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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS PEREZ,  
  
Plaintiff,  
  
v.  
  
SAN DIEGO COUNTY et al.,  
  
Defendants.

Case No.: 20cv2501-CAB-AHG  
  
**ORDER REGARDING  
DEFENDANTS’ MOTIONS TO  
DISMISS [Doc. Nos. 5 and 6]**

Plaintiff, a non-prisoner, proceeding *pro se*, has filed a complaint asserting various federal and state claims arising out of a traffic stop on October 25, 2020. [Doc. No. 1.] On March 5, 2021, Defendant County of San Diego (erroneously sued as San Diego County) filed a motion to dismiss Plaintiff’s Complaint. [Doc. No. 5.] On March 5, 2021, Defendants State of California, by and through the California Highway Patrol, Officer J. Jalomo, and Sergeant Matheson (hereinafter the “CHP Defendants”) filed a motion to dismiss. [Doc. No. 6.] On March 24, 2021, Plaintiff filed an opposition to the motions to dismiss. [Doc. No. 12.] On April 1, 2021, Defendants filed replies to the opposition. [Doc. Nos. 13, 14.] The motions are fully briefed, and the Court deems them suitable for submission without oral argument. For the reasons set forth below, the motions to dismiss are **GRANTED in part**.

1 ALLEGATIONS OF COMPLAINT

2 Plaintiff alleges that a CHP officer named Officer J. Jalomo pulled him over on  
3 October 25, 2020 without probable cause while Plaintiff was driving in his private  
4 vehicle. Complaint at ¶ 2. Officer Jalomo allegedly used a confrontational tone,  
5 demanded Plaintiff’s driver’s license, and stated that Plaintiff was not free to go and  
6 would be issued a citation. *Id.* at ¶¶ 3-4. Officer Jalomo allegedly also told Plaintiff that if  
7 he did not sign the citation Plaintiff “would be stripped of his freedom and his property  
8 seized and thrown in jail.” *Id.* at ¶ 4. Plaintiff alleges that he then showed Officer Jalomo  
9 his driver’s license while under duress. *Id.* at ¶ 6. Officer Jalomo then ordered Plaintiff to  
10 step out of the vehicle and said that the vehicle would be impounded.<sup>1</sup> *Id.* at ¶ 7.

11 Plaintiff refused to step out of his vehicle, and Officer Jalomo called for back-up.  
12 *Id.* at ¶¶ 7-8. Plaintiff alleges that a second CHP officer then arrived and trespassed into  
13 the vehicle to forcibly remove Plaintiff. *Id.* at ¶ 9. He alleges that the CHP officers then  
14 violated his Fourth Amendment rights and his right to compensation for the taking of  
15 private property by impounding his vehicle. *Id.* at ¶ 10.

16 Plaintiff alleges that another CHP officer acting in a supervisory role also came to  
17 the scene, was deliberately indifferent to the violations of Plaintiff’s rights, and failed to  
18 “remedy the officer’s actions and behavior.” [sic]. *Id.* at ¶ 11. Plaintiff further alleges that  
19 “the San Diego County California Highway Patrol” has a policy and practice of  
20 facilitating the type of conduct alleged in the Complaint,

21 [B]y failing to adequately investigate, punish, and discipline prior instances  
22 of similar misconduct, thereby leading CHP employees to believe their  
23 actions will never be scrutinized and in that way directly encouraging future  
abuses such as those affecting Plaintiff.

24 *Id.* at ¶ 23.

25 Based on the above allegations, Plaintiff has brought this lawsuit against Officer

26 \_\_\_\_\_  
27 <sup>1</sup> The vehicle report attached to Plaintiff’s complaint indicates that the vehicle was being towed because  
28 Mr. Perez’ license was suspended. [Doc. No. 1 at 12.]

1 Jalomo, unknown officers, the CHP, and the County asserting a claim for unreasonable  
2 search and seizure in violation of 42 U.S.C. § 1983. He has also asserted claims against  
3 unspecified defendants for false arrest; failure to intervene; unlawful trespass pursuant to  
4 25 CFR § 11.411 and California Penal Code section 602.8; and violation of State of  
5 California Executive Order No. D-78-89.

## 6 DISCUSSION

### 7 A. Legal Standard.

8 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the  
9 defense that the complaint “fail[s] to state a claim upon which relief can be granted”—  
10 generally referred to as a motion to dismiss. The Court evaluates whether a complaint  
11 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil  
12 Procedure 8(a)(2), which requires a “short and plain statement of the claim showing that  
13 the pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual  
14 allegations,’ . . . it [does] demand . . . more than an unadorned, the defendant-unlawfully-  
15 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
16 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

17 “To survive a motion to dismiss, a complaint must contain sufficient factual  
18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*  
19 (quoting *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially  
20 plausible when the collective facts pled “allow . . . the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged.” *Id.* There must be  
22 “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely  
23 consistent with’ a defendant’s liability” fall short of a plausible entitlement to relief. *Id.*  
24 (quoting *Twombly*, 550 U.S. at 557). The Court need not accept as true “legal  
25 conclusions” contained in the complaint, *id.*, or other “allegations that are merely  
26 conclusory, unwarranted deductions of fact, or unreasonable inferences,” *Daniels-Hall v.*  
27 *Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

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1 B. Analysis.

2 There are six counts in the Complaint. Counts I – III are claims against various  
3 defendants for constitutional violations pursuant to 42 U.S.C. Section 1983. Count V is  
4 entitled “Failure to Intervene” and discusses violation of “Plaintiff’s constitutional rights”  
5 but does not indicate if it is brought under Section 1983. Counts IV and VI are state law  
6 claims.

7 1. State law claims.

8 Plaintiff’s state law claims as to all defendants fail for several reasons. First, the  
9 state law claims appear to be precluded by California Government Code section 950.2,  
10 which provides that “a cause of action against a public employee . . . for injury resulting  
11 from an act or omission in the scope of his employment as a public employee is barred  
12 unless a timely claim has been filed against the employing public entity.” Here, Plaintiff  
13 has not alleged compliance with Section 950.2, nor has he addressed the matter in his  
14 opposition.

15 Second, Plaintiff’s claims for unlawful trespass under 25 C.F.R. §11.411 and  
16 California Penal Code section 602.8 (Count VI), and for violation of Executive Order No.  
17 D-78-89 (Count IV), fail because those regulations/statutes/orders do not provide a  
18 private right of action. 25 C.F.R. Section 11.411 is part of a body of regulations “for the  
19 administration of justice for Indian tribes in those areas of Indian country where tribes  
20 retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal  
21 courts have not been established to exercise that jurisdiction.” 25 C.F.R. §11.102. Thus,  
22 while Section 11.411 provides a means to criminally prosecute trespassing in “Indian  
23 country,” it does not provide a private right of action in a civil action. Similarly, Penal  
24 Code section 602.8, which is not limited to “Indian country,” also provides a means to  
25 criminally prosecute trespass, but does not provide a private right of action. Finally,  
26 there is also no private right of action under Executive Order D-78-89, which pertains to  
27 takings of real property for public improvements or public works. Therefore, the state  
28 law claims are barred.

1           2. Defendant County.

2           As noted by the County, none of the allegations in the Complaint pertain to the  
3 County. The allegations pertain solely to the CHP and the alleged actions of CHP  
4 officers. The CHP, however, is a state law enforcement agency that is not affiliated with  
5 the County.<sup>2</sup> Because the CHP is a state law enforcement agency that is not affiliated  
6 with the County and Plaintiff’s allegations pertain solely to the CHP, the actions of CHP  
7 officers, and unspecified policies and practices of the CHP, the Complaint fails to state  
8 facts sufficient to sustain any claim for relief against the County.

9           3. Defendant CHP.

10          The CHP is a California state agency and is therefore immune from suit under the  
11 Eleventh Amendment. *See McCain v. California Highway Patrol*, No. 11-1265, 2011  
12 WL 3439225, at \*3(E.D. Cal. Aug. 4, 2011)(citations omitted).

13          Counts I-III, and possibly V, are brought pursuant to Section 1983. However,  
14 “[n]either states nor state officials acting in their official capacities are ‘person[s]’ within  
15 the meaning of section 1983 when sued for damages.” *Will v. Michigan Dept. of State*  
16 *Police*, 491 U.S. 58, 71, fn. 10 (1989). Therefore, the Section 1983 damages claims  
17 against the CHP and any CHP officials acting in their official capacity are barred.

18          4. Sargeant Matheson.

19          Defendant Sergeant Matheson’s name is mentioned only once, in the first  
20 paragraph of the Complaint, when Plaintiff names Sergeant Matheson as someone he is  
21 suing. [Doc. No. 1.] Thereafter, there are no factual allegations about Sergeant  
22 Matheson. Therefore, the complaint fails to state a claim against that defendant.

23          5. Federal Rule of Civil Procedure 8.

24          Defendants argue that the entire Complaint should be dismissed pursuant to Rule  
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26 <sup>2</sup> Defendant’s request for judicial notice [Doc. No. 5-3] is **GRANTED** pursuant to Fed.R.Evid. 201  
27 because it is a fact “generally known within the trial court’s territorial jurisdiction.” *See also O’Leary v.*  
28 *California Highway Patrol*, 923 F.2d 862 (9th Cir. 1991)(“Because the CHP is a state agency . . . and  
the State of California has not consented to suit . . . both the State and the CHP enjoy sovereign  
immunity and cannot be sued under section 1983.”)

1 41(b) for failure to comply with Rule 8 because the complaint does not allege any facts  
2 about the status of the underlying criminal action and/or citation issued by Officer Jalomo  
3 to Plaintiff. The Court agrees that this information is necessary to determine whether the  
4 case may be barred by the *Younger*<sup>3</sup> abstention doctrine, the *Rooker Feldman*<sup>4</sup> abstention  
5 doctrine, or the *Heck*<sup>5</sup> doctrine regarding invalidating state court convictions. However,  
6 these issues are better addressed in a motion to dismiss pursuant to Federal Rule of Civil  
7 Procedure 12(b)(1) or in a post-pleading motion. Therefore, the motion to dismiss the  
8 entire complaint on this basis is DENIED WITHOUT PREJUDICE to being asserted in a  
9 Rule 12(b)(1) motion, or a post-pleading motion.

#### 10 CONCLUSION

11 For the reasons set forth above, the Court **HEREBY ORDERS:**

- 12 1. The motions to dismiss the state law claims (Counts IV and VI) are  
13 **GRANTED WITHOUT LEAVE TO AMEND** as to all defendants;
- 14 2. The motions to dismiss the remaining claims are **GRANTED WITH LEAVE**  
15 **TO AMEND;**
- 16 3. The motion to dismiss the entire complaint for failure to comply with Rule 8  
17 regarding the status of the underlying criminal action and/or citation issued by  
18 Officer Jalomo to Plaintiff is **DENIED WITHOUT PREJUDICE** to being  
19 asserted in a Rule 12(b)(1) motion or a post-pleading motion;
- 20 4. Plaintiff shall have until **May 27, 2021**, to file a First Amended Complaint that  
21 cures the deficiencies noted above. If no First Amended Complaint is filed by  
22 that date, the case shall be **CLOSED** without further court order;
- 23 5. Plaintiff is cautioned that the First Amended Complaint must be complete in  
24 itself without reference to his original pleading. Defendants not named and any  
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26 <sup>3</sup> *Younger v. Harris*, 401 U.S. 37 (1971).

27 <sup>4</sup> *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Court of Appeals v.*  
28 *Feldman*, 460 U.S. 462, 486-87(1983).

<sup>5</sup> *Heck v. Humphrey*, 512 U.S. 477, 486-87.

1 claims not re-alleged in the First Amended Complaint will be considered  
2 waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner &*  
3 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading  
4 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.  
5 2012) (noting that claims dismissed with leave to amend which are not re-  
6 alleged in an amended pleading may be “considered waived if not repled.”)

7 **IT IS SO ORDERED.**

8 Dated: April 27, 2021



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10 Hon. Cathy Ann Bencivengo  
11 United States District Judge  
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