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8	IN THE UNITED STATES DISTRICT COURT		
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
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11	ROGER P. SNITCHFIELD, 2:10-CV-3243-TLN-CMK		
12	Plaintiff,		
13	vs. <u>FINDINGS AND RECOMMENDATIONS</u>		
14	RED BLUFF POLICE DEPT., et al.,		
15	Defendants.		
16	/		
17	Plaintiff, who is proceeding pro se, brings this civil action. Pending before the		
18	court is defendants' unopposed motion to dismiss (Doc. 19).		
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20	I. BACKGROUND		
21	This action proceeds on plaintiff's first amended complaint (Doc. 5) against the		
22	Red Bluff Police Department and various of its officers, Scott Capilla, John Rossi, and Martin		
23	Perrone. Plaintiff alleges:		
24	1. I allege that numerous police officers under orders of Mr. Scott Capilla		
25	were keeping me under daily surveillance in Red Bluff Riverside Park from September 2006 until the time of the traffic citation (April 28, 2008)		
26	because it was assumed that a prior time (August 2006) I ignored a subpoena issued by the Tehama DA Office to appear at the arraignment		
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and trial of a person who attempted to stab me in the dark in Red Bluff 1 (July 2006). I was in Trinity County at the time the subpoena was issued 2 and I did not receive it until after it had expired. 3 2. I allege that Officer John Rossi and two other unidentified individuals deliberately entrapped me in an intersection to make it appear that I had committed a violation (April 28, 2008). I had a perfect driving record of Δ more than twenty years before I was cited in the evening of the very same 5 day that I returned to Red Bluff after an absence of three weeks. ... On February 6, 2009, the Tehama Court notified me that the fine had been increased from \$380 to \$648 and my license to drive was suspended one 6 year after the citation on June 3, 2009, by the DMV and continues to be 7 suspended from that date until the present time. I am enduring much hardship due to inability to drive because of an illegal citation. 8 9 Plaintiff adds: 10 The entrapment occurred as follows: Shortly before I left Red Bluff Riverside Park in the evening of April 28, 2008, there was an unmarked 11 police car which passed near my car to verify my presence and notify (by radio) two police vehicles (one unmarked) that I would soon be passing through the intersection where I would be cited. As soon as I entered the 12 intersection on a green light an unmarked police car entered from the opposite side and violated my right of way by turning left directly in front 13 of me in order to block me from getting any further into the intersection and to make it appear that I had entered on a red light. 14 There was a yellow light for three seconds after this happened and I proceeded to the center of the intersection before the light turned red. At 15 about this time Officer Rossi, who was waiting around the corner and out of sight at the next intersection a block away, upon a signal from the driver 16 who blocked my right of way, suddenly appeared and followed me out of 17 the intersection, where I was cited. There was no marked police vehicle in sight when I entered the intersection.... I believe that Mr. Capilla and other police officers were annoyed 18 by my continued presence of several years in Red Bluff as a homeless 19 person who slept in a vehicle, although I was never accused by anyone of doing anything illegal until the day of the citation. Mr. Capilla is no 20 longer Chief of Police in Red Bluff. Mr. Martin Perrone, who claimed to be an investigator for the 21 Tehama DA Office, approached me one day in August 2007 while I was in Riverside Park in my car and told me that he was conducting a "sweep" of 22 the park (all by himself?) and he questioned me implying that I had been drinking (alcohol) and after I denied this he realized when he saw a large 23 bag of recyclable aluminum cans in my car that I was not drinking at all and left me alone. There were no other police in evidence at the time of 24 the sweep and I did not see Mr. Perrone approach anyone else. I often wonder if Mr. Perrone may have been the scheduled prosecutor at the trial 25 mentioned above, and was only attempting to find out why I was still in Red Bluff. There appears to be a close connection between Mr. Capilla, 26 Mr. Rossi, and Mr. Perrone.

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for their conduct because he had done nothing wrong.

II. STANDARD FOR MOTION TO DISMISS

commit any traffic violation on the day in question. Plaintiff asserts that the defendants are liable

The underlying allegation in plaintiff's complaint is that he did not, in fact,

6 In considering a motion to dismiss, the court must accept all allegations of 7 material fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The 8 court must also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer 9 v. Rhodes, 416 U.S. 232, 236 (1974); see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 10 738, 740 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All 11 ambiguities or doubts must also be resolved in the plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). However, legally conclusory statements, not supported by actual 12 13 factual allegations, need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009). In addition, pro se pleadings are held to a less stringent standard than those drafted by 14 15 lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

16 Rule 8(a)(2) requires only "a short and plain statement of the claim showing that 17 the pleader is entitled to relief" in order to "give the defendant fair notice of what the ... claim is 18 and the grounds upon which it rests." Bell Atl. Corp v. Twombly, 550 U.S. 544, 555 (2007) 19 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for 20 failure to state a claim under Rule 12(b)(6), a complaint must contain more than "a formulaic 21 recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to 22 raise a right to relief above the speculative level." Id. at 555-56. The complaint must contain 23 "enough facts to state a claim to relief that is plausible on its face." Id. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the 24 25 reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more 26

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than a sheer possibility that a defendant has acted unlawfully." Id. (quoting Twombly, 550 U.S. 1 at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility for entitlement to relief." Id. 4 (quoting Twombly, 550 U.S. at 557).

5 In deciding a Rule 12(b)(6) motion, the court generally may not consider materials outside the complaint and pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998); 6 7 Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). The court may, however, consider: (1) documents whose contents are alleged in or attached to the complaint and whose authenticity no 8 9 party questions, see Branch, 14 F.3d at 454; (2) documents whose authenticity is not in question, 10 and upon which the complaint necessarily relies, but which are not attached to the complaint, see 11 Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials of which the court may take judicial notice, see Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir. 12 13 1994).

Finally, leave to amend must be granted "[u]nless it is absolutely clear that no 14 15 amendment can cure the defects." Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per 16 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

III. DISCUSSION

19 In their motion to dismiss, defendants argue, among other things the court should 20 abstain under the Rooker-Feldman doctrine from exercising jurisdiction. Under the Rooker-21 Feldman abstention doctrine, lower federal courts lack jurisdiction to hear matters already 22 decided in state court. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of 23 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine applies in cases "brought by state court losers complaining of injuries caused by state court judgments rendered 24 25 before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005). 26

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1	An exception, inapplicable here, would be where Congress expressly grants federal courts			
2	jurisdiction to review state court judgments (such as habeas corpus, for example).			
3	The court agrees. State court records defendants request the court to judicially			
4	notice reveal the following timeline: ¹			
5		Plaintiff issued traffic citation no. 92938, by Red Bluff Police Department officer J. Rossi.		
6 7	t	Plaintiff was notified by the Tehama County Superior Court hat he had an appearance date scheduled for June 2, 2008, n relation to the pending traffic violation charge.		
8	June 2, 2008 I	Plaintiff failed to appear.		
9		Plaintiff telephoned the Tehama County Superior Court		
10		asking for another appearance date and his case was re-set to July 7, 2008.		
11	July 7, 2008 H	Plaintiff failed to appear.		
12 13		Plaintiff telephoned the court requesting another continuance and his matter was re-set to September 8, 2008.		
14		Plaintiff failed to appear.		
15		After failing to appear three times, the state court convicted		
16		plaintiff in absentia, increased his fine for failing to appear on three prior occasions, and informed plaintiff that the		
17	r	Department of Motor Vehicles would be notified with a request for suspension of license pursuant to California		
18		Vehicle Code § 40509.5.		
19 20		Plaintiff was granted amnesty under California Vehicle Code § 42008.7.		
20 21	///			
21	///			
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23 24	¹ The court may take judicial notice pursuant to Federal Rule of Evidence 201 of matters of public record. See U.S. y. 14.02 Agree of Land. 530 E 3d 883, 804 (0th Cir. 2008)			
2 4 25	matters of public record. <u>See U.S. v. 14.02 Acres of Land</u> , 530 F.3d 883, 894 (9th Cir. 2008). Thus, this court may take judicial notice of state court records, <u>see Kasey v. Molybdenum Corp.</u> of America, 336 F.2d 560, 563 (9th Cir. 1964), as well as its own records, <u>see Chandler v. U.S.</u> ,			
23 26	378 F.2d 906, 909 (9th Cir. 1967). Here, defendants' request that the court judicially notice			

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19	DATED: September
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23	² The cou Rooker-Feldman abste
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25	Documents attached to that question – plaintif
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ar from the record that plaintiff's state court case came to conclusion with February 2012. It is also clear that the same party was involved in both e court action – namely plaintiff. And it is also clear that plaintiff had aise his constitutional issues in the state court. Specifically, had plaintiff e three arraignments scheduled in his case, he could have entered a plea of ter set for trial, and raised his arguments in that context. For these reasons, bstention doctrine operates to preclude this court's review.²

IV. CONCLUSION

in the foregoing, the undersigned recommends that defendants' unopposed c. 19) be granted.

indings and recommendations are submitted to the United States District ase, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days these findings and recommendations, any party may file written urt. Responses to objections shall be filed within 14 days after service of file objections within the specified time may waive the right to appeal. 951 F.2d 1153 (9th Cir. 1991).

5,2013

UNITED STATES MAGISTRATE JUDGE

in full, and recalling the case from collection.

art had earlier recommended, upon screening plaintiff's complaint, that the ntion doctrine should apply in this case. That recommendation was not signed District Judge because, based on the record as it existed at the time, certain that plaintiff's case had resulted in a final state court judgment. defendants' request for judicial notice, which should be granted, resolve f's traffic case was concluded through a final judgment awarding amnesty,