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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLIFTON WILLIAMS, JR.,

Plaintiff,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 1:22-cv-00509-DAD-BAM

FINDINGS AND RECOMMENDATIONS THAT THE FEDERAL CLAIMS BE DISMISSED, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM AND THE COURT DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIM

(Doc. 4)

FOURTEEN (14) DEADLINE

Plaintiff Clifton Williams, Jr. (“Plaintiff”), a county jail inmate proceeding pro se and *in forma pauperis*, initiated this civil rights action on April 29, 2022. The Court screened Plaintiff’s complaint and granted Plaintiff leave to amend. (ECF No. 3.) Plaintiff’s first amended complaint is currently before the Court for screening. (Doc. 4.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);

1 1915(e)(2)(B)(ii).

2 A complaint must contain “a short and plain statement of the claim showing that the
3 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
4 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
5 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
6 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
7 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
8 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

9 To survive screening, Plaintiff’s claims must be facially plausible, which requires
10 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
11 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
12 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
13 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
14 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

15 **II. Plaintiff’s Allegations**

16 Plaintiff is currently housed at the Stanislaus County Public Safety Center. He brings suit
17 against Deputy District Attorney P. Hogan and Jessica Davies, Modesto Police Officer for Due
18 Process and Fourth Amendment violations for claims of false arrest, false imprisonment,
19 harassment, racial profiling, malicious prosecution, arrest without probable cause. (*See generally*
20 *Doc. 4, Compl.*)

21 Plaintiff alleges “there were no events leading up to Officer Davies blocking my car in
22 with her patrol car. Plaintiff was parked in front of a store getting ready to get out of his vehicle
23 and enter the store. Plaintiff’s driver and passenger side windows were rolled completely down
24 when Officer Davies made contact with Plaintiff at his driver side window.” Officer Davies
25 started “harassing me about my back windows” being tinted which she knows is perfectly legal.
26 She could see in Plaintiff’s vehicle and her report stated that Plaintiff was talking to someone at
27 Plaintiff’s driver’s side window. Tinted window was the only means she had for approaching
28 Plaintiff’s vehicle. Plaintiff did not get a ticket or a citation to support Officer Davies’ reason for

1 her probable cause (tinted window).

2 Officer Davies asked if Plaintiff was on Probation or Parole and Plaintiff said yes.
3 Plaintiff later discovered that the probation was illegal and unauthorized order of probation
4 imposed by the trial court was also issued to law enforcement. This error made by the trial court
5 “opened the door for [Plaintiff] to also be brought without probable cause which also lead to
6 unlawful and illegal search and seizure.”

7 This had not stopped Defendant Hogan from the district attorney’s office from continuing
8 in his malicious prosecution to convince Plaintiff even knowing these facts. Plaintiff’s Due
9 Process rights have been violated. Plaintiff seeks *Monell* liability for a claim against a local
10 government unit for a deliberate policy, custom or practices that was the moving force behind the
11 constitutional violation. The defective invalid and illegal order of probation imposed by the trial
12 court and issued to law enforcement has violated Plaintiff Due Process rights.

13 Plaintiff seeks compensatory damages and has been in custody since September 24, 2021.

14 **III. Discussion**

15 Plaintiff’s complaint fails to comply with Federal Rules of Civil Procedure 8 and fails to
16 state a cognizable claim.

17 **A. Federal Rule of Civil Procedure 8**

18 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and
19 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).
20 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause
21 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678
22 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a
23 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
24 at 570, 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are
25 not. *Id.*; see also *Twombly*, 550 U.S. at 556–557.

26 Plaintiff’s complaint is short, but it lacks sufficient factual allegations to state a claim for
27 relief. Plaintiff’s complaint relies on generalized and conclusory allegations and lacks specific
28 factual allegations about what happened, who was involved and what each person did to violate

1 Plaintiff's Constitutional rights.

2 **B. Prosecutorial Immunity**

3 To the extent Plaintiff is attempting to bring suit against Defendant Hogan, he may not do
4 so. "A state prosecuting attorney enjoys absolute immunity from liability under § 1983 for his
5 conduct in 'pursuing a criminal prosecution' insofar as he acts within his role as an 'advocate for
6 the State' and his actions are 'intimately associated with the judicial phase of the criminal
7 process.'" *Cousins v. Lockyer*, 568 F.3d 1063, 1068 (9th Cir. 2009); *see also Lacey v. Maricopa*
8 *Cty.*, 693 F.3d 896, 912 (9th Cir.2012) ("Prosecutors performing their official prosecutorial
9 functions are entitled to absolute immunity against constitutional torts."). Therefore, Defendant
10 Hogan would be entitled to prosecutorial immunity for actions associated with Plaintiff's criminal
11 prosecution. Plaintiff cannot cure this deficiency

12 **C. Unlawful Arrest, Search, Seizure**

13 Plaintiff is attempting to assert a claim for unlawful arrest, search, and seizure. The Fourth
14 Amendment prohibits unreasonable "seizures" of a person. In *California v. Hodari D.*, the Court
15 reaffirmed that a person has been "seized" within the meaning of the Fourth Amendment if, in
16 view of all the circumstances surrounding the incident, a reasonable person would have believed
17 that he was not free to leave. *California v. Hodari D.*, 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed.
18 2d 690 (1991). The Fourth Amendment's safeguards, however, do not foreclose all police-
19 initiated encounters or questioning. Law enforcement officers may approach and contact
20 individuals to ask questions. *See, e.g., Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115
21 L.Ed.2d 389 (1991) ("[A] seizure does not occur simply because a police officer approaches an
22 individual and asks a few questions."); *accord Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct.
23 1319, 75 L.Ed.2d 229 (1983) ("[L]aw enforcement officers do not violate the Fourth Amendment
24 by merely approaching an individual on the street or in another public place, by asking him if he
25 is willing to answer some questions, [or] by putting questions to him if the person is willing to
26 listen...").

27 "A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth
28 Amendment, provided the arrest was without probable cause or other justification." *Dubner v.*

1 *City & Cty. of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001). To state a claim under § 1983
2 for false arrest and imprisonment, however, a plaintiff must allege facts “to demonstrate that there
3 was no probable cause to arrest him.” *See Cabrera v. City of Huntington Park*, 159 F.3d 374, 380
4 (9th Cir. 1998) (citing *George v. City of Long Beach*, 973 F.2d 706, 710 (9th Cir. 1992)).
5 Probable cause “exists when under the totality of the circumstances known to the arresting
6 officers, a prudent person would have concluded that there was a fair probability that [the person
7 arrested] had committed a crime.” *Barlow v. Ground*, 943 F.2d 1132, 1135 (9th Cir. 1991)
8 (quoting *United States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986)). The Fourth Amendment only
9 prohibits unreasonable searches. *See, e.g., Bell v. Wolfish*, 441 U.S. 520, 558 (1979). “The test of
10 reasonableness under the Fourth Amendment is not capable of precise definition or mechanical
11 application [and] each case it requires a balancing of the need for the particular search against the
12 invasion of personal rights that the search entails.” *Id.* “Courts must consider the scope of the
13 particular intrusion, the manner in which it is conducted, the justification for initiating it, and the
14 place in which it is conducted.” *Id.*

15 Plaintiff claims he was “seized” or arrested when the officer came to talk to him about his
16 tinted windows. But officers do not need probable cause to talk with a citizen. There were no facts
17 that suggest he was seized by the conversation with the officer at his passenger window. The
18 citizen contact doctrine applies whether the individual is on foot or in a vehicle. “It is well
19 established ... that the Fourth Amendment is not implicated when law enforcement officers
20 merely approach an individual in public and ask him if he is willing to answer questions.... This is
21 true whether an officer approaches a person who is on foot or a person who is in a car parked in a
22 public place.” *United States v. Washington*, 490 F.3d 765, 770 (9th Cir. 2007); *see also United*
23 *States v. Cormier*, 220 F.3d 1103, 1109 (9th Cir. 2000) (police may do what any other citizen
24 could do, including knock and talk at residence). Every encounter with law enforcement does not
25 require probable cause or reasonable suspicion. *United States v. Lundin*, 817 F.3d 1158, 1158 (9th
26 Cir. 2016) (The knock-and-talk exception permits police “to encroach upon the curtilage of a
27 home, for the purpose of asking questions of the occupants.” The exception is based on the
28 theory of implied consent: a resident's consent is implied from the custom of treating the “knocker

1 on the front door” as an invitation (i.e., license) to approach the home and knock.)

2 Here, Plaintiff was not “seized” by the officer asking him questions while he was parked
3 on a street with his windows rolled down. Law enforcement officers may approach and contact
4 individuals to ask questions.

5 Plaintiff claims he was arrested without probable cause. He told the officer he was on
6 probation, but later learned the probation was not proper. However, here, Plaintiff’s complaint
7 fails to allege facts to support a lack of probable cause for his arrest. In fact, Plaintiff fails to
8 allege he was arrested. The officer was entitled to rely on Plaintiff’s statement that he was subject
9 to probation and was not required to look into the illegality of the probation. It appears that
10 Plaintiff was unaware of the purported illegality of the probation until sometime after his contact
11 with Officer Davies. Plaintiff fails to allege facts that that demonstrate there was no probable
12 cause to arrest him. Plaintiff also fails to include any factual allegations as to the search, its scope
13 or even what happened. Probable cause is determined based on the totality of circumstances
14 known to the arresting officers at the time of arrest. *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

15 Plaintiff may be claiming he was racially profiled. Apart from the bare allegation of
16 “racial profiling,” the complaint is devoid of any indication that Plaintiff was discriminated
17 against due to his race. The complaint’s statement about the alleged racial profiling is not tied in
18 any meaningful way to any of the other allegations in the complaint. While the complaint’s
19 reference to “racial profiling” may suggest some intentional act, there is nothing further in the
20 Complaint to support this allegation. Absent any factual basis, the complaint fails to support a
21 claim that Plaintiff was the subject of racial discrimination. “To prevail on an Equal Protection
22 claim brought under § 1983, Plaintiff must allege facts plausibly showing that ‘the defendants
23 acted with an intent or purpose to discriminate against [them] based upon membership in a
24 protected class,’ (citing *see Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005))
25 (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001)), or that similarly situated
26 individuals were intentionally treated differently without a rational relationship to a legitimate
27 state purpose.” *Engquist v. Oregon Department of Agr.*, 553 U.S. 591, 601-02, 128 S.Ct. 2146
28 (2008). Plaintiff has been unable to cure this deficiency.

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D. Malicious Prosecution

A claim for malicious prosecution or abuse of process is not generally cognizable under Section 1983 if a process is available within the state judicial system to provide a remedy. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987) (citations omitted). The exception is “when a malicious prosecution is conducted with the intent to deprive a person of equal protection of the laws or is otherwise intended to subject a person to denial of constitutional rights.” *Id.* (citations omitted). In order to prevail on a Section 1983 claim of malicious prosecution, a plaintiff “must show that the defendants prosecuted [him] with malice and without probable cause, and that they did so for the purpose of denying [him] equal protection or another specific constitutional right.” *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995) (citations omitted); see also *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004); *Lacey v. Maricopa County*, 693 F.3d 896, 919 (9th Cir. 2012). A malicious prosecution claim may be brought against prosecutors or against the individuals who wrongfully caused the prosecution. *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011). Probable cause is an absolute defense to malicious prosecution. *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054 (9th Cir. 2009).

In order to state a malicious prosecution claim, Plaintiff must show that the prior proceeding was commenced by or at the direction of a defendant and it was: 1) pursued to a legal termination favorable to plaintiff; 2) brought without probable cause; and 3) initiated with malice. *Ayala v. Environmental Health*, 426 F.Supp.2d 1070, 1083 (E.D. Cal. 2006). For the termination to be considered “favorable” to the malicious prosecution plaintiff, it must be reflective of the merits of the action and of the plaintiff’s innocence of the charges. *Villa v. Cole*, 4 Cal.App.4th 1327, 1335 (1992); *Awabdy*, 368 F.3d at 1068 (“An individual seeking to bring a malicious prosecution claim must generally establish that the prior proceedings terminated in such a manner as to indicate his innocence.”). In this regard, “a dismissal in the interests of justice satisfies this requirement if it reflects the opinion of the prosecuting party or the court that the action lacked merit or would result in a decision in favor of the defendant,” and “[w]hen such a dismissal is procured as the result of a motion by the prosecutor and there are allegations that the prior proceedings were instituted as the result of fraudulent conduct, a malicious prosecution plaintiff is

1 not precluded from maintaining his action unless the defendants can establish that the charges
2 were withdrawn on the basis of a compromise among the parties or for a cause that was not
3 inconsistent with his guilt.” *Id.*

4 Plaintiff has failed to describe how any individual Defendant caused the case to be
5 prosecuted against Plaintiff with malice and without probable cause nor presented any specific
6 facts about any prosecution dismissal. A dismissal resulting from negotiation, settlement or
7 agreement is generally not deemed a favorable termination of the proceedings. *Villa*, 4
8 Cal.App.4th at 1335. “[A]s a matter of law...the favorable termination which is essential to the
9 plaintiff in a malicious prosecution action cannot be based on the dismissal of the criminal
10 charges remaining after the defendant in a criminal proceeding has entered a plea of nolo
11 contendere to one or more of the charges in the accusatory pleading pursuant to a plea bargain.
12 *Cote v. Henderson*, 218 Cal. App. 3d 796, 804 (1990). Plaintiff's complaint does not clearly
13 indicate the facts of his prosecution or facts upon which his case was dismissed. Plaintiff has been
14 unable to cure this deficiency,

15 E. **Monell Liability**

16 Under section 1983, a local government unit may not be held responsible for the acts of its
17 employees under a respondeat superior theory of liability. *Monell v. Department of Social*
18 *Services*, 436 U.S. 658, 691, 98 S.Ct. 2018 (1978). Generally, a claim against a local government
19 unit for municipal or county liability requires an allegation that “a deliberate policy, custom, or
20 practice ... was the ‘moving force’ behind the constitutional violation ... suffered.” *Galen v. Cty.*
21 *of Los Angeles*, 477 F.3d 652, 667 (9th Cir. 2007).

22 Plaintiff does not allege facts to support a claim that any alleged constitutional violation
23 was the result of a deliberate policy, custom or practice instituted by any local government. The
24 County of Stanislaus is not named in the first amended complaint as a defendant in this action.

25 F. **State Law Claims**

26 Although unclear, it appears Plaintiff is attempting to pursue state law claims in this action.
27 Under 28 U.S.C. § 1367(a), in any civil action in which the district court has original jurisdiction,
28 the “district courts shall have supplemental jurisdiction over all other claims that are so related to

1 claims in the action within such original jurisdiction that they form part of the same case or
2 controversy under Article III of the United States Constitution,” except as provided in subsections
3 (b) and (c). The Supreme Court has stated that “if the federal claims are dismissed before trial, ...
4 the state claims should be dismissed as well.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715,
5 726 (1966). Although the Court may exercise supplemental jurisdiction over state law claims,
6 Plaintiff must first have a cognizable claim for relief under federal law. 28 U.S.C. § 1367. As
7 Plaintiff has not stated a cognizable claim for relief under federal law, the Court declines to screen
8 Plaintiff’s state law claims.

9 Further, “California’s Government Claims Act requires that a tort claim against a [state]
10 public entity or its employees for money or damages be presented to the California Victim
11 Compensation and Government Claims Board ... no more than six months after the cause of action
12 accrues.” *Lopez v. Cate*, No. 1:10-cv-01773-AWI, 2015 WL 1293450, at *13 (E.D. Cal. 2015)
13 (citing Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2). “Timely claim presentation is not
14 merely a procedural requirement, but is ... a condition precedent to plaintiff’s maintaining an action
15 against defendant and thus an element of the plaintiff’s cause of action.” *Id.* (internal quotation
16 marks and citations omitted). The “obligation to comply with the Government Claims Act” is
17 independent of the obligation to exhaust administrative remedies pursuant to the Prison Litigation
18 Reform Act (“PLRA”). *McPherson v. Alamo*, No. 3:15-cv-03145-EMC, 2016 WL 7157634, at *6
19 (N.D. Cal. 2016) (citing *Parthemore v. Col.*, 221 Cal. App. 4th 1372, 1376 (2013)).

20 Plaintiff appears to raise claims under California state law. However, Plaintiff does not
21 allege that he presented a claim to the California Government Claims Program (the successor to the
22 Victim Compensation and Government Claims Board) within six months of the incidents
23 underlying this action. Thus, Plaintiff’s state-law claims, to the extent he raises any, are not
24 cognizable. *Pradia v. Becerra*, No. 1:20-CV-01348 JLT(PC), 2021 WL 1839613, at *4 (E.D. Cal.
25 May 7, 2021).

26 IV. Conclusion and Recommendation

27 For the reasons stated, Plaintiff’s first amended complaint fails to comply with Federal
28 Rule of Civil Procedure 8 and fails to state a cognizable claim for relief. Despite being provided

1 with the relevant pleading and legal standards, Plaintiff has been unable to cure the identified
2 deficiencies and further leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130
3 (9th Cir. 2000).

4 IT IS HEREBY RECOMMENDED as follows:

- 5 1. The federal claims in this action be dismissed, with prejudice, based on Plaintiff's
6 failure to state a cognizable claim upon which relief may be granted; and
- 7 2. The Court decline to exercise supplemental jurisdiction over Plaintiff's purported state
8 law claim.

9 These Findings and Recommendation will be submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
11 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
12 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
13 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
14 specified time may result in the waiver of the "right to challenge the magistrate's factual
15 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
16 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17
18 IT IS SO ORDERED.

19 Dated: July 26, 2022

/s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE