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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEO JOHN PONTILLO, II,  
  
Plaintiff,  
  
v.  
  
COUNTY OF STANISLAUS, BIRGIT  
FLADAGER, JON REINECCIUS, STEVE  
JACOBSON, ALICE MIMMS, ADAM  
CHRISTIANSON, CITY OF MODESTO,  
and DAVID HARRIS,  
  
Defendants.

No. 1:16-cv-01834-DAD-SKO

ORDER DENYING COUNTY  
DEFENDANTS' MOTION TO DISMISS IN  
PART, AND GRANTING OTHER MOTIONS  
TO DISMISS

(Doc. Nos. 43, 44, 46)

Between September 15, 2017 and September 21, 2017, each of the three sets of defendants in this action moved to dismiss plaintiff's operative complaint.<sup>1</sup> (Doc. Nos. 43, 44, 46.) Plaintiff filed two oppositions on October 20, 2017.<sup>2</sup> (Doc. Nos. 47, 48.) The motions came on for hearing before the court on November 7, 2017, at which time plaintiff appeared on his own behalf. Attorney John Whitefleet appeared on behalf of defendants County of Stanislaus, Fladager, Jacobson, Mimms, Christianson, and Harris (the "Stanislaus County defendants").

<sup>1</sup> This operative pleading is the second amended complaint ("SAC") filed by plaintiff, who is proceeding pro se.

<sup>2</sup> Plaintiff did not file an opposition to the motion to dismiss brought on behalf of defendant City of Modesto.

1 Attorney Matthew Roman appeared for defendant Reineccius and attorney Blake Loeb appeared  
2 on behalf of defendant City of Modesto. Following the hearing, the matter was taken under  
3 submission. For the reasons given below, the court will deny the motion to dismiss filed by the  
4 Stanislaus County defendants in part, and will grant the motions to dismiss filed by defendant  
5 Reineccius and the City of Modesto.

## 6 BACKGROUND

7 The factual allegations of plaintiff's complaint have previously been set out in the court's  
8 prior order (Doc. No. 40 at 2–4) and will not be repeated. In brief, plaintiff—a bail bondsman—  
9 alleges defendants sought to maliciously prosecute him on various kidnapping and extortion  
10 related charges, following a multi-agency investigation. In addition to the facts alleged in  
11 plaintiff's prior complaint, which are largely repeated verbatim in the SAC, his operative  
12 complaint includes the following new factual allegations: (1) that defendant Jacobson testified  
13 untruthfully at plaintiff's preliminary hearing while being questioned by defendant Harris about  
14 plaintiff's alleged kidnapping of Benjamin Campbell, which false testimony “contributed” to  
15 plaintiff being held over for trial<sup>3</sup>; (2) that video recordings indicate Modesto Police Officer  
16 Hodgeson—not a defendant here—was present at plaintiff's business at the time plaintiff  
17 kidnapped Walter Scott Osborn according to the criminal charges against him, and that this fact  
18 was not disclosed by defendant Jacobson during his preliminary hearing testimony;<sup>4</sup> and (3) that  
19 defendant Jacobson testified at plaintiff's preliminary hearing that defendant Mimms alleged  
20 plaintiff was violating the California Insurance Code. (Doc. No. 42 at ¶¶ 23–25.)

## 21 LEGAL STANDARD

22 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
23 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir.

24 \_\_\_\_\_  
25 <sup>3</sup> Plaintiff explains he learned that defendant Jacobson testified untruthfully because it was later  
26 revealed that Campbell was in the custody of the Stanislaus County Jail at the time plaintiff was  
alleged to have been kidnapping him. (Doc. No. 42 at ¶ 23.)

27 <sup>4</sup> It is unclear from the SAC what Officer Hodgeson would have offered to the prior criminal  
28 proceeding, if identified. Nonetheless, the court will infer the evidence would have been  
exculpatory to plaintiff in some way.

1 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
2 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901  
3 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to  
4 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A  
5 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
6 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*  
7 *Iqbal*, 556 U.S. 662, 678 (2009).

8 In determining whether a complaint states a claim on which relief may be granted, the  
9 court accepts as true the allegations in the complaint and construes the allegations in the light  
10 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v.*  
11 *United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court need not assume the truth  
12 of legal conclusions cast in the form of factual allegations. *United States ex rel. Chunie v.*  
13 *Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed  
14 factual allegations, “it demands more than an unadorned, the defendant-unlawfully-harmed-me  
15 accusation.” *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere “labels and  
16 conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S.  
17 at 555. *See also Iqbal*, 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action,  
18 supported by mere conclusory statements, do not suffice.”). Moreover, it is inappropriate to  
19 assume that the plaintiff “can prove facts which it has not alleged or that the defendants have  
20 violated the . . . laws in ways that have not been alleged.” *Associated Gen. Contractors of Cal.,*  
21 *Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

## 22 ANALYSIS

23 In his SAC, plaintiff alleges one cause of action for malicious prosecution under 42  
24 U.S.C. § 1983 against all defendants. As this court has previously explained, claims for  
25 malicious prosecution may be cognizable under 42 U.S.C. § 1983. *See Lacey v. Maricopa*  
26 *County*, 693 F.3d 896, 919 (9th Cir. 2012) (en banc). While “malicious prosecution . . . is not a  
27 federal constitutional tort if process is available within the state judicial systems to remedy such  
28 wrongs,” federal courts have recognized an exception where the prosecution is “intended to

1 subject a person to a denial of constitutional rights.” *Bretz v. Kelman*, 773 F.2d 1026, 1031 (9th  
2 Cir. 1985); *see also Yagman v. Garcetti*, 852 F.3d 859, 867 (9th Cir. 2017). A prosecution  
3 intended to deny a person their Fourth Amendment right to be free from unreasonable searches  
4 and seizures may serve as the basis for a malicious prosecution claim under § 1983. *See, e.g.,*  
5 *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1069 (9th Cir. 2004). Such a claim requires the  
6 plaintiff to allege and ultimately show that “the defendants acted for the purpose of depriving him  
7 of a ‘specific constitutional right.’” *Id.* (quoting *Freeman v. City of Santa Ana*, 68 F.3d 1180,  
8 1189 (9th Cir. 1995)). More specifically, it requires plaintiff to allege and show both that “the  
9 defendants prosecuted him with malice and without probable cause” and that a search or seizure  
10 which was unlawful under the Fourth Amendment occurred. *Yousefian v. City of Glendale*, 779  
11 F.3d 1010, 1015 (9th Cir.), *cert. denied*, \_\_\_U.S.\_\_\_, 136 S. Ct. 135 (2015). Malicious  
12 prosecution claims are cognizable against police officers and other investigating officials in some  
13 instances, particularly where the officer maliciously or recklessly makes false reports to the  
14 prosecuting authority. *Blankenhorn v. City of Orange*, 485 F.3d 463, 482 (9th Cir. 2007).

15 Having been held to answer after a preliminary hearing, as plaintiff was here in the  
16 underlying criminal proceedings, “constitutes *prima facie*—but not *conclusive*—evidence of  
17 probable cause.” *Awabdy*, 368 F.3d at 1067. This *prima facie* showing can be rebutted by a  
18 showing that the prosecution was “induced by fraud, corruption, perjury, fabricated evidence, or  
19 other wrongful conduct undertaken in bad faith.” *Id.* However, a prosecutor’s independent  
20 judgment “may break the chain of causation between the unconstitutional actions of other  
21 officials and the harm suffered by a constitutional tort plaintiff.” *Beck v. City of Upland*, 527  
22 F.3d 853, 862 (9th Cir. 2008). The prosecutor’s decision to pursue charges provides a  
23 presumption that the prosecutor exercised independent judgment. *Id.* That presumption is  
24 rebutted by evidence—or in the case of a motion brought under Rule 12(b)(6), factual  
25 allegations—that the prosecutor was given false information, where the officers acted  
26 “maliciously or with reckless disregard” for the arrestee’s rights, or where the prosecutor relied  
27 on the police investigation and arrest rather than coming to an independent judgment. *Id.* at 862–  
28 63. In sum, the presumption that a prosecutor exercised independent judgment in pursuing

1 criminal charges “may be rebutted if the plaintiff shows that the independence of the prosecutor’s  
2 judgment has been compromised.” *Id.* at 862.

3 The new facts alleged by plaintiff here concern only defendant Jacobson. For that reason,  
4 the court need not reiterate its prior analysis regarding the deficiencies of plaintiff’s complaint  
5 with respect to the other defendants. However, with respect to defendant Jacobson, the court  
6 concludes that plaintiff can state a claim for malicious prosecution under § 1983. Plaintiff has  
7 particularly alleged in his SAC that defendant Jacobson gave false testimony concerning  
8 allegations that plaintiff kidnapped two individuals. (Doc. No. 42 at ¶¶ 23–25.) False testimony  
9 can be the basis for a claim of malicious prosecution, rebutting at this pleading stage any *prima*  
10 *facie* claim that there was probable cause to hold plaintiff because of the outcome of the  
11 preliminary hearing. *See Awabdy*, 368 F.3d at 1067. Moreover, while the court previously  
12 concluded that plaintiff’s Fourth Amendment claims were barred by the statute of limitations, it  
13 did not conclude plaintiff had alleged insufficient facts to support such claims. (*See* Doc. No.  
14 40.) The pleadings of *pro se* plaintiffs are “to be liberally construed. *Erickson v. Pardus*, 551  
15 U.S. 89, 94 (2007) (*quoting Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *Karim-Panahi v. L.A.*  
16 *Police Dep’t*, 839 F.2d 621, 623–24 (9th Cir. 1988). Construing the allegations of plaintiff’s  
17 SAC in keeping with that standard, the court concludes plaintiff has adequately alleged that  
18 defendant Jacobson presented false testimony and in doing so deprived plaintiff of his Fourth  
19 Amendment right to be free from detention without probable cause. *See Manuel v. City of Joliet*,  
20 \_\_\_ U.S. \_\_\_, \_\_\_, 137 S.Ct. 911, 917–20 (2017) (holding that pre-trial detention based on false  
21 evidence can be the basis of a Fourth Amendment violation). This is sufficient to state a  
22 cognizable claim for malicious prosecution.

23 Because plaintiff alleges no new facts in his SAC concerning any of the other Stanislaus  
24 County defendants, or defendants Reineccius or City of Modesto, the court has no basis to come  
25 to a conclusion other than that reached in its prior orders that plaintiff has failed to allege  
26 sufficient facts to proceed on a malicious prosecution claim against them. The court previously  
27 dismissed claims against these defendants with leave to amend and plaintiff has identified no new  
28 facts in the subsequently amended SAC that would give rise to a cognizable claim against them.

1 Accordingly, the court concludes further leave to amend in this regard would be futile. *See Zucco*  
2 *Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has  
3 previously been granted leave to amend and has subsequently failed to add the requisite  
4 particularity to its claims, “[t]he district court’s discretion to deny leave to amend is particularly  
5 broad.”) (quoting *In re Read-Rite Corp.*, 335 F.3d 843, 845 (9th Cir. 2003)). Accordingly, these  
6 defendants will be dismissed from this action and without further leave to amend.

7 **CONCLUSION**

8 For the reasons set forth above:

- 9 1. The motions to dismiss brought on behalf of defendants City of Modesto and Reineccius  
10 (Doc. Nos. 43, 46) are granted;
- 11 2. The motion to dismiss brought on behalf of the Stanislaus County defendants (Doc. No.  
12 44) is denied as to plaintiff’s malicious prosecution claim against defendant Jacobson and  
13 granted in all other respects; and
- 14 3. All named defendants other than defendant Jacobson are dismissed from this action  
15 without further leave to amend being granted.

16 IT IS SO ORDERED.

17 Dated: December 10, 2017

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20 UNITED STATES DISTRICT JUDGE