the access of
26 the public to official records of federal agencies”). However, no federal agencies have been
27 implicated in this case and no federal agencies are named as defendants. Thus, FOIA is
28 inapplicable.

1 **f. Violation of California Rules of Professional Conduct Not Actionable**

2 Plaintiff alleges violations of Rule 5-200 of the California Rules of Professional Conduct
3 throughout the 2AC. The punishment for violation of the Rules of Professional Conduct is a
4 matter within the purview of the State Bar, not of a court presiding over the affected case. *See*
5 *United States v. Sierra Pac. Indus.*, 857 F. Supp. 2d 975, 984 (E.D. Cal. 2011) (citations omitted.)
6 Accordingly, Plaintiff cannot state a cause of action for perceived violation(s) of the California
7 Rules of Professional Conduct.

8 **g. Judges and Judicial Officers Immune from Liability**

9 Plaintiff attempts to bring certain claims against judges and judicial officers.² “Judges are
10 absolutely immune from civil liability for damages for their judicial acts.” *Mullis v. U.S. Bankr.*
11 *Court for Dist. of Nevada*, 828 F.2d 1385, 1388 (9th Cir. 1987) (citing *Bradley v. Fisher*, 80 U.S.
12 (13 Wall.) 335, 347, 20 L.Ed. 646 (1872); *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18
13 L.Ed.2d 288 (1967) (applying judicial immunity to § 1983 action)). “A judge will not be deprived
14 of immunity because the action he took was in error, was done maliciously, or was in excess of
15 his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of
16 all jurisdiction.’ ” *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 356–57, 98 S.Ct. 1099, 1104–
17 05, 55 L.Ed.2d 331 (1978) (citing *Bradley*, 80 U.S. (13 Wall.) at 351, 20 L.Ed. 646)). “Absolute
18 judicial immunity is not reserved solely for judges, but extends to nonjudicial officers for ‘all
19 claims relating to the exercise of judicial functions.’ ” *In re Castillo*, 297 F.3d at 947 (quoting
20 *Burns v. Reed*, 500 U.S. 478, 499, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991) (Scalia, J., concurring
21 in part and dissenting in part)).

22 Thus, if a Judge made a legal mistake, it could be a proper subject of appeal of that
23 Judges’ ruling. But it would not form a basis to sue that Judge.

24 **V. Additional Legal Standards**

25 Below the Court will set forth certain legal standards that could apply to situations where
26 a person has been arrested unlawfully. The Court is not finding that a claim exists here, and there

27 _____
28 ² The IFP statute specifically requires dismissal of any claim that seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

1 would still be a question of whether Plaintiff has already pursued such claims in state court
2 subject to a state appeal. Nevertheless, the Court provides these standards to assist Plaintiff in
3 determining whether he has a viable claim to assert in an amended complaint.

4 **a. Unlawful Seizure**

5 As a starting point, Plaintiff alleges that Tulare County officers lacked authority to seize
6 his animals due a defective warrant. A claim alleging a violation of a person’s Fourth
7 Amendment right proscribing against unreasonable searches and seizures is actionable in a
8 Section 1983 case. *See Graham v. Connor*, 490 U.S. 386, 390, 109 S. Ct. 1865, 1868–69, 104 L.
9 Ed. 2d 443 (U.S. 1989). “The Fourth Amendment states unambiguously that ‘no Warrants shall
10 issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the
11 place to be searched, and the persons or things to be seized.’” *Groh v. Ramirez*, 540 U.S. 551,
12 557, 124 S. Ct. 1284, 1289, 157 L. Ed. 2d 1068 (2004) (quoting U.S. Const., Amdt. 4). “[I]n the
13 ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth
14 Amendment ... unless ... accomplished pursuant to a judicial warrant issued by a neutral and
15 detached magistrate after finding probable cause[.]” *Menotti v. City of Seattle*, 409 F.3d 1113,
16 1154 (9th Cir. 2005) (quoting *Illinois v. McArthur*, 531 U.S. 326, 330-31, 121 S.Ct. 946, 148
17 L.Ed.2d 838 (2001) (internal quotation marks omitted)). “The Fourth Amendment by its terms
18 requires particularity in the warrant, not in the supporting documents.” *Groh*, 540 U.S. at 557,
19 124 S. Ct. at 1289 (citing *Massachusetts v. Sheppard*, 468 U.S. 981, 988, n. 5, 104 S.Ct. 3424, 82
20 L.Ed.2d 737 (1984) (“[A] warrant that fails to conform to the particularity requirement of the
21 Fourth Amendment is unconstitutional”); *United States v. Stefonek*, 179 F.3d 1030, 1033 (C.A.7
22 1999) (“The Fourth Amendment requires that the *warrant* particularly describe the things to be
23 seized, not the papers presented to the judicial officer ... asked to issue the warrant” (emphasis in
24 original))).

25 **b. Unlawful Arrest**

26 Next, Plaintiff alleges that he was unlawfully detained during the seizure of his animals
27 from his property. “A claim for unlawful arrest is cognizable under § 1983 as a violation of the
28 Fourth Amendment, provided the arrest was without probable cause or other justification.” *Lacey*

1 v. *Maricopa Cty.*, 693 F.3d 896, 918 (9th Cir. 2012) (quoting *Dubner v. City & Cnty. of S.F.*, 266
2 F.3d 959, 964 (9th Cir. 2001)). “Probable cause exists when there is a fair probability or
3 substantial chance of criminal activity.” *Ibid.* (quoting *United States v. Patayan Soriano*, 361 F.3d
4 494, 505 (9th Cir.2004) (quoting *United States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001))
5 (internal quotation marks omitted). “There is probable cause for a warrantless arrest and a search
6 incident to that arrest if, under the totality of the facts and circumstances known to the arresting
7 officer, a prudent person would have concluded that there was a fair probability that the suspect
8 had committed a crime.” *United States v. Struckman*, 603 F.3d 731, 739 (9th Cir. 2010) (quoting
9 *United States v. Gonzales*, 749 F.2d 1329, 1337 (9th Cir. 1984)). “[W]arrantless arrests for
10 crimes committed in the presence of an arresting officer are reasonable under the Constitution.”
11 *Virginia v. Moore*, 553 U.S. 164, 176, 128 S. Ct. 1598, 1607, 170 L. Ed. 2d 559 (2008).

12 c. Unreasonable Force

13 Plaintiff further alleges that officers caused him harm by using unnecessary force during
14 his detention. A claim of excessive force in the course of making an arrest may be brought as a
15 claim under 42 U.S.C. § 1983. This claim is properly analyzed under the Fourth Amendment’s
16 objective reasonableness standard. *Scott v. Harris*, 550 U.S. 372, 381 (2007); *Graham v. Connor*,
17 490 U.S. 386 (1989). This assessment involves determining whether the force was objectively
18 reasonable “in light of the facts and circumstances confronting [the officer], without regard to
19 their underlying intent or motivation.” *Graham*, 490 U.S. at 397. “Determining whether the force
20 used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful
21 balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment
22 interests against the countervailing governmental interests at stake.” *Gregory v. County of Maui*,
23 523 F. 3d 1103, 1106 (9th Cir. 2008), quoting *Graham v. Connor*, 490 U.S. at 396. The factors
24 the court may consider in this analysis are: 1) “the severity of the crime at issue”; 2) “whether a
25 suspect poses an immediate threat to the safety of the officer or others”; and 3) whether the
26 suspect “is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at
27 396; *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (“[t]hese factors, however, are not
28

1 exclusive. Rather, we examine the totality of the circumstances and consider ‘whatever specific
2 factors may be appropriate in a particular case, whether or not listed in *Graham*’”).

3 **d. Due Process**

4 Finally, Plaintiff repeatedly complains that his due process rights were violated by the
5 procedures utilized by Tulare County in seizing and ultimately euthanizing his animals. A
6 procedural due process claim is cognizable in a Section 1983 case. “To obtain relief on a
7 procedural due process claim, the plaintiff must establish the existence of ‘(1) a liberty or
8 property interest protected by the Constitution; (2) a deprivation of the interest by the
9 government; and (3) lack of process.’” *Stamas v. Cnty. of Madera*, 795 F.Supp.2d 1047, 1077
10 (E.D. Cal. 2011), *quoting Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008). “[P]rocedural
11 due process claims do not ‘deal with the substance of the challenged decisions, but with the
12 process by which they were reached.’” *Id.*, *quoting Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1260
13 (9th Cir. 1994). “The due process clause does not prohibit every deprivation by the state of an
14 individual’s property. Only those deprivations carried out without due process are actionable
15 under 42 U.S.C. § 1983.” *Halverson*, 42 F.3d at 1260. “‘Ordinarily, due process of law requires
16 [notice and] an opportunity for some kind of hearing *prior* to the deprivation of a significant
17 property interest.’” *Id.*

18 **A. ORDER**

19 The Court will provide Plaintiff a final opportunity to amend the Complaint to address the
20 issues identified above. If Plaintiff chooses to file a Third Amended Complaint, it must bear the
21 docket number assigned in this case and be labeled “Third Amended Complaint.” As a general
22 rule, an amended complaint supersedes any earlier complaints. *Lacey v. Maricopa Cnty.*, 693 F.3d
23 896 (9th Cir. 2012) (noting that there may be limited exceptions to this rule on appeal). In other
24 words, the amended complaint must be “complete in itself without reference to the prior or
25 superseded pleading.” Local Rule 220.

26 Because Rule 8(a) requires a short and plain statement of the claim, twenty (20) pages are
27 sufficient for Plaintiff to identify his claims and set forth specific facts in support of those claims.
28 In order to comply with this limitation, Plaintiff is directed to closely review the guidance given

1 by the Court in this order and omit any non-actionable allegations and other irrelevant material
2 from his amended complaint. Accordingly, Plaintiff's amended complaint may not exceed
3 twenty pages in length. Failure to follow this directive may result in dismissal of this case.

4 For the reasons set forth above, Plaintiff's Second Amended Complaint (ECF No. 71) is
5 **DISMISSED WITH LEAVE TO AMEND.** Plaintiff is instructed to consider the standards set
6 forth in this Order and should only file a Third Amended Complaint if he believes his claims are
7 cognizable. Any amended complaint shall be filed no later than **30 days from the date of this**
8 **order.**

9 Failure to file Third Amended Complaint by the date specified will result in dismissal of
10 this action.

11 IT IS SO ORDERED.

12
13 Dated: June 19, 2017

/s/ Eric P. Gray
14 UNITED STATES MAGISTRATE JUDGE

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