

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Stephan Condodemetraky

v.

Civil No. 20-cv-631-JD
Opinion No. 2021 DNH 102

Gordon MacDonald, et al.

O R D E R

Stephan Condodemetraky, proceeding pro se, brought this suit alleging violations of the federal constitution and state law against several New Hampshire officials and employees.¹ The defendants move to dismiss the First Amended Complaint. Condodemetraky objects and moves for leave to file a proposed Second Amended Complaint. The defendants object to the proposed amendment of the complaint.

I. Motion to Dismiss

In considering a motion to dismiss, the court asks whether the plaintiffs have made allegations that are sufficient to render their entitlement to relief plausible. [Manning v. Boston Med. Ctr. Corp.](#), 725 F.3d 34, 43 (1st Cir. 2013). The court

¹ The defendants are Attorney General Gordon MacDonald; Robert Quinn, Commissioner of Safety of the New Hampshire Department of Safety; James Boffetti; John Garrigan; Gregory Albert; David Hilts; Elizabeth Bielecki, Director of the Division of Motor Vehicles; and Priscilla Vaughn, Supervisor at the Department of Safety.

accepts all well-pleaded facts as true and draws all reasonable inferences in the non-moving party's favor. [Hamann v. Carpenter](#), 937 F.3d 86, 88 (1st Cir. 2019). The court, however, disregards conclusory allegations that simply parrot the applicable legal standard. [Manning](#), 725 F.3d at 43. To determine whether a complaint survives a motion to dismiss, the court should use its "judicial experience and common sense," but should also avoid disregarding a factual allegation merely because actual proof of the alleged facts is improbable. [Id.](#) Because Condodemetraky filed his complaint pro se, the court construes it liberally. [Foss v. Marvic, Inc.](#), 994 F.3d 57, 63 n.7 (1st Cir. 2021) (citing [Erickson v. Pardus](#), 551 U.S. 89, 94 (2007)).

A. Background

Condodemetraky operated a business called "DustyOldCars.com" ("DOC") which dealt in buying, selling, repairing, and consigning cars. As suggested by its name, DOC's business focused on "inexpensive and materially problematic classic and antique vehicles" Doc. 11 ¶ 12. DOC's specialty was in cars worth less than \$20,000, and nearly all cars sold by DOC required repair or restoration work to be in a condition saleable at a retail price.

In 2014, DOC began accepting vehicles on consignment. DOC customers were required to sign a consignment agreement before DOC would accept a vehicle for consignment. In 2015, DOC "realized" that it was losing money on restorations it had been performing on consigned vehicles. Id. ¶ 20. Despite significant growth in the inventory of the business, DOC determined that it needed to charge for repair and restoration work on consigned vehicles to remain solvent. As a result, in 2015, DOC changed its "consignment agreement" to allow it to title consigned vehicles in its name and to make repairs to consigned cars as needed and at its sole discretion.

After DOC began obtaining titles for cars that were "consigned" to it and began charging consigners for repair and restoration work, consigners began making "significant complaints" to the New Hampshire Attorney General's office. Id. ¶ 22. The consigners alleged that DOC illegally took ownership of their cars and had overcharged them for the repair work or that DOC failed to complete the work. DOC changed its consignment agreement to allow it to title consigned vehicles in its name and to "correct any items misrepresented by cosigner [sic] at the execution of this agreement." Id. ¶ 23.

Nevertheless, "[s]ome consumers later loudly complained, despite having signed the documents allowing [DOC to take title], that the company had illegally taken ownership of their

vehicle, and obtained a NH Title in the company's name." Id.
¶ 24. In October 2015, the New Hampshire Attorney General's Office issued a subpoena requiring Condodemetraky to appear at its offices. Additional subpoenas were issued to DOC's employees in April 2016. In September and October 2016, a Merrimack County grand jury issued subpoenas to DOC employees.

From June 2016 through December 2016, the DMV began refusing to process requests by Condodemetraky and/or DOC to obtain certificates of title in his or DOC's name. DOC declared bankruptcy in December 2016.

In May 2017, Condodemetraky was indicted for title fraud, forgery, and witness tampering. In June 2017, Condodemetraky was indicted for theft by deception, in which the state alleged that Condodemetraky misrepresented the sale price of vehicles to lower the amount that he had to pay consignors. In February 2018, Condodemetraky was found guilty of theft by deception.²

In November 2018, Condodemetraky was indicted for securities fraud. The state alleged that Condodemetraky misled an investor, withheld information, and told the investor not to speak with investigators when DOC's bankruptcy began.

² The New Hampshire Supreme Court affirmed Condodemetraky's conviction for theft by deception. [State v. Condodemetraky](#), 2020 WL 6058582, at *2 (Sept. 21, 2020).

In November 2019, Condodemetraky was acquitted of the May 2017 title fraud, forgery, and witness tampering charges after a jury trial. The charges for securities fraud have not been resolved.

Condodemetraky alleges in the complaint that the Attorney General's office knew about "credible exculpatory evidence that was presented in multiple depositions," that its witnesses had a motive to lie, and that its witnesses' stories did not make sense. Id. ¶ 105. Condodemetraky alleges that the "wrongful prosecution of the Plaintiff continues to this day in October of 2020." Id. ¶ 121.

Liberally construed, the First Amended Complaint alleges the following claims:

- Count I, malicious prosecution (Fourth Amendment and state law);³
- Count II, violation of due process (New Hampshire constitution, the Fifth Amendment, and the Fourteenth Amendment);
- Count III, civil conspiracy to injure Condodemetraky's reputation, business operations, status in the community, and financial condition;
- Count IV, breach of contract;
- Count V, defamation;
- Count VI, intentional interference with business relationships; and

³ The First Amended Complaint is unclear about whether Condodemetraky alleges a malicious prosecution claim under the Fourth Amendment. Because Condodemetraky proceeds pro se, the court liberally construes Count I to allege malicious prosecution claims under both New Hampshire state law and the Fourth Amendment.

- Count VII, negligent interference with prospective economic relations.

Condodemetraky requests money damages, attorneys' fees and costs, and "such other relief as this Court may deem right and just including injunctive and declaratory relief as may be required in the interest of justice." Id. at 41.

Condodemetraky does not indicate what specific injunctive or declaratory relief he wants the court to order in his complaint.

B. Discussion

The defendants move to dismiss on the ground that the court should abstain under [Younger v. Harris, 401 U.S. 37 \(1971\)](#), because of the ongoing state proceedings against Condodemetraky. The defendants also argue that Condodemetraky fails to allege cognizable claims in Counts I (malicious prosecution) and II (due process violation) and that the court should decline supplemental jurisdiction over Condodemetraky's state law claims. Condodemetraky objects to dismissal.

1. Younger Abstention

The defendants assert that, consistent with Younger, Condodemetraky's suit should be dismissed to the extent it constitutes an attempt to enjoin or interfere with the ongoing state prosecutions. The defendants add that the court should also abstain from Condodemetraky's claims for damages because

awarding damages would be equivalent to a declaration that the defendants' conduct violated Condodemetraky's federal constitutional rights as part of an ongoing prosecution. Condodemetraky responds that his suit does not interfere with ongoing state prosecutions and that the defendants cannot use the fact that they have indicted him multiple times to avoid claims involving criminal charges for which he has been acquitted.

"The Younger doctrine reflects a 'longstanding public policy against federal court interference with state court proceedings,' and is based on two conceptual foundations." [Mass. Delivery Ass'n v. Coakley, 671 F.3d 33, 40 \(1st Cir. 2012\)](#) (quoting Younger, 401 U.S. at 43). "[I]t is based on a notion that 'courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied relief.'" Id. "[M]ore importantly, Younger rests upon basic notions of federalism and comity, and also on a related desire to prevent unnecessary duplication of legal proceedings." Id. To determine whether Younger applies, the court must ascertain whether the requested relief would interfere with an ongoing state judicial proceeding that implicates an important state interest and provides an opportunity for the federal plaintiff to advance his

constitutional challenge. [Id.](#); [see also Middlesex Cnty. Ethics Comm. v. Garden State Bar Assoc.](#), 457 U.S. 423, 432 (1983).

Generally, Condodemetraky alleges that, in the course of their investigation of him and his business, the defendants engaged in various acts that violated his constitutional rights. According to the complaint, the investigation led to three separate criminal proceedings against Condodemetraky. Condodemetraky was acquitted in one prosecution (for title fraud, forgery, and witness tampering), he was convicted in another (for theft by deception), and one prosecution (for securities fraud) is ongoing. While there is one prosecution ongoing and one in which he was convicted, Condodemetraky states in the First Amended Complaint that he "brings this pleading regarding the charges that have been dismissed or [of] which he has been acquitted. The Plaintiff will amend in the future as other charges are resolved in his favor." Doc. 11 ¶ 159.⁴

Therefore, Condodemetraky's complaint and requests for relief appear to be limited to the title fraud, forgery, and witness tampering charges of which he was acquitted. On the other hand, the defendants argue that the facts behind

⁴ Condodemetraky's statement that he intends to amend the complaint in the future if other charges are resolved in his favor does not mean he would necessarily be allowed to do so. [See Fed. R. Civ. P. 15\(a\)\(2\)](#) (requiring the opposing party's assent or the court's leave to amend a pleading when amendment is unavailable as a matter of course).

Condodemetraky's claims involve the state's investigation, which implicates all three prosecutions. For that reason, they assert that, in addition to rejecting any injunction that stops the ongoing prosecution, the court should "abstain from reaching Mr. Condodemetraky's damages claim under § 1983, as awarding Mr. Condodemetraky damages on that claim would be tantamount to declaring that the defendants' conduct in relation to the pending prosecutions violated Mr. Condodemetraky's federal constitutional rights." Doc. 14-1 at 13.

To the extent that Condodemetraky seeks to enjoin or prevent his prosecution by the state on the remaining charges of securities fraud, which are ongoing, Younger bars that relief. See Jackson v. Worcester Police Dep't., 2010 WL 4273821, at *2-*3 (D. Mass. Oct. 26, 2010) (dismissing case under Younger because Fourth and Fifth Amendment claims challenging police investigation tactics could be "understood as challenges to the legality of [the plaintiffs'] underlying arrests" relative to ongoing state prosecutions). Additionally, under Heck v. Humphrey,⁵ Condodemetraky cannot obtain money damages under § 1983 for an allegedly unconstitutional conviction or other harm where a judgment in his favor would imply that his

⁵ The defendants did not raise Heck as a potential bar to Condodemetraky's complaint. The court, however, can raise the issue sua sponte. Shapard v. Attea, 2016 WL 5871360, at *4 (W.D.N.Y. Oct. 7, 2016).

conviction or sentence is invalid, unless he can demonstrate that the conviction has already been invalidated. See [512 U.S. 477, 486-87 \(1994\)](#); [O'Brien v. Town of Bellingham, 943 F.3d 514, 528-29 \(1st Cir. 2019\)](#).

Younger and Heck, however, do not bar Condodemetraky's complaint in its entirety because some of the theories of recovery alleged in Condodemetraky's complaint do not call into question the validity of the ongoing proceedings or his conviction. For example, if Condodemetraky succeeded on his due process claim premised on the state's failure to process requests for certificates of title, it would not call into question the ongoing proceedings for securities fraud or his conviction for theft by deception. Moreover, without further factual development of the grounds for the claims, it is unclear at this time whether or to what extent awarding damages or other relief to Condodemetraky would interfere with the ongoing state prosecution or undermine his conviction. See [Bey v. Sullivan, 2011 WL 2680730, at *2 \(D. Mass. July 6, 2011\)](#) (declining, for the moment, to dismiss pro se complaint under Heck because "without further factual development, it cannot be determined definitively" whether it applies).

Nonetheless, as explained below, Condodemetraky's federal claims are not cognizable on other grounds, and the court declines to exercise supplemental jurisdiction over

Condodemetraky's state claims. Accordingly, it is unnecessary to parse out exactly which of Condodemetraky's claims might have interfered with the ongoing state court prosecution if they had been successful. See [Marshall v. Bristol Superior Court](#), 753 F.3d 10, 17 (1st Cir. 2014) (stating that there was no reason to determine whether Younger abstention applied to claim that is patently without merit); [Amadi v. McManus](#), 2018 WL 5555062, at *4 (D. Mass. Oct. 26, 2018) (dismissing claims for money damages under Rule 12(b)(6) even though a stay of the claims would have been necessary under Younger if no independent basis for dismissal existed).

2. Additional Grounds for Dismissal

a. Eleventh Amendment

The defendants argue that Condodemetraky's claims for damages under § 1983 and his state-law claims should be dismissed to the extent they are brought against the defendants in their official capacities due to sovereign immunity pursuant to the Eleventh Amendment. Condodemetraky did not respond to this argument.

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

U.S. Const. amend. XI. "Absent an explicit waiver from the state, the Eleventh Amendment bars 'official capacity suits' against state actors in federal court unless the suit seeks prospective injunctive relief." [Caisse v. DuBois](#), 346 F.3d 213, 218 (1st Cir. 2003) (citing [Rosie D. v. Swift](#), 310 F.3d 230, 234 (1st Cir. 2002)). Moreover, state-law claims brought in federal court against nonconsenting state actors are barred regardless of the relief sought. [Raygor v. Regents of Univ. of Minn.](#), 534 U.S. 533, 540-41 (2002) (reaffirming that the Eleventh Amendment bars state law claims brought against nonconsenting state actors in federal court).

The Eleventh Amendment bars Condodemetraky's claims against the defendants in their official capacities for money damages for violations of the federal constitution (Count I, in part, and Count II) and his claims for any relief alleging violations of state law (Count I, in part, and Counts III through VII). See [Raygor](#), 534 U.S. at 540-41; [Caisse](#), 346 F.3d at 218; [Coggeshall v. Mass. Bd. of Registration of Psychologists](#), 604 F.3d 658, 662 (1st Cir. 2010) ("To the extent that the members of the Board are sued in their official capacities, they stand in the shoes of the state and enjoy the same immunity as does the Board."). As to the exception for prospective injunctive relief, Condodemetraky does not ask for any specific injunctive relief nor identify in his objection to the motion to dismiss

what injunctive relief he would request that the court order.⁶ For those reasons, all defendants are dismissed to the extent they are named in their official capacities. The Attorney General and Commissioner Quinn are named only in their official capacities and are therefore dismissed as party defendants for this reason.

b. Count I (Fourth Amendment Malicious Prosecution)

Next, the defendants from the Attorney General's office argue that, to the extent they are named in their personal capacities, they are entitled to absolute prosecutorial immunity as to a claim for malicious prosecution under the Fourth Amendment. The defendants add that, to the extent Condodemetraky's allegations of malicious prosecution are premised on actions they took during the investigation, Condodemetraky does not have a Fourth Amendment right not to be investigated and that Condodemetraky has not alleged facts showing that he was "seized", which is an element of a Fourth

⁶ In his objection, Condodemetraky suggests that the court should not dismiss his request for declaratory or injunctive relief because the defendants "can be expected to repeatedly and continually harass" him. Doc. 19 ¶ 15. As noted above, however, Younger constrains the court's ability to halt an ongoing state-court prosecution. In any event, as discussed below, Condodemetraky fails to state any federal claims upon which relief could be granted, so he could not be granted injunctive relief even if he had better articulated the injunctive relief that he is seeking.

Amendment malicious prosecution claim. The defendants argue that, even if Condodemetraky had been seized, Condodemetraky premises his allegations on misconduct that occurred before the seizure rather than the seizure itself, so there was no Fourth Amendment violation.

Condodemetraky did not respond to the prosecutorial immunity argument. Instead, he contends that the defendants' malfeasance has been a continuing process, so it is not true that the alleged misconduct occurred only before his alleged seizure.⁷ For that reason, he argues that he can bring a claim based on the investigation.

Under the Fourth Amendment, a plaintiff can succeed on a "malicious prosecution" theory if he demonstrates that the defendant law enforcement officers caused him to be seized pursuant to a legal process unsupported by probable cause and that criminal proceedings terminated in the plaintiff's favor.

⁷ Condodemetraky also asserts in his objection that Nashua police officers (who are not named as defendants in this case) seized several vehicles from him and that a warrant was not obtained for the seizure until after Condodemetraky demanded the vehicles back. Doc. 19 ¶ 34. This assertion was not included as an allegation in the First Amended Complaint and, in any event, it is not sufficient to remedy the flaws in his malicious prosecution claim. Condodemetraky also states that the defendants "took steps to prevent Plaintiff from obtaining title to his vehicles, effectively and unrightfully depriving him of ownership and consequently property." Id. ¶ 35. This assertion also does not support Condodemetraky's malicious prosecution claim under the Fourth Amendment.

[Hernandez-Cuevas v. Taylor](#), 723 F.3d 91, 100-01 (1st Cir. 2013).

The first element requires the plaintiff to “demonstrate that the actions or statements of law enforcement officers [that resulted in his seizure] ‘amounted to deliberate falsehood or . . . reckless disregard for the truth.’” [Hernandez-Cuevas v. Taylor](#), 836 F.3d 116, 125 (1st Cir. 2016).⁸

In the First Amended Complaint, Condodemetraky alleges that the defendants are liable for malicious prosecution because their investigation was “crooked” and a “witch hunt” that resulted in “the full destruction” of his business. Doc. 11 ¶¶ 138, 141, 148. These conclusory allegations, however, are not sufficient to state a claim for malicious prosecution under the Fourth Amendment. Condodemetraky does not allege facts showing that he was seized under the meaning of the Fourth Amendment without probable cause or that any seizure that occurred resulted from any defendant’s action or statement that

⁸ To the extent Condodemetraky’s malicious prosecution claim concerns the defendants’ initiation of the state’s prosecution for title fraud, forgery, and witness tampering, the defendants from the New Hampshire Attorney General’s office are absolutely immune in their individual capacities. See, e.g., [Burns v. Reed](#), 500 U.S. 478, 490-91 (1991) (reiterating that prosecutors are absolutely immune from § 1983 liability in initiating and presenting a state’s criminal case as long as the conduct is intimately associated with the judicial phase of the criminal process); [Filler v. Kellett](#), 859 F.3d 148, 153 (1st Cir. 2017).

was deliberately false or made with reckless disregard for the truth.

Condodemetraky alleges that he was arrested at some point during the investigation, but he does not say when he was arrested nor on what charge. He does not indicate whether a warrant was issued for the arrest. Condodemetraky does not connect the misconduct he has alleged about the investigation or subsequent prosecution with the arrest, nor does he indicate how any actions or statements made by the defendants with deliberate or reckless disregard for the truth resulted in that arrest. See [Hernandez-Cuevas, 836 F.3d at 125](#). For those reasons, Count I is dismissed to the extent a Fourth Amendment malicious prosecution claim is alleged.⁹

c. Count II (Due Process Claims under Fifth and Fourteenth Amendments)

The defendants argue that the First Amended Complaint fails to state any due process claims on which relief can be granted. They contend that Condodemetraky's allegations about the state's investigation of him and his business do not support a due process claim because there is no constitutional due process right not to be investigated. The defendants also argue that

⁹ In Count I, Condodemetraky also raised a malicious prosecution claim under state law. The court addresses Condodemetraky's state law claims separately below.

Condodemetraky has not identified any protected interest in which he holds a property right of which he was deprived without due process.

Condodemetraky responds that the defendants' malfeasance consonant with but extraneous to their investigation of him is conduct that can "trigger Plaintiff's due process concerns." Doc. 19 at 7. He contends that these actions - including statements to the press and statements made to individuals during the investigation - "ultimately acted as the catalyst which forced Plaintiff into bankruptcy, depriving him of his property interests and ultimately forcing the closure of his business." Id.¹⁰ He also argues that the defendants interfered with his ability to receive titles for vehicles, which deprived him of his ability to do business.

Generally, the due process guarantees of the Fifth and Fourteenth Amendments require that a state provide a person notice and an opportunity to be heard before it deprives that person of a protected interest. [Garcia-Gonzalez v. Puig-Morales](#), 761 F.3d 81, 87-88 (1st Cir. 2014); [Miller v. Town of Wenham, Ma.](#), 833 F.3d 46, 52 (1st Cir. 2016). For purposes of whether the Fifth and Fourteenth Amendments provide those

¹⁰ Condodemetraky also references the seizure of cars by the Nashua police in support of his due process claim. That allegation is not in the First Amended Complaint.

procedural guarantees, protected “[p]roperty interests are created and defined by state law.” See [Frank v. City of Manchester](#), No. 9-CV-389-PB, 2011 WL 3489888, at *3 (D.N.H. Aug. 10, 2011) (citing [Leis v. Flynt](#), 439 U.S. 438, 441 (1979)). A property interest exists only when a person has a legitimate entitlement to the interest. See [Bd. of Regents v. Roth](#), 408 U.S. 564, 577 (1972) (“[A] person clearly must have more than an abstract need or desire for [the benefit]. He must have more than a unilateral expectation of it.”).

The First Amended Complaint fails to state a claim for a procedural due process violation. The Fifth and Fourteenth Amendments do not guarantee due process relative to the wrongful acts alleged by Condodemetraky, such as “inspiring” individuals to file civil suits against Condodemetraky or his business or speaking to the press about the ongoing investigation. See [Paul v. Davis](#), 424 U.S. 693, 711-12 (1976) (holding that conduct by a state official that causes reputational harm to an individual does not implicate a protected property or liberty interest); [Aponte v. Calderon](#), 284 F.3d 184, 195-96 (1st Cir. 2002) (“Reputational harms must be attached to some other alteration in status in order to raise a valid due process claim.”).

Condodemetraky also alleges that the defendants refused to process his applications to obtain certificates of title between June 2016 and December 2016, prior to his indictment for title

fraud in May 2017. State law, however, does not support a finding that Condodemetraky had a property interest in receiving certificates of title for consigned vehicles. Under New Hampshire state law, the Department of Motor Vehicles has discretion to refuse to issue a certificate of title "if it has reasonable grounds to believe that . . . [t]he applicant is not the owner of the vehicle" or "[t]he application contains a false or fraudulent statement." RSA 261:11. The Department of Motor Vehicles also has discretion, if it is not satisfied as to the ownership of the vehicle, to withhold issuing a certificate of title until the applicant "presents documents reasonably sufficient to satisfy the director as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it," or to issue title but require the applicant to pay a bond equal to one plus one-half of the value of the vehicle. RSA 261:10.

Condodemetraky was under investigation for title fraud in connection with his business during the time period when the DMV is alleged to have withheld certificates of title, and, under New Hampshire law, the DMV is vested with discretion to withhold or deny a person a certificate of title under those circumstances. Therefore, Condodemetraky has not shown that he was entitled to obtain certificates of title from the state under the circumstances he has alleged. [Chongris v. Bd. of](#)

[Appeals](#), 811 F.2d 36, 43 (1st Cir. 1987) (holding that applicant for “common victualler’s license” had no protectable interest where statute stated licensing authorities “may” grant licenses and that authorities had discretion to determine whether license was warranted by “the public good”). For the foregoing reasons, Count II, to the extent a federal claim for a due process violation under the Fifth Amendment or Fourteenth Amendment is alleged, is dismissed.

3. Supplemental Jurisdiction

The defendants argue that, if the court dismisses Condodemetraky’s federal claims, which it has, the court should decline to exercise supplemental jurisdiction over the remaining state law claims. See [28 U.S.C. § 1367\(c\)](#) (“The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction.”). While a district court, in some circumstances, may use its discretion to exercise supplemental jurisdiction even after the basis for its original jurisdiction has disappeared, it is prudent for a court to decline to exercise supplemental jurisdiction when it has dismissed all original jurisdiction claims during the early stages of a case. See [28 U.S.C. § 1367\(c\)\(3\)](#); [Rossi v. Gemma](#), [489 F.3d 26, 38-39 \(1st Cir. 2007\)](#) (“As a general principle, the

unfavorable disposition of a plaintiff's federal claims at the early stages of a suit . . . will trigger the dismissal without prejudice of any supplemental state-law claims.”). Because the court has dismissed all claims over which it has original jurisdiction during the early stages of this case, the court declines to exercise supplemental jurisdiction over the remaining state law claims asserted by Condodemetraky.

II. Motion to Amend Complaint¹¹

In addition to opposing the defendants’ motion to dismiss the First Amended Complaint, Condodemetraky filed a separate motion to amend his First Amended Complaint and submitted a proposed Second Amended Complaint. The defendants object to amendment of the complaint on the grounds that amendment would be prejudicial to them and that the Second Amended Complaint does not cure the deficiencies of the First Amended Complaint such that amendment would be futile.

After a party has used its right to amend a pleading “once as a matter of course” as permitted in [Federal Rule of Civil Procedure 15\(a\)\(1\)](#), “a party may amend its pleading only with

¹¹ In some cases, the court will consider a motion to amend before deciding a pending motion to dismiss. Here, however, because of the similarity between the proposed Second Amended Complaint and the First Amended Complaint, it was more appropriate to consider the motion to amend subsequent to deciding the motion to dismiss.

the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." [Fed. R. Civ. P. 15\(a\)\(2\)](#); see also LR 15.1(a). Futility - meaning that the proposed amended complaint fails to state a claim - is a sufficient reason to deny amendment under Rule 15(a)(2). [Sykes v. RBS Citizens, N.A.](#), 2 F. Supp. 3d 128, 133 (D.N.H. 2014); see also [Nikitine v. Wilmington Tr. Co.](#), 715 F.3d 388, 390 (1st Cir. 2013).¹²

The legal bases for the claims alleged in the proposed Second Amended Complaint are the same as the legal bases for the claims alleged in the First Amended Complaint. The facts alleged in the Second Amended Complaint are also largely the same as the facts alleged in the First Amended Complaint. None of the changes in the proposed Second Amended Complaint would cure the defects of the First Amended Complaint already discussed. Therefore, amendment would be futile.

For example, as to Count I, Condodemetraky clarifies in his Second Amended Complaint that his claim is brought under both federal and state standards for malicious prosecution. As explained above, however, the court construed the First Amended Complaint to include a federal malicious prosecution claim under

¹² Condodemetraky has already amended his complaint once and the defendants did not assent to a second amendment. See doc. 11; doc. 20. Therefore, Condodemetraky requires the court's leave to amend the complaint. [Fed. R. Civ. P. 15\(a\)\(2\)](#).

the Fourth Amendment, but the facts alleged are insufficient to state a plausible claim for relief. Condodemetraky adds allegations that the defendants acted to harm a company that his parents own, Tradz LLC, but Condodemetraky lacks standing to raise claims based on injuries suffered by Tradz LLC.

[Fideicomiso De La Tierra Del Cano Martin Pena v. Fortuno](#), 604 F.3d 7, 16 (1st Cir. 2010) (stating that, to have constitutional standing to sue, the plaintiff must have “suffered an injury in fact ‘causally connected to the challenged conduct’ and capable of being remedied through suit.”).

Similarly, as to Count II, Condodemetraky expands his allegations of due process violations to include the DMV’s refusal to issue certificates of title for his parents’ business, Tradz LLC. As noted, Condodemetraky lacks standing to raise claims based on alleged injuries to Tradz LLC rather than to himself. See id. The proposed Second Amended Complaint also states that “Plaintiff’s property was unlawfully seized by Defendants” and that “[h]is vehicles were seized without due process.” Doc. 20-1 ¶ 143. These are conclusory allegations and do not meet the standard necessary to state a claim for relief under Rule 12(b)(6). See Manning, 725 F.3d at 43.

Further, the proposed Second Amended Complaint does not add new federal claims that were not considered as to the First Amended Complaint. Accordingly, the circumstances that compel

the court to decline to exercise supplemental jurisdiction over Condodemetraky's state law claims would be as applicable to the proposed Second Amended Complaint as to the First Amended Complaint. For those reasons, the proposed Second Amended Complaint is futile, and the motion to amend is denied.

Conclusion

For the foregoing reasons, the defendants' motion to dismiss (doc. no. 14) is granted. Condodemetraky's motion for leave to file a Second Amended Complaint (doc. no. 20) is denied. The case is dismissed.

The Clerk of Court shall enter judgment accordingly and close the case.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

June 28, 2021

cc: Stephen Condodemetraky, pro se
Counsel of Record.