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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TIMOTHY MAPP,

12 Plaintiff,

13 v.

14 ERNESSITA SANTOS and
15 COUNTY OF SAN DIEGO,

16 Defendants.

Case No.: 17cv2220-WQH-MDD

ORDER

17 HAYES, Judge:

18 The matter before the Court is the motion to dismiss filed by Defendants County of
19 San Diego (“the County”) and Ernessita Santos (ECF No. 17) and the motion for a
20 preliminary injunction filed by Plaintiff Timothy Mapp. (ECF No. 24).

21 **I. BACKGROUND**

22 On February 8, 2018, Plaintiff Timothy Mapp, proceeding pro se, filed the First
23 Amended Complaint (“FAC”), the operative pleading in this action, against Defendants
24 Ernessita Santos¹ and the County. (ECF No. 14).
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28 ¹ Defendants state that Ernessita Santos was erroneously sued as “Earnessita Santos.” (ECF No. 17 at 1).

1 On March 5, 2018, Defendants filed a motion to dismiss the FAC. (ECF No. 17).
2 On April 3, 2018, Plaintiff filed a response in opposition. (ECF No. 19). On April 9, 2018,
3 Defendants filed a reply. (ECF No. 21).

4 On April 23, 2018, Plaintiff filed a motion for a temporary restraining order and/or
5 preliminary injunction seeking an injunction preventing Defendants from suspending his
6 professional license pending entry of a final judgment in this action. (ECF No. 24).

7 On April 24, 2018, the Court issued an Order denying the motion for a temporary
8 restraining order and setting a briefing schedule on the motion for a preliminary injunction.
9 (ECF No. 25).

10 On May 4, 2018, Defendants filed a response in opposition to the motion for a
11 preliminary injunction. (ECF No. 26).

12 On May 15, 2018, Plaintiff filed a reply (ECF No. 30) and an “Objection to
13 Allegation of Non-Payment for Payments Due Prior to March 5th 2018.” (ECF No. 28).

14 **II. ALLEGATIONS OF FACT**

15 Plaintiff brings a cause of action pursuant to 42 U.S.C. § 1983 for violations of his
16 due process rights in connection with the suspension of his professional license for failure
17 to pay child support. Plaintiff alleges that Defendant Santos, a case worker for the
18 Department of Child Support Services (“DCSS”), “made a false report of non-payment to
19 the Department of Motor Vehicles” on April 18, 2017 and as a result “Plaintiff’s
20 professional license was suspended effective 18 May 2017.” (ECF No. 14 at 3). Plaintiff
21 alleges,

22 The Department of Motor Vehicles notified the Plaintiff of the suspension on
23 6 September 2017. The Plaintiff contacted D.C.S.S. the same day. Plaintiff
24 spoke to Edina Manny. Manny told the Plaintiff payment was received on 17
25 August 2017. Manny also told the Plaintiff he must speak to case worker
Santos if he wants his license back.

26 *Id.* Plaintiff alleges that he brought two lawsuits in the California Superior Court for the
27 County of San Diego dealing with the same or similar facts involved in this case, 37-2014-
28 000-38542-CU-NP-CTL and 37-2017-000-2417-CU-NP-CTL. Plaintiff alleges that he

1 raised the issue of a “false report of non payment resulting in suspension of professional
2 license and loss of employment” and that both state court cases were dismissed due to
3 government immunity. *Id.* at 6.

4 Plaintiff seeks damages and an injunction preventing Defendants “from suspending
5 Plaintiff’s professional license without court order first.” *Id.* at 7.

6 **III. REQUEST FOR JUDICIAL NOTICE**

7 Defendants filed a request for judicial notice in support of their motion to dismiss.
8 (ECF No. 17-2). Federal Rule of Evidence 201 provides that “[t]he court may judicially
9 notice a fact that is not subject to reasonable dispute because it . . . is generally known
10 within the trial court’s territorial jurisdiction; or . . . can be accurately and readily
11 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
12 201(b). “[U]nder Fed. R. Evid. 201, a court may take judicial notice of ‘matters of public
13 record.’” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack v.*
14 *South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial
15 notice of “proceedings in other courts, both within and without the federal judicial system,
16 if those proceedings have a direct relation to matters at issue.” *U.S. ex rel. Robinson*
17 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation and
18 internal quotations omitted).

19 The Court grants the request for judicial notice with respect to the following state
20 court documents pursuant to Federal Rule of Evidence 201: (1) Exhibit 5, Family Support
21 judgment/order from state court proceedings dated March 14, 2008; (2) Exhibit 6, Family
22 support order from state court proceedings dated November 18, 2014; (3) Exhibit 7, motion
23 filed in state court proceedings dated January 12, 2017; (4) Exhibit 8, Plaintiff’s
24 opposition/objection filed in state court proceedings dated February 7, 2017; (5) Exhibit 9,
25 court order from state court proceedings dated February 23, 2017. ECF No. 17-2. The
26 request is otherwise denied as unnecessary. *See, e.g., Asvesta v. Petroutsas*, 580 F.3d 1000,
27 1010 n.12 (9th Cir. 2009) (denying request for judicial notice where judicial notice would
28 be “unnecessary”).

1 **IV. MOTION TO DISMISS**

2 Defendants move the Court for dismissal of this action under Federal Rule of Civil
3 Procedure 12(b)(1). Defendants contend that the Court should abstain from adjudicating
4 this matter under the *Rooker-Feldman* doctrine and *Younger* abstention principles.
5 Defendants also move the Court for dismissal pursuant to Federal Rule of Civil Procedure
6 12(b)(6) for failure to state a claim. In his response to the motion to dismiss, Plaintiff
7 argues that he alleges adequate facts to state a claim under 42 U.S.C. § 1983. Plaintiff does
8 not specifically address Defendants’ arguments for dismissal on *Rooker-Feldman* and
9 *Younger* grounds but asserts that the Court properly has subject matter jurisdiction. (ECF
10 No. 19).

11 **A. Legal Standard**

12 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows a defendant to move
13 for dismissal on the grounds that the court lacks subject matter jurisdiction. Fed. R. Civ.
14 P. 12(b)(1). A jurisdictional attack pursuant to Rule 12(b)(1) may be facial or factual.
15 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “In a facial attack, the challenger asserts
16 that the allegations contained in the complaint are insufficient on their face to invoke
17 federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).
18 In a facial attack on subject matter jurisdiction under Rule 12(b)(1), the court assumes the
19 factual allegations of the complaint to be true and draws all reasonable inferences in favor
20 of the plaintiff. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009). However, the court
21 does not accept “the truth of legal conclusions merely because they are cast in the form of
22 factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
23 2003). “[I]n a factual attack, the challenger disputes the truth of the allegations that, by
24 themselves, would otherwise invoke federal jurisdiction.” *Safe Air for Everyone*, 373 F.3d
25 at 1039. “In resolving a factual attack on jurisdiction, the district court may review
26 evidence beyond the complaint without converting the motion to dismiss into a motion for
27 summary judgment.” *Id.* (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036,
28 1039 n.2 (9th Cir. 2003)). “Once the moving party has converted the motion to dismiss

1 into a factual motion by presenting affidavits or other evidence properly brought before the
2 court, the party opposing the motion must furnish affidavits or other evidence necessary to
3 satisfy its burden of establishing subject matter jurisdiction.” *Savage*, 343 F.3d at 1039
4 n.2.

5 **B. *Younger* Abstention**

6 “*Younger* and its progeny teach that federal courts may not, where circumstances
7 dictate, exercise jurisdiction when doing so would interfere with state judicial
8 proceedings.” *Canatella v. State of California*, 304 F.3d 843, 850 (9th Cir. 2002). “A
9 district court must abstain . . . on the basis of *Younger* where: (1) state proceedings are
10 ongoing; (2) important state interests are involved; and (3) the plaintiff has an adequate
11 opportunity to litigate federal claims in the state proceedings.” *Id.* (citing *Middlesex Cty.*
12 *Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982)). *Younger* principles
13 apply in an action for damages pursuant to 42 U.S.C. § 1983 in addition to suits for
14 injunctive and declaratory relief. *Gilbertson v. Albright*, 381 F.3d 965, 975 (9th Cir. 2004).
15 In an action for damages, “relief is not discretionary, and it may not be available in the
16 state proceedings.” *Id.* at 980. Accordingly, “an abstention-based stay order, rather than a
17 dismissal, is appropriate when damages are at issue.” *Id.* at 975.

18 In this case, Plaintiff’s claim arises from Defendants’ efforts to enforce state court
19 orders directing Plaintiff to pay child support.² The record reflects that state court
20 proceedings are ongoing. In 2008, the Superior Court of California for the County of San
21 Diego issued an order determining that Plaintiff owed child support arrearages for the
22 period of November 30, 1991 to September 30, 2017. (Exhibit 5, ECF No. 17-3 at 29–30).
23 On November 18, 2014, the state court issued an order precluding suspension of Plaintiff’s
24 driver’s license without a prior court order. (Exhibit 6, ECF No. 17-3 at 31–32). Upon a
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27 ² Plaintiff alleges that Defendant Santos was acting pursuant to section 17520 of the California Family
28 Code. Section 17520 provides that an agency can seek the suspension of a driver’s license for an
individual who is not in compliance with court-ordered child or family support payments. *See* Cal. Fam.
Code § 17520.

1 motion by DCSS, the state court dissolved the order requiring DCSS to seek a court order
2 prior to suspending Plaintiff’s license. (Exhibit 9, ECF No. 17-3 at 47–48). The state court
3 further stated that Plaintiff remained under a continuing order to pay arrears on a monthly
4 basis. *Id.* Plaintiff filed an ex parte request seeking the release of his driver’s license
5 suspension in September 2017. (Exhibit 10, ECF No. 17-3 at 49–51). Plaintiff also asserts
6 in the FAC that he has filed two previous cases in state court raising the issue of “false
7 report of non payment resulting in suspension of professional license and loss of
8 employment.” (ECF No. 14 at 6).

9 *Younger* abstention further requires that important state interests are involved in the
10 litigation. In *H.C. ex rel. Gordon v. Koppel*, the Ninth Circuit Court of Appeals determined
11 that *Younger* abstention applied to a case where plaintiffs sought “to invoke the power of
12 federal courts to alter the course of pending state custody proceedings.” 203 F.3d 610, 612
13 (9th Cir. 2000). The Court of Appeals determined that important state interests were
14 implicated because “[f]amily relations are a traditional area of state concern.” *Id.* at 613
15 (quoting *Moore v. Sims*, 442 U.S. 415, 435 (1979)). The Court further stated that “a state
16 has a vital interest in protecting the ‘authority of the judicial system, so that its orders and
17 judgments are not rendered nugatory.’” *Id.* (quoting *Juidice v. Vail*, 430 U.S. 327, 336
18 n.12 (1977)). The Court stated that this was particularly important in the field of domestic
19 relations over which federal courts lack general jurisdiction and in which state courts “have
20 a special expertise and experience.” *Id.* In this case, Plaintiff seeks relief that would
21 interfere with ongoing state child support proceedings. The Court concludes that this
22 action implicates important state interests in family relations and protecting the authority
23 of the judicial system.

24 Finally, Plaintiff has an adequate opportunity to litigate his federal due process
25 claims in state court. *See Canatella*, 304 F.3d at 850. Plaintiff states in the FAC that he
26 has previously asserted the same claims before the state court. The record reflects that the
27 state court recently lifted an injunction that had provided the same relief Plaintiff seeks in
28 this federal action. *See Koppel*, 203 F.3d at 613 (stating that a case where a plaintiff seeks

1 wholesale intervention into an ongoing state domestic dispute and the “vacation of existing
2 interlocutory orders” is “precisely the type of case suited to *Younger* abstention”).

3 The Court determines that *Younger* abstention is appropriate in this due process
4 challenge under section 1983 in light of the ongoing state child support proceedings. In
5 cases where damages are sought and *Younger* applies, the Ninth Circuit Court of Appeals
6 has stated that a stay, rather than dismissal is generally warranted. *See Gilbertson*, 381
7 F.3d at 975. However, in *Gilbertson*, the Court of Appeals stated, “We do not foreclose
8 the possibility of a unique case where damages are sought and *Younger* principles apply
9 but dismissal is indicated for some other reason. A damages claim that is plainly frivolous,
10 for example, might not save an action.” *Id.* at 982 n.18. In this case, Plaintiff seeks an
11 injunction preventing Defendants “from suspending Plaintiff’s professional license without
12 court order first” as well as damages in the sum of \$15.00 and punitive damages in the sum
13 of \$168,000. (ECF No. 14 at 7). The allegations of the FAC do not clearly identify the
14 due process violation that occurred with respect to the suspension of Plaintiff’s license.³
15 Plaintiff fails to provide any facts supporting his assertion of compensatory and punitive
16 damages as currently pleaded. Accordingly, the Court concludes that dismissal without
17 prejudice on *Younger* abstention grounds is warranted under these circumstances.⁴

18 V. PRELIMINARY INJUNCTION

19 Although the Court has denied Plaintiff’s request for a temporary restraining order,
20 Plaintiff’s motion for a preliminary injunction “enjoining defendant SAN DIEGO
21 COUNTY, and all persons acting on its behalf, from SUSPENDING THE DRIVERS
22 LICENSE OF TIMOTHY MAPP (PURSUANT TO CALIFORNIA FAMILY CODE
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25 ³ Plaintiff seeks an injunction preventing the suspension of his license without court order. In his
26 application for a preliminary injunction, Plaintiff provides an order from the Superior Court of California
27 for the County of San Diego on April 20, 2018 requiring that Plaintiff’s license be released. (ECF No. 14
28 at 6).

⁴ The Court does not reach Defendants’ alternate grounds for dismissal under the *Rooker-Feldman*
doctrine and Federal Rule of Civil Procedure 12(b)(6).

1 17520, pending entry by the Court of a final judgment in this action” remains pending
2 before the Court. (ECF No. 24 at 1). In opposition to the motion, Defendants argue that
3 Plaintiff fails to satisfy his burden of demonstrating that he is entitled to a preliminary
4 injunction in this matter.

5 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should
6 not be granted unless the movant, by a clear showing, carries the burden of persuasion.”
7 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotation omitted). To obtain
8 preliminary injunctive relief, a movant must show “that he is likely to succeed on the
9 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
10 the balance of equities tips in his favor, and that an injunction is in the public interest.”
11 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Am. Trucking*
12 *Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

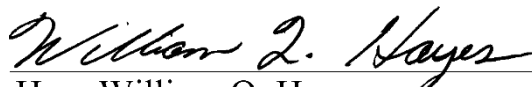
13 The Court has dismissed the FAC in this case on *Younger* abstention principles in
14 light of state court proceedings. Accordingly, the Court cannot conclude that Plaintiff has
15 demonstrated a likelihood of success on the merits. The motion for a preliminary
16 injunction is denied. (ECF No. 24).

17 VI. CONCLUSION

18 IT IS HEREBY ORDERED that Defendants’ motion to dismiss is GRANTED.
19 (ECF No. 17). The FAC is dismissed without prejudice. If no motion to file an amended
20 complaint is filed within 30 days, the Clerk of the Court shall close the case.

21 IT IS FURTHER ORDERED that Plaintiff’s motion for a preliminary injunction is
22 DENIED. (ECF No. 24).

23 Dated: June 28, 2018

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25 Hon. William Q. Hayes
26 United States District Court
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