



1 required to file an amended complaint at this juncture, *but see* Fed. R. Civ. P. 15(a) (addressing  
2 amending as a matter of course). The Court has serious doubts as to Plaintiff’s ability to state a claim  
3 for retaliation under Title VII,<sup>1</sup> but it will defer ruling on that issue until Plaintiff has actually filed an  
4 amended complaint (if he chooses to do so). Once that amended complaint is filed, the Court will  
5 determine whether subject matter jurisdiction exists and, in particular, whether Plaintiff has stated a  
6 federal cause of action. *See* Fed. R. Civ. P. 12(h)(3); *see also Reed v. Lieurance*, 863 F.3d 1196, 1207  
7 (9th Cir. 2017) (district court may sua sponte dismiss for failure to state a claim).

8 While the Court is deferring ruling on subject matter jurisdiction to afford Plaintiff an  
9 opportunity to file an amended complaint, the Court feels compelled to remind Plaintiff and his counsel  
10 of their obligations under Rule 11 of the Federal Rules of Civil Procedure in drafting and filing any such  
11 amended complaint. In the limited filings in this case, Plaintiff has already provided what appear to be  
12 directly contradictory factual assertions. For example, Plaintiff attempted to plead diversity jurisdiction  
13 on the premise that “Defendants are not known at this time. Plaintiff has **no knowledge** of which states  
14 Defendants belong to.” Compl. at ¶ 5(b) (emphasis added). In his current filing, however, Plaintiff  
15 asserts that he has reason to believe one of the defendants is a supervisor working for Nye County.  
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17 <sup>1</sup> Plaintiff appears to believe that a supervisor’s false accusations made against him to the FBI,  
18 standing alone, would constitute retaliation under Title VII. Docket No. 4 at 2. That is incorrect. The  
19 elements of a *prima facie* retaliation claim are that (1) the employee engaged in protected activity, (2) he  
20 suffered an adverse employment action, and (3) there is a causal link between the protected activity and the  
21 adverse employment action. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1093 (9th Cir. 2008). Plaintiff has  
22 not identified any engagement in protected activity, let alone protected activity causally linked to an adverse  
23 employment action. Moreover, Plaintiff provides no indication of any adverse employment action against  
24 him and, instead, his complaint makes clear that he maintains his position with the Nye County Sheriff’s  
25 Department. *See* Compl. at ¶ 9.

24 Additionally, and significantly, a plaintiff cannot bring a claim for retaliation under Title VII without  
25 first exhausting his administrative remedies by filing a timely charge with the EEOC. *See, e.g., Vasquez v.*  
26 *County of Los Angeles*, 349 F.3d 634, 644 (9th Cir. 2003). Given that Plaintiff is claiming he does not want  
27 his supervisor to know of this retaliation claim, Docket No. 4 at 2, it seems obvious that he has not  
28 exhausted his administrative remedies with the EEOC.

In short, Plaintiff cannot simply shoehorn his state tort claim allegations of false reports to the FBI  
into a claim for employment retaliation under Title VII.

1 Docket No. 4 at 2. It is difficult to imagine how Plaintiff could allege (on March 7, 2018) that he had  
2 “no knowledge” of the doe defendants’ citizenship, while changing course (on March 22, 2018) to say  
3 he believes one of the defendants works for Nye County. *Cf. Lew v. Moss*, 797 F.2d 747, 750 (9th Cir.  
4 1986) (citizenship for diversity purposes is determined based on a number of factors, including “place  
5 of employment”).

6 In short, Plaintiff is permitted to file an amended complaint if he chooses. Such amended  
7 complaint must be filed by March 30, 2018. In the alternative, Plaintiff may consider it to be the better  
8 course to simply file a notice of voluntary dismissal and to pursue his claims in state court. *See* Fed. R.  
9 Civ. P. 41(a) (plaintiffs may voluntarily dismiss their cases prior to the filing of an answer or motion for  
10 summary judgment and, absent an earlier filed-case involving the same claim, such dismissal is without  
11 prejudice).<sup>2</sup>

12 IT IS SO ORDERED.

13 DATED: March 23, 2018

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16 NANCY J. KOPPE  
17 United States Magistrate Judge  
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28 <sup>2</sup> Plaintiff appears to seek leave from the Court to withdraw his complaint. Docket No. 4 at 2. Leave  
is not required in the current litigation posture. *See* Fed. R. Civ. P. 41(a).