

1 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
2 § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have
3 been paid, the court shall dismiss the case at any time if the court determines that . . .
4 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
5 § 1915(e)(2)(B)(ii).

6 **II. Pleading Standard**

7 Section 1983 "provides a cause of action for the deprivation of any rights,
8 privileges, or immunities secured by the Constitution and laws of the United States."
9 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
10 Section 1983 is not itself a source of substantive rights, but merely provides a method for
11 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
12 (1989).

13 To state a claim under § 1983, a plaintiff must allege two essential elements:
14 (1) that a right secured by the Constitution or laws of the United States was violated and
15 (2) that the alleged violation was committed by a person acting under the color of state
16 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
17 1243, 1245 (9th Cir. 1987).

18 A complaint must contain "a short and plain statement of the claim showing that
19 the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
20 are not required, but "[t]hreadbare recitals of the elements of a cause of action,
21 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.
22 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
23 Plaintiff must set forth "sufficient factual matter, accepted as true, to state a claim to relief
24 that is plausible on its face." Id. Facial plausibility demands more than the mere
25 possibility that a defendant committed misconduct and, while factual allegations are
26 accepted as true, legal conclusions are not. Id. at 677-78.

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1 **III. Plaintiff's Allegations**

2 Plaintiff complains of acts that occurred during his encounters with law
3 enforcement officers in Hanford, California. He names police officer Patrick Jurdon as a
4 defendant. The original complaint also named Officers Lerry Leeds, Jonathan Rivera,
5 Steven Sitter, Adams, and Martinez. These officers are not listed in the caption of the
6 first amended complaint nor mentioned in any section of the pleading identifying
7 defendants. Rule 10(a) of the Federal Rules of Civil Procedure requires that each
8 defendant be named in the caption of the complaint. A complaint is subject to dismissal if
9 "one cannot determine from the complaint who is being sued, [and] for what relief. . ."
10 McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996). Nevertheless, it is clear that
11 Plaintiff intends to proceed against all of the individuals named in his prior complaint.
12 Accordingly, the Court will address the allegations.

13 His allegations are substantially similar to those presented previously, although
14 with some additional detail. The allegations may be summarized essentially as follows:

15 On February 5, 2017, Plaintiff had an encounter with Defendants Sitter, Adams,
16 and Martinez. Sitter came to Plaintiff's home to talk about a hit and run. Sitter claimed to
17 have seen Plaintiff driving and swerving. This was false. Plaintiff told Sitter to leave.
18 Adams and Martinez arrived and Plaintiff was arrested on false charges of DUI. Plaintiff
19 appears to claim that Defendants did not follow up with the alleged witness to the hit and
20 run who was racially profiling Plaintiff, as were the officers. The case against Plaintiff is
21 currently pending in Kings County Superior Court. The officers also gave a false account
22 of this incident to the local newspaper. This conduct violated Plaintiff's Fourth and
23 Fourteenth Amendment rights and also constitutes intentional infliction of emotional
24 distress, recklessness, false imprisonment, and slander.

25 On February 21, 2017, officers were called to Holt Street on allegations of animal
26 cruelty called in by Plaintiff's neighbor. Plaintiff was bitten by a pet dog and put the dog
27 over his fence to protect himself and school children who might be passing by. Officers
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1 Jurdon, Rivera, and Leeds responded. Plaintiff explained the incident to Defendant
2 Jurdon. Officers Jurdon, Rivera, and Leeds falsely claimed that the dog was injured and
3 almost drowned. According to Plaintiff, however, the dog could not have drowned
4 because there was no water in the canal behind his house on that date. A “false witness”
5 gave the officers false information. The police were wearing body cameras but did not
6 take video when they went through the neighbor’s yard to examine the dog. Plaintiff
7 provides detailed explanations of why and how he believes the officers’ gave false
8 testimony.

9 Plaintiff was arrested and jailed on these false charges from February 21, 2017 to
10 June 26, 2017. His car was impounded and his personal effects were taken. The case
11 against Plaintiff ultimately was dismissed. The officers also falsely reported the incident
12 to the local newspaper. The officers’ conduct violated Plaintiff’s Fourth and Fourteenth
13 Amendment rights and constituted false imprisonment, unlawful arrest, intentional
14 infliction of emotional distress, and slander.

15 Finally, Plaintiff claims that he was “stalked” on multiple occasions by Defendants
16 Jurdon and Leeds. The officers would pass by his house and flash their lights on his
17 house or sit outside. In November 2016 officers saw him pushing his car down the street
18 and accused him of DUI. It appears that his car was impounded, the impounded fees
19 were sent to collections, and Plaintiff’s social security income was garnished. He
20 contends this behavior constitutes racial profiling.

21 Plaintiff does not specify any requested relief but requests a jury trial.

22 **IV. Analysis**

23 **A. Abstention**

24 Plaintiff currently is facing charges in relation to the February 5, 2017 incident.
25 Accordingly, this Court must abstain from addressing his claims regarding that incident.
26 Under principles of comity and federalism, a federal court should not interfere with
27 ongoing state criminal proceedings except under special circumstances. Younger v.
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1 Harris, 401 U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971). Abstention is proper
2 regardless of whether the applicant seeks declaratory relief, injunctive relief, or
3 damages. See Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state
4 criminal prosecution has begun, the Younger rule directly bars a declaratory judgment
5 action” as well as a section 1983 action for declaratory relief and damages “where such
6 an action would have a substantially disruptive effect upon ongoing state criminal
7 proceedings.”); Gilbertson v. Albright, 381 F.3d 965, 984 (9th Cir. 2004) (Younger
8 abstention applies to actions for damages as it does to declaratory and injunctive relief).
9 Younger abstention is required when: (1) state judicial proceedings are pending; (2) the
10 state proceedings involve important state interests; and (3) the state proceedings afford
11 adequate opportunity to raise the constitutional issue. Middlesex Cnty. Ethics Comm. v.
12 Garden State Bar Ass’n, 457 U.S. 423, 432 (1982); Dubinka v. Judges of the Super. Ct.,
13 23 F.3d 218, 223 (9th Cir. 1994).

14 The remainder of this screening order addresses only the February 21, 2017
15 incident.

16 **C. Fourth Amendment**

17 Plaintiff brings a Fourth Amendment claim that he was arrested on false charges.

18 An arrest without probable cause violates the Fourth Amendment and gives rise
19 to a claim for damages under section 1983. Harper v. City of Los Angeles, 533 F.3d
20 1010, 1022 (9th Cir. 2008). “Probable cause to arrest exists when officers have
21 knowledge or reasonably trustworthy information sufficient to lead a person of
22 reasonable caution to believe an offense has been or is being committed by the person
23 being arrested.” Id. (internal quotation marks omitted) (quoting United States v. Lopez,
24 482 F.3d 1067, 1072 (9th Cir. 2007)). While conclusive evidence of guilt is not required,
25 “[m]ere suspicion, common rumor, or even strong reason to suspect are not enough” to
26 establish probable cause. Id. (citation and internal quotation marks omitted).

1 Here, an eyewitness reported seeing Plaintiff throw a dog over his fence. Plaintiff
2 himself acknowledged choking the dog and throwing it over the fence, although he
3 believed he had reason to do so. A dog was, indeed, seen on the other side of Plaintiff's
4 fence. These facts are sufficient to show that officers had probable cause to arrest
5 Plaintiff. Although Plaintiff challenges the extent of the investigation undertaken by
6 officers and the ultimate condition of the dog (i.e., how severely it was injured), such
7 disputes are insufficient to allege a claim based on an arrest lacking probable cause.

8 This claim should be dismissed without further leave to amend.

9 **D. Fourteenth Amendment Due Process**

10 To the extent Plaintiff's Fourteenth Amendment claim is based on alleged
11 falsehoods in the police report, he is advised that the filing of a false police report itself
12 does not amount to a constitutional violation. However, it can provide the basis for a
13 § 1983 action where it results in some constitutional harm to the plaintiff. See, e.g.,
14 Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980) (“[T]he mere filing of
15 the false police reports, by themselves and without more, did not create a right of action
16 in damages under 42 U.S.C. § 1983.”); Bronner v. S.F. Superior Court, 2010 U.S. Dist.
17 LEXIS 80503, at * 15, 2010 WL 2650500 (N.D. Cal. July 1, 2010) (“Numerous courts
18 have held that the fact that a false, incomplete or fraudulent police report has been filed
19 is insufficient to state a § 1983 claim. . . . As these cases make clear, there must be
20 some constitutional deprivation that flows from the report.”).

21 Here, the Court finds no constitutional violation flowing from the aspects of the
22 police report that Plaintiff disagrees with. As stated above, even setting aside these
23 alleged fabrications, there was probable cause to support Plaintiff's arrest. Plaintiff does
24 not identify any other violation.

25 The Ninth Circuit has recognized “a clearly established constitutional due process
26 right not to be subjected to criminal charges on the basis of false evidence that was
27 deliberately fabricated by the government.” Devereaux v. Abbey, 263 F.3d 1070, 1074-
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1 75 (9th Cir. 2001); see also Costanich v. Dep't of Soc. & Health Servs., 627 F.3d 1101,
2 1111-12 (9th Cir. 2010) (relying on Devereaux to hold that a state investigator “who
3 deliberately mischaracterizes witness statements in her investigative report also commits
4 a constitutional violation”). To state such a claim, Plaintiff must point to evidence that
5 supports at least one of the following two propositions: “(1) Defendants continued their
6 investigation of [Plaintiff] despite the fact that they knew or should have known that he
7 was innocent; or (2) Defendants used investigative techniques that were so coercive and
8 abusive that they knew or should have known that those techniques would yield false
9 information.” Devereaux, 263 F.3d at 1076.

10 Nothing indicates that Defendants knew Plaintiff was innocent or used abusive or
11 coercive investigative techniques. This claim should be dismissed without further leave
12 to amend.

13 **E. Fourteenth Amendment Equal Protection**

14 Plaintiff claims a Fourteenth Amendment Equal Protection violation on the basis
15 of racial profiling.

16 The Equal Protection Clause requires that persons who are similarly situated be
17 treated alike. City of Cleburne, Tex. v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439
18 (1985). An equal protection claim may be established by showing that the defendant
19 intentionally discriminated against the plaintiff based on the plaintiff's membership in a
20 protected class, Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Lee v. City of
21 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were
22 intentionally treated differently without a rational relationship to a legitimate state
23 purpose, Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Lazy Y
24 Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of
25 Pacifica, 526 F.3d 478, 486 (9th Cir. 2008). “The Constitution prohibits selective
26 enforcement of the law based on considerations such as race.” Whren v. United States,
27 517 U.S. 806, 814 (1996).

1 Plaintiff's allegations of racial profiling appear to be entirely speculative. Indeed,
2 the two specific law enforcement encounters identified appear to have been precipitated
3 by eyewitness reports to the police. Plaintiff does not provide sufficient facts to suggest
4 that other law enforcement encounters were motivated by racial discrimination. This
5 claim should be dismissed without further leave to amend.

6 **F. State Law Claims**

7 The Court may exercise supplemental jurisdiction over state law claims in any civil
8 action in which it has original jurisdiction, if the state law claims form part of the same
9 case or controversy. 28 U.S.C. § 1367(a). "The district courts may decline to exercise
10 supplemental jurisdiction over a claim under subsection (a) if . . . the district court has
11 dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). The
12 Supreme Court has cautioned that "if the federal claims are dismissed before trial, . . .
13 the state claims should be dismissed as well." United Mine Workers of Am. v. Gibbs, 383
14 U.S. 715, 726 (1966).

15 Because Plaintiff fails to allege a cognizable federal claim, the Court cannot
16 exercise supplemental jurisdiction over his state law claim. 28 U.S.C. § 1367(a); Herman
17 Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001). Plaintiff's
18 state law claims should be dismissed.

19 **V. Conclusion and Order**

20 Plaintiff's complaint fails to state a claim upon which relief may be granted. He
21 previously was advised of pleading defects and afforded the opportunity to cure them.
22 He failed to do so. Further leave to amend appears futile and should be denied.

23 Accordingly, it is HEREBY RECOMMENDED that:

- 24 1. Plaintiff's claims regarding the February 21, 2017 incident be dismissed
25 with prejudice for failure to state a claim;
26 2. Plaintiff's claims regarding the February 5, 2017 incident be dismissed
27 without prejudice pursuant to Younger;

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- 3. Plaintiff's state law claims be dismissed for lack of jurisdiction;
- 4. Leave to amend be denied; and
- 5. The case be closed.

The findings and recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with the findings and recommendation, the parties may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." A party may respond to another party's objections by filing a response within fourteen (14) days after being served with a copy of that party's objections. The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: September 10, 2017

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE