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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TYLER WASHINGTON,
Plaintiff,
v.
NICK WHITE, et al.,
Defendants.

Case No. [18-cv-00333-WHO](#)

**ORDER GRANTING MOTIONS TO
DISMISS WITH PREJUDICE**

Re: Dkt. Nos. 33, 34

Plaintiff Tyler Washington claims that defendants Nick White, Lindsay Haynes, and Paul Wrapp conspired to have plaintiff maliciously prosecuted for domestic violence and violated her rights to equal protection under the law. I dismissed Washington’s prior complaint because Washington had not pleaded facts to rebut the presumption that her prosecution was based on probable cause and there were no facts alleged that plausibly suggested that White (an off-duty Sausalito, California police officer) conspired with Haynes and Wrapp (on-duty Mill Valley, California police officers) to cause Washington’s arrest and prosecution. I also explained that Washington failed to allege facts plausibly supporting her denial of equal protection claims.

In her First Amended Complaint, the factual allegations of which I accept as true for purposes of defendants’ motions to dismiss, Washington adds more facts to support her theories, including excerpts from a post-incident interview between Wrapp and White that Washington notes was not disclosed until her trial was underway. However, the facts pleaded by Washington demonstrate that there was probable cause to arrest her for domestic violence. She still fails to allege any facts that plausibly suggest a conspiracy was formed by White, Haynes, and Wrapp. Her equal protection claims continue to be deficient. Because she identifies no additional unpleaded facts that could support her claims, the case is dismissed with prejudice.

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BACKGROUND

I. FACTUAL BACKGROUND

In October 2015, Washington (who is African American, 5’4” tall, and weighs 120 pounds) met White (who is 6’3” tall and weighs 220 pounds) through an on-line dating site; they subsequently started dating. FAC ¶¶ 3, 4, 8. On January 22, 2016, after Washington dropped an overnight bag at White’s home, they went out to dinner. *Id.* ¶ 10. After dinner, they had drinks at two different locations. At the second location, Washington received a text from another man, which upset White. *Id.* ¶ 11. On the drive back to White’s home, White was driving unsafely and unleashed caustic and abusive language at Washington. *Id.* ¶ 12. Washington insisted that White pull over for their safety, and he did so after grabbing Washington’s arm with unnecessary force. *Id.* While stopped, Washington “removed [White’s] eyeglasses to get his attention and White flinched, accidentally causing a minor injury to his face.” *Id.*

Once back at White’s home, their argument continued. During the argument, White forcibly grabbed and pushed Washington while trying to persuade her to leave despite the fact that she was intoxicated and leaving would pose a safety risk to herself and the public. *Id.* ¶ 13. White knew, given his training and experience, that because of his conduct, size advantage, gender, and Washington’s injuries that he could be arrested for domestic violence. *Id.* ¶ 14. Therefore, White acted to protect himself by calling the Mill Valley Police Department to complain that he was a victim of domestic violence. *Id.*

During his first call to the Mill Valley Police Department at 12:23 a.m., White identified himself as a Sausalito Police Department officer, and after finding out that defendant Wrapp was on duty that night, asked the dispatcher to forward his number to Wrapp. *Id.* ¶ 15. White made a second 911 call about 13 minutes later, asking to speak with Wrapp or any other available officers, complaining of an unwanted subject in his house, but declining to “make a report” at that time. *Id.* ¶ 16.

During the next two hours the couple continued to argue while White intermittently videotaped their interactions, capturing his demeaning and abusive language and well as his

1 physical conduct that included grabbing Washington’s “arm, body, hurting her, digging nails into
2 her, and acting erratically and manically.” *Id.* ¶ 17. The recordings confirm that Washington was
3 reluctant to leave because, after drinking alcohol, she wanted to sleep before driving. *Id.* The
4 recordings also show White threatening Washington that if she did not leave his home before
5 police arrived, she would be arrested and that would impact her job as a preschool teacher. *Id.*
6 These threats were part of White’s “abuse of authority” and intent to prevent Washington from
7 telling her side of the story to police, by forcing her to leave before the police arrived. *Id.* “In
8 furtherance of [the] conspiracy” and on information and belief “Haynes and Sgt. Wrapp did not
9 ask to view these videos or even collect them for months.” *Id.* ¶ 18.

10 After Washington left White’s apartment, White called Mill Valley dispatch for the third
11 time. He complained that Washington had been drinking and just left. He gave dispatch
12 Washington’s name, car make, license plate, and direction of travel. *Id.* ¶ 19. Haynes was the
13 first officer to respond to White’s home, followed shortly thereafter by Wrapp. *Id.* ¶ 20. White
14 identified himself as a Sausalito police officer and took advantage of “his pretense of authority as
15 a fellow law-enforcement officer, shown by Haynes and Wrapp’s ignoring the objective evidence
16 available to them in [White’s] cell-phone videos which would have revealed the cause of
17 Washington’s reported injuries to her arm, face and neck.” *Id.*

18 Haynes and Wrapp knew the current incident was not an “isolated one” because two years
19 earlier White had “victimized” and falsely accused another woman of domestic violence. *Id.* ¶ 21.
20 In that instance, however, both White and the victim were interviewed together and neither one
21 was arrested. *Id.* The prior incident also involved drinking, jealousy by White, arguing, and
22 allegations of mutual threats and physical contact. *Id.*

23 Another Mill Valley officer located Washington’s car at 12:56 a.m. *Id.* ¶ 22. Haynes,
24 under the supervision of Wrapp, went to that location and immediately detained Washington,
25 placing her under arrest for domestic violence without interviewing Washington or conducting any
26 other investigation, contrary to policy and training and without probable cause to arrest. *Id.* ¶¶ 23,
27 24.

28 On January 23, 2016 at 2:13 a.m., Wrapp returned to White’s residence to interview him.

1 *Id.* ¶ 25. In this recorded interview, which was not disclosed until Washington’s trial was
2 underway, White admitted to his jealousy. *Id.* Wrapp cautioned him that his delay in calling in
3 the incident made White’s version of the events harder to confirm and could give the appearance
4 that he was trying to manipulate the situation. *Id.* White expressed his concern that this incident
5 would turn into a he said/she said situation like the “last time” and he did not want to deal with the
6 backlash at his work. *Id.* White agreed with Wrapp that his relationship with Washington was
7 over. *Id.*

8 Washington alleges Haynes and Wrapp’s police reports, printed on Friday February 5th,
9 were false because: (i) they did not disclose the recorded Wrapp interview; (ii) the injuries White
10 complained of should not have been viewed as “credible” if the officers had reviewed White’s
11 cell-phone recordings; and (iii) White was given preferential treatment by not having to give his
12 statement at the police station and did not turn over his cell-phone recordings for months. *Id.* ¶ 26.
13 She also alleges that the police reports: (i) omit the existence of Wrapp’s recorded interview with
14 White; (ii) give undue deference to White’s version of events; (iii) omit White’s threat to
15 Washington that she could lose her job; (iv) omit White’s history of one prior DV report; (v) omit
16 the fact that White’s jealousy motivated the dispute; (vi) omit White’s intent, as stated to Wrapp,
17 to handle this situation differently to avoid a he said/she said situation; and (vii) contain
18 unspecified “inconsistencies” between White’s allegations, motives, and the evidence. *Id.* ¶ 27.
19 The omission of this “evidence” was done in furtherance of the “conspiracy.” *Id.*

20 In a criminal complaint filed the work day following the filing of the police reports,
21 February 8, 2016, Washington was charged with one count of misdemeanor domestic violence. *Id.*
22 ¶ 28. Washington alleges that White, Haynes, and Wrapp agreed to “cause” Washington to be
23 arrested and prosecuted for domestic violence without cause. *Id.* ¶ 29. Washington alleges that
24 the Marin County District Attorney did not conduct any investigation before filing the complaint
25 and solely relied on the police reports filed by Haynes and Wrapp. *Id.* ¶ 30. On July 12, 2016, the
26 District Attorney filed a First Amended Complaint adding a second count for aggravated trespass.
27 *Id.* ¶ 31.

28 The case proceeded to trial. At trial, the recorded “exculpatory” interview between White

1 and Wrapp was disclosed; the existence of that interview had not been disclosed prior to trial. *Id.*
2 ¶ 32. White was the only witness called by the prosecution. *Id.* Washington was acquitted by a
3 unanimous verdict on March 27, 2017. *Id.* ¶ 33.

4 **II. PROCEDURAL BACKGROUND**

5 Washington filed this action on January 16, 2018. Dkt. No. 1. She asserted four causes of
6 action under 42 U.S.C. § 1983, based on theories that (1) she was maliciously prosecuted based on
7 incomplete, false, and withheld evidence; (2) her rights to equal protection were violated because
8 she was treated differently than the woman who, two years earlier, was accused by White of
9 domestic violence without a rational basis and her arrest was irrational and arbitrary; (3) her rights
10 to equal protection were violated because she was arrested, but the Caucasian prior victim of the
11 false accusation of domestic violence was not; and (4) her rights to due process were violated
12 because the defendants intentionally withheld the exculpatory evidence of White’s recorded
13 conversation with Wrapp. Defendants Haynes and Wrapp, and separately White, moved to
14 dismiss all claims. Dkt. Nos. 11, 12. In my May 18, 2018 Order, I dismissed Washington’s first
15 three causes of action with leave to amend, explaining in detail what was missing from those
16 causes of action. May 18, 2018 Order (Dkt. No. 31) at 6-12. I dismissed the fourth cause of
17 action with prejudice because she did not have standing to raise that claim. *Id.* at 12-14.

18 Washington filed a First Amended Complaint on June 7, 2018. In the FAC, she provides a
19 few more facts and clarifies her theory of this case, that White’s jealous and possessive behavior
20 led to the domestic violence that occurred and White conspired to have Washington arrested so
21 that he would not be arrested. Haynes and Wrapp, and separately, White, again move to dismiss.

22 **LEGAL STANDARD**

23 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
24 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
25 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
26 face.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
27 when the plaintiff pleads facts that “allow the court to draw the reasonable inference that the
28 defendant is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

1 (citation omitted). There must be “more than a sheer possibility that a defendant has acted
2 unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff
3 must allege facts sufficient to “raise a right to relief above the speculative level.” *See Twombly*,
4 550 U.S. at 555, 570.

5 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
6 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
7 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
8 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
9 fact, or unreasonable inferences.” *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
10 2008).

11 If the court dismisses the complaint, it “should grant leave to amend even if no request to
12 amend the pleading was made, unless it determines that the pleading could not possibly be cured
13 by the allegation of other facts.” *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In
14 making this determination, the court should consider factors such as “the presence or absence of
15 undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous
16 amendments, undue prejudice to the opposing party and futility of the proposed amendment.” *See*
17 *Moore v. Kayport Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

18 DISCUSSION

19 I. MALICIOUS PROSECUTION

20 As explained in detail in my prior Order, because the District Attorney filed charges and
21 the case proceeded to trial, Washington must state sufficient facts that “overcome” the
22 presumption of probable cause and independent prosecutorial judgment in order to allege a
23 malicious prosecution claim against the arresting officers. She must do so by pleading “specific
24 allegations showing that the officers procured the filing of the criminal complaint ‘by fraud,
25 corruption, perjury, fabricated evidence, or other wrongful conduct undertaken in bad faith.’”
26 May 18, 2018 Order at 5-8.¹

27 _____
28 ¹ *See Awabdy v. City of Adelanto*, 368 F.3d 1062, 1067 (9th Cir. 2004) (In California, there “is a long-standing principle of common law that a decision by a judge or magistrate to hold a

1 Washington claims she has done so by identifying the false and misrepresented facts
2 included in the police reports, namely the failure of those reports to include evidence from White’s
3 cell-phone recordings and the recorded Wrapp interview, as well as the facts that Washington
4 believes led White to “create” this situation (his jealousy and prior DV report). FAC ¶¶ 26-27.
5 But the FAC admits that the cell-phone recordings were “disclosed” within months of the arrest;
6 the District Attorney had access to them before the amended criminal complaint was filed that
7 added the trespass charge to the existing (and not withdrawn) domestic violence charge. The
8 District Attorney had access to the police reports as well, yet used prosecutorial discretion to add a
9 charge *and* continue to prosecute the DV charge. The *Smiddy* prosecutorial independence
10 presumption cannot be overcome by focusing on the first criminal complaint (when those cell-
11 phone recordings had not yet been produced) because the second criminal complaint and the
12 prosecutorial discretion it was based on superseded it.²

13 As to the unproduced Wrapp interview, White’s problem is that she identifies *no evidence*
14 from the that interview that could have exculpated her from either the DV or the trespass charges,
15 or was otherwise material to her being prosecuted. The “evidence” from that interview that
16 Washington relies on in her FAC is relevant only to her theory of why the incident played out as it
17 did (White’s jealousy initiated the argument and White’s motivation to avoid another he said/she
18 said situation and force Washington to leave). FAC ¶ 25.³ None of that evidence, however,

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20 defendant to answer after a preliminary hearing constitutes *prima facie*-but not conclusive-
21 evidence of probable cause” that can be rebutted “by showing that the criminal prosecution was
22 induced by fraud, corruption, perjury, fabricated evidence, or other wrongful conduct undertaken
23 in bad faith.”). *See also Newman v. County of Orange*, 457 F.3d 991, 995 (9th Cir. 2006) (“If
24 charges are filed, *Smiddy* protects the officers unless such evidence shows that officers interfered
25 with the prosecutor’s judgment in some way, by omitting relevant information, by including false
26 information, or by pressuring the prosecutor to file charges.”) (relying on *Smiddy v. Varney*, 665
27 F.2d 261, 267 (9th Cir. 1981)).

28 ² Washington’s reliance on *Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP*, 184 Cal. App.
4th 313, 333 (Cal. App. 2d Dist. 2010), for the proposition that a malicious prosecution action
does not have to be addressed to an entire lawsuit is misplaced. That discrete portions of a civil
lawsuit can lead to a malicious prosecution claim is irrelevant to the question of whether the
probable cause or prosecutorial discretion presumptions have been rebutted in a criminal
prosecution.

³ I assume for purposes of ruling on these motions that Washington has stated sufficient facts to
support her allegation that defendants intentionally withheld the existence of the Wrapp interview

1 undermines the evidence that the police officers undisputedly had: Washington injured White’s
2 face during their argument, giving them probable cause to arrest her for domestic violence, which
3 led to her prosecution for domestic violence.⁴

4 The problem for Washington is that she *admits* in the FAC that she committed domestic
5 violence against White as she removed his eyeglasses to get his attention. That she may have
6 accidentally injured White and done so while attempting to convince him to drive more safely to
7 protect themselves and the public is not material to the legal question of whether she could be
8 prosecuted for DV, even though her justifications may well have been significant to her defense at
9 trial. Similarly, the chain of probable cause *as to her* is not broken despite her view that White
10 should have been arrested for DV because *he* inflicted injuries on her during their argument (as
11 allegedly shown in White’s cell-phone recordings).⁵

12 The FAC, like the prior complaint, fails to identify *any facts* that Washington told the
13 arresting officers that were omitted (intentionally and in bad faith) from the police reports.
14 Washington complains of the “deference” Haynes and Wrapp showed to White “in terms of any
15 analysis of objective information about injuries that were reported,” FAC ¶ 27b, but fails to
16 identify *the facts* that were missing from the reports. The specific omissions that Washington
17 complains of, about White’s motivation and history of prior DV report (FAC ¶¶ 26-27), do not
18 undermine the fact that she caused an injury to White.

19 In sum, Washington still fails to plead necessary facts showing that Haynes and Wrapp
20
21 from the District Attorney.

22 ⁴ The same is true for Washington’s assertion that Haynes and Wrapp knew about White’s prior
23 DV report and yet failed to include it in their police reports about Washington’s arrest. There no
24 facts alleged to support that, and Washington provides no plausible theory why any information
about that prior incident should have been included in the arrest reports regarding Washington’s
arrest.

25 ⁵ In her Opposition, Washington contends that Haynes and Wrapp knew the injuries alleged by
26 White were not the product of DV by Washington and Wrapp “conceded” that in his recorded
27 interview with White. Oppo. at 8. But nothing in the portions of the interview cited by
28 Washington in her FAC support that contention. See FAC ¶ 25. In addition, the injury to White’s
face cause by Washington occurred in the car on the ride to White’s home and the cell-phone
recordings show only conduct after that point. The cell-phone recordings, therefore, could not be
relevant to whether Washington had injured White before that point.

1 “procured the filing of the criminal complaint” *against Washington* by fraud, corruption, perjury,
2 fabricated evidence, or other wrongful conduct undertaken in bad faith. As to White, that
3 Washington believes he was trying to protect himself from a charge of domestic violence does not
4 undermine the basis for *Washington’s prosecution*. She does not identify any *lies* that White told
5 Haynes or Wrapp, knowingly false facts that Haynes and Wrapp included in their police reports
6 that *led* to her prosecution, or facts known by Haynes or Wrapp that they failed to include in their
7 reports that could have caused the District Attorney to not charge her.⁶

8 Washington has, again, failed to allege facts to overcome the presumption of probable
9 cause and independent prosecutorial discretion, and her malicious prosecution claim fails as a
10 matter of law. Because my last Order clearly laid out what Washington needed to allege and
11 Washington has not identified (in opposition or at oral argument) any additional, as yet unalleged
12 facts to support these claims, this claim is dismissed WITH PREJUDICE.⁷

13 **II. EQUAL PROTECTION**

14 **A. Class of One**

15 As I noted in dismissing this claim in my prior Order, Washington needed to plead facts
16 showing that she was intentionally discriminated against and treated differently from others who
17 were similarly situated. May 18, 2018 Order at 10-11. In particular, I noted that Washington was
18 required to plead facts showing that given the information of which Haynes and Wrapp were
19 aware, they acted without a rational basis in arresting her. *Id.* at 11. The first problem, as noted
20 above, is that she admits she caused an injury to White during their argument. A rational basis –
21 in other words, probable cause – existed for her arrest. In her FAC, Washington argues that in the
22 prior DV report both sides complained of injuries, but there are no allegations that in the prior case

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24 ⁶ As I noted in my prior Order, Washington cannot get by on conclusory allegations that the police
25 reports were “biased or incomplete” or as phrased in the FAC “Defendants’ reports omit or
26 misrepresent facts” without identifying the missing or misstated facts. For example, Washington
does not allege that she told Haynes *any specific facts* regarding that night that were not included
in Haynes’ report that could have affected the District Attorney’s decision to prosecute her.

27 ⁷ I do not, therefore, need to address whether Washington has identified a constitutional right
28 violated by defendants’ conduct or her continued failure to allege facts showing that White
“controlled” Haynes and Wrapp or that the three formed a conspiracy sufficient to create liability
for White for the malicious prosecution claim.

1 either White or the other woman had visible injuries supporting probable cause to arrest, as here.

2 The second problem is that some forms of state action “by their nature involve
3 discretionary decisionmaking based on a vast array of subjective, individualized assessments.”
4 *Engquist v. Oregon Dept. of Agr.*, 553 U.S. 591 (2008). In those cases, “treating like individuals
5 differently is an accepted consequence of the discretion granted to governmental officials.” *Id.* at
6 603. No one was arrested as a result of the prior DV incident, where both White and the other
7 woman were on scene and interviewed. But in *this situation*, Washington was arrested after the
8 third call by White to the police department, and after he had been interviewed in person by
9 Haynes and Wrapp and shown them his injuries. This shows not only that there are significant
10 factual differences between the cases but highlights how individualized assessments of the type
11 involved in DV arrests do not fit within the “context of arm’s-length regulation” where class of
12 one equal protection liability may be found. *Id.* at 604. There is no evidence that Haynes and
13 Wrapp were exercising their discretion (or the Mill Valley police department more generally) with
14 respect to DV arrests in such a manner that Washington can be found to have been treated
15 differently and detrimentally based on only one, admittedly different, incident. *See, e.g., Towery*
16 *v. Brewer*, 672 F.3d 650, 660–61 (9th Cir. 2012) (requiring evidence of a “pattern of generally
17 exercising the discretion in a particular manner while treating one individual differently *and*
18 detrimentally”) (emphasis in original).

19 **B. Race**

20 Finally, in dismissing Washington’s equal protection based on race claim in my prior
21 Order, I noted that Washington failed to allege any facts demonstrating that she was arrested due
22 to *racial animus* on the part of the defendants. The only fact she could identify is that in the prior
23 incident, the other woman involved was white. In the FAC, she includes no allegations that
24 Haynes and Wrapp were out to get her because of her race. May 18, 2018 Order at 12; *but see*
25 *Awabdy v. City of Adelanto*, 368 F.3d at 1070 (allowing equal protection claim to go forward
26 where plaintiff alleged facts that defendants “were out to get him” based on racial animus). She
27 added no facts, circumstantial or otherwise, to cure this defect. Instead, she contends in her
28 oppositions that “common sense” and abundant statistical data show that Black Americans are

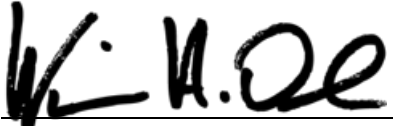
1 more likely to be arrested while driving because they are black. Oppo. to White at 13-14. That is
2 insufficient to allege a denial of equal protection here, especially in the context of an arrest for DV
3 based only on one admittedly different situation.

4 **CONCLUSION**

5 Washington's malicious prosecution and equal protection claims are DISMISSED. She
6 was explicitly told what was missing in my last Order, the defects were not cured in the FAC, and
7 she identified no additional facts that could be alleged in either her oppositions to the pending
8 motions or during oral argument. Accordingly, these claims are now DISMISSED WITH
9 PREJUDICE.

10 **IT IS SO ORDERED.**

11 Dated: August 28, 2018

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14 William H. Orrick
15 United States District Judge
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