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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRENT LEE HARDING,
Plaintiff,
v.
AARON DE CANIO, *et al.*,
Defendants.

Case No. 2:21-cv-02239-DJC-JDP (PS)
FINDING AND RECOMMENDATIONS
THAT PLAINTIFF’S AMENDED
COMPLAINT BE DISMISSED WITHOUT
LEAVE TO AMEND
ECF No. 7
OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Brent Lee Harding is a state inmate proceeding pro se and *in forma pauperis*. The amended complaint alleges that Rancho Cordova Detective Aaron De Canio violated plaintiff’s right to due process by executing an untimely state search warrant outside of De Canio’s jurisdiction. The allegations do not give rise to a federal claim. I will therefore recommend dismissal of this action.

Screening and Pleading Requirements

Plaintiff’s complaint is subject to screening under 28 U.S.C. § 1915(e). That statute requires the court to dismiss any action filed by a plaintiff proceeding *in forma pauperis* that is frivolous or malicious, that fails to state a claim upon which relief may be granted, or that seeks monetary relief against a defendant who is immune from suit. 28 U.S.C. § 1915(e)(2)(B).

1 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
4 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
6 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
9 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
10 n.2 (9th Cir. 2006) (en banc) (citations omitted).

11 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
15 However, “a liberal interpretation of a civil rights complaint may not supply essential elements
16 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

18 **Analysis**

19 The complaint alleges that, in March 2021, police stopped plaintiff in his vehicle and
20 arrested him for a crime that allegedly occurred in January 2021. ECF No. 7 at 1. A search of
21 plaintiff’s vehicle resulted in the discovery of two stolen items. *Id.* After his arrest, plaintiff’s
22 vehicle was released to his acquaintance. *Id.* The following week, defendant Detective De Canio
23 obtained a search warrant from a California court to search the vehicle again; the vehicle was at
24 the time in the acquaintance’s possession. *Id.* at 2. The warrant was obtained in Sacramento
25 County, which, according to the complaint, is outside of De Canio’s jurisdiction; plaintiff alleges
26 that De Canio did not notify local enforcement that he would be executing the warrant in that
27 jurisdiction. *Id.* at 2-3. The complaint states that the search warrant’s probable cause was “non-
28 existent” and “unreasonable” because the vehicle had not been in plaintiff’s possession for more

1 than a week at the time of the second search. *Id.* at 3. The complaint alleges violation of
2 plaintiff's due process rights. *Id.*

3 As explained in my prior screening order, a delay in executing a search warrant may raise
4 a constitutional issue when the probable cause upon which the warrant was issued has ceased to
5 exist. *United States v. Grubbs*, 547 U.S. 90, n.2 (2006); *United States v. Gann*, 732 F.2d 714, 722
6 (9th Cir. 1984) ("The test for judging the timeliness of a search warrant is whether there is
7 sufficient basis to believe, based on a continuing pattern or other good reasons, that the items to
8 be seized are still on the premises."). However, plaintiff's vague and conclusory statement that
9 probable cause was non-existent and unreasonable does not support a constitutional claim. *See*
10 *Tanaka v. Kaaukai*, No. CV 20-00205 SOM-RT, 2020 WL 5097829, at *5 (D. Haw. Aug. 28,
11 2020) (holding that the plaintiff "cannot proceed based only on her bald, unadorned conclusory
12 allegation that the warrants were unsupported by probable cause"). Indeed, the complaint
13 concedes that stolen property was found in the vehicle during plaintiff's arrest.

14 Plaintiff's claim that De Canio executed the warrant outside his jurisdiction and without
15 notifying local law enforcement is meritless. *See People v. P.P.G., Inc.*, 88 Cal. App. 3d Supp.
16 12, 18 (App. Dep't Super Ct. 1978) (finding that an officer who had valid authority to execute a
17 search warrant could do so without obtaining consent from chief of police, or a person authorized
18 by him, in city outside of judicial district where warrant had been issued). Further, any alleged
19 failure by De Canio to comply with California law's notice requirement does not give rise to a
20 claim under § 1983. *See Ove v. Gwinn*, 264 F.3d 817, 824 (9th Cir. 2001) ("To the extent that the
21 violation of a state law amounts to the deprivation of a state-created interest that reaches beyond
22 that guaranteed by the federal Constitution, Section 1983 offers no redress."); *Langford v. Day*,
23 110 F.3d 1380, 1389 (9th Cir 1996) (holding that a plaintiff cannot "transform a state-law issue
24 into a federal one merely by asserting a violation of due process").

25 Finally, the amended complaint indicates that criminal charges were filed against plaintiff,
26 and that he expects those proceedings to be "finalized very soon." ECF No. 7 at 3. To the extent
27 that plaintiff asserts claims about the validity of the search warrant, those claims are barred by the
28 abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971). As previously explained

1 to plaintiff, that doctrine generally prohibits federal courts from interfering with ongoing, state-
2 court criminal proceedings. Given that nothing short of changing the fundamentals of the
3 allegations could result in a viable complaint, I recommend the dismissal be without leave to
4 amend. *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th Cir. 2011) (“Dismissal of a pro se
5 complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of
6 the complaint could not be cured by amendment.”) (internal quotation marks omitted).

7 Accordingly, it is hereby RECOMMENDED that plaintiff’s first amended complaint, ECF
8 No. 7, be dismissed without leave to amend for failure to state a claim.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
14 objections shall be served and filed within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
17 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 IT IS SO ORDERED.

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20 Dated: December 6, 2023


21 JEREMY D. PETERSON
22 UNITED STATES MAGISTRATE JUDGE
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