APPENDIX A
FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PEYMAN ROSHAN, *Plaintiff - Appellant.* v. DOUGLAS R. MCCAULEY, *Defendant – Appellee.*	No. 24-659 D.C. NO. 4:23-cv-05819-JST OPINION

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted February 11, 2025
San Francisco, California

Filed March 11, 2025

Before: John B. Owens, Lawrence VanDyke, and Anthony D. Johnstone, Circuit Judges.

Opinion by Judge Owens

SUMMARY*

Younger abstention

The panel affirmed the district court's dismissal of Peyman Roshan's federal lawsuit seeking to enjoin the California Department of Real Estate ("DRE") disciplinary proceeding against him.

After the California Supreme Court suspended Roshan's law license for misconduct, the DRE initiated a reciprocal disciplinary proceeding against Roshan's real estate license. Roshan sued the DRE in federal court for alleged constitutional violations. Citing *Younger v. Harris*, 401 U.S. 37 (1971), the district dismissed the lawsuit and held that it must abstain from hearing the matter in favor of the pending state DRE disciplinary proceeding.

The panel held that the district court correctly dismissed Roshan's case under the *Younger* abstention doctrine. Applying the *Younger* requirements, the panel noted that Roshan did not contest that the state proceedings were ongoing and implicated important state interests. This court's precedents foreclosed his argument that the state proceedings were inadequate because he could raise his federal claims in judicial review of the DRE action. Finally, the DRE proceeding was quasi-criminal given that (1) DRE initiated the action after conducting an investigation, (2) DRE filed an "accusation" against Roshan that was akin to a complaint; and (3) the proceeding's purpose was to

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

determine whether Roshan should be sanctioned—via the
suspension or revocation of his real estate license. Because the *Younger* requirements were satisfied and Roshan has not made a showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate, the district court properly abstained.

COUNSEL

Peyman Roshan (argued), Pro Se, San Francisco, California, for Plaintiff-Appellant.

Jack C. Nick (argued), Deputy Attorney General, Business Litigation; Michael D. Gowe, Supervising Deputy Attorney General; Tamar Pachter, Senior Assistant Attorney General; Rob Bonta, California Attorney General; California Attorney General's Office, Los Angeles, California; for Defendant-Appellee.

OPINION

OWENS, Circuit Judge:

Peyman Roshan, a lawyer and real estate broker, appeals from the district court's dismissal of his federal lawsuit to enjoin the California Department of Real Estate ("DRE") disciplinary proceeding against him. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

I. BACKGROUND

After extensive California State Bar litigation, the California Supreme Court in 2021 suspended

Roshan's law license for misconduct. Shortly thereafter, the DRE—an administrative agency charged with the "protection" of "buyers of real property and those persons dealing with real estate licensees"—initiated a reciprocal disciplinary proceeding against Roshan's real estate license. Cal. Bus. & Prof. Code § 10050(b); *see also id.* § 10177(f) (disciplinary actions by another agency may be grounds for license suspension or revocation). Roshan's fight against the DRE proceeding—which included attempts to subpoena and depose the California Supreme Court and California State Bar—led him to sue the DRE in federal court for alleged constitutional violations.

Citing *Younger v. Harris*, 401 U.S. 37 (1971), the district court dismissed the lawsuit and held that it must abstain from hearing the matter in favor of the pending state DRE disciplinary proceeding. It concluded that the DRE action was "quasi-criminal," as, among other things, it could result in the suspension or revocation of Roshan's real estate license. Roshan timely appealed.

II. DISCUSSION

A. Standard of Review

We review the district court's decision to abstain on *Younger* grounds de novo. *Cook v. Harding*, 879 F.3d 1035, 1038 (9th Cir. 2018).

B. The District Court Correctly Dismissed Roshan's Appeal Under the *Younger* Abstention Doctrine

1. *Younger* Abstention

"[A]bstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Sprint*

Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 82 (2013) (citation omitted). "[R]ooted in overlapping principles of equity, comity, and federalism," *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018), *Younger* abstention is a "national policy forbidding federal courts to stay or enjoin [certain] pending state court proceedings," *Younger*, 401 U.S. at 41. "*Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2)are quasi-criminal enforcement actionsor involve a state's interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges." *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 63–64 (9th Cir. 2024) (citation omitted).

Roshan does not contest that the first and third *Younger* criteria apply to the DRE proceeding. And because he can raise his federal claims in judicial review of the DRE action, *see* Cal. Gov't Code § 11523; Cal. Civ. Proc. Code §§ 1085, 1094.5, our precedents foreclose his argument that the state proceedings are inadequate, *see Kenneally v. Lungren*, 967 F.2d 329, 332–33 (9th Cir. 1992) (collecting cases and rejecting argument that California's administrative procedures do not allow "meaningful opportunity" to raise federal claims).[1]

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[1] *Williams v. Reed*, which held that state courts may not apply state administrative exhaustion requirements "to immunize state officials from § 1983 suits," does not change the calculus. 604 U.S. ___, No. 23- 191, 2025 U.S. LEXIS 550, at *4 (U.S. Feb. 21, 2025). Unlike *Williams*, this case concerns not exhaustion but abstention, which the Supreme Court has explained is "fully consistent" with the principle "that litigants need not exhaust their administrative remedies prior to bringing a § 1983 suit in federal court." *Ohio C.R. Comm'n v. Dayton*

Thus, the only question is whether the DRE proceeding is quasi-criminal. If the answer is yes, then Roshan's request to enjoin the proceeding "would interfere in a way that *Younger* disapproves." *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004) (en banc).

2. The DRE Proceeding Is Quasi-Criminal Under *Younger*

"[T]hree 'exceptional' categories" of proceedings warrant *Younger* treatment: (1) "state criminal prosecutions," (2) "certain 'civil enforcement proceedings,'" and (3) "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78 (quoting *New Orleans Public Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989) ("*NOPSI*")).

This case implicates the second category. "[D]ecisions applying *Younger* to instances of civil enforcement have generally concerned state proceedings 'akin to a criminal prosecution.'" *Id.* at 79 (citation omitted). "Such enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Id.* "[A] state actor is routinely a party to the state proceeding and often initiates the action," and "[i]nvestigations are commonly involved, often culminating in the filing of a formal complaint or charges." *Id.* at 79–80.

In *Middlesex County Ethics Committee v. Garden State Bar Association*, this Court held that *Younger* barred federal courts from enjoining a pending state

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Christian Schs. Inc., 477 U.S. 619, 627 n.2 (1986) (abstaining from a § 1983 suit under *Younger*).

bar disciplinary action. 457 U.S. 423, 425, 437 (1982). That action was "akin to a criminal proceeding" because "an investigation and formal complaint preceded the hearing, an agency of the State's Supreme Court initiated the hearing, and the purpose of the hearing was to determine whether the lawyer should be disciplined for his failure to meet the State's standards of professional conduct." *Sprint*, 571 U.S. at 81 (characterizing *Middlesex*).

The DRE proceeding here is similarly quasi-criminal. The DRE, a state agency acting pursuant to its authority to "exercis[e] its licensing . . . and disciplinary functions" for the "[p]rotection of the public," initiated the action. Cal. Bus. & Prof. Code § 10050.1; *see also id.* § 10100. Before doing so, it performed an investigation, as indicated by its awareness of the order suspending Roshan's law license and its request that Roshan complete an "Interview Information Statement" for it to review. It then filed an "accusation" against Roshan, which is akin to a complaint: It is "a written statement of charges that" identifies "the acts or omissions with which the respondent is charged" and "specif[ies] the statutes and rules that the respondent is alleged to have violated," Cal. Gov't Code § 11503(a), and it must be served on the respondent, *see id.* § 11505(a).

And critically, the DRE proceeding's purpose is to determine whether Roshan should be sanctioned—via the suspension or revocation of his real estate license, *see* Cal. Gov't Code § 11503(a))—for "act[ing] or conducting [him]self in a manner that would have warranted the denial of [his] application for a real estate license" or performing "acts that, if done by a real estate licensee, would be grounds for the

suspension or revocation of a California real estate license," Cal. Bus. & Prof. Code § 10177(f). This disciplinary purpose is "the quintessential feature of a *Younger*-eligible 'civil enforcement action.'" *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 589 (9th Cir. 2022). "Because a license [is] at issue and could be suspended or revoked, the state proceedings . . . [a]re 'quasi-criminal.'" *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir. 2003); *cf. Gibson v. Berryhill*, 411 U.S. 564, 576–77 (1973) (observing that "administrative proceedings looking toward the revocation of a license to practice medicine may in proper circumstances command the respect due court proceedings").[2]

Sprint is not to the contrary. In that case, the Supreme Court declined to abstain from enjoining proceedings before a state utilities board concerning a national telecommunications company's obligation to pay access fees to a local telecommunications company.

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[2] Our conclusion is bolstered by the DRE's procedures, which provide for formal hearings that include the taking of testimony, *see* Cal. Gov't Code § 11511; the finding of facts, *see id.* §§ 11507.6, 11507.7 (discovery), 11512 (admission of evidence), 11513 (party rights respecting witnesses and other evidence), 11515 (taking of notice); and the granting of relief, *see id.* §§11511.5, 11511.7 (settlement), 11517(c)(2) (power to adopt, alter, or reject administrative law judge's decision), 11518.5(a) (corrections), 11519 (stays of execution, restitution), 11521 (reconsideration), 11522 (license reinstatement, penalty reduction). *See Fresh Int'l Corp. v. Agric. Labor Rels. Bd.*, 805 F.2d 1353, 1357 n.3 (9th Cir. 1986) (noting as relevant to the *Younger* inquiry the California agency's authority to "take testimony, make findings of fact and grant relief"); *Hirsh v. Justs. of the Sup. Ct.*, 67 F.3d 708, 712 (9th Cir. 1995) (noting as relevant another California agency's authority to "conduct[] a formal hearing and make[] findings").

571 U.S. at 72. There, unlike the proceeding at issue here, "[a] private corporation, Sprint, initiated the action. No state authority conducted an investigation into Sprint's activities, and no state actor lodged a formal complaint against Sprint." *Id.* at 80. Moreover, the state's "adjudicative authority . . . was invoked to settle a civil dispute between two private parties, not to sanction Sprint for commission of a wrongful act." *Id.*

Roshan contends that in *Seattle Pacific*, we held that *Sprint* vitiated *Younger*'s applicability to California administrative proceedings. *See* 104 F.4th 50. Not so. In *Seattle Pacific*, we declined to apply *Younger* "[b]ecause there [we]re no ongoing enforcement actions or any court judgment" from which to abstain. *Id.* at 64. We emphasized that there was no "state court proceeding" or "administrative proceeding or other enforcement action." *Id.* However, there is an ongoing administrative proceeding here. As the Supreme Court has observed, "lower courts have been virtually uniform in holding that the *Younger* principle applies to pending state administrative proceedings in which an important state interest is involved." *Ohio C.R. Comm'n*, 477 U.S. at 627 n.2. Indeed, since *Sprint*, our sister circuits have continued to abstain from state administrative proceedings dealing with licensing and disciplinary matters in particular. *See, e.g.*, *Gonzalez v. Waterfront Comm'n of the N.Y. Harbor*, 755 F.3d 176, 180–85 (3d Cir. 2014) (employee discipline); *Doe v. Univ. of Ky.*, 860 F.3d 365, 368–71 (6th Cir. 2017) (school discipline); *Zadeh v. Robinson*, 928 F.3d 457, 472–73 (5th Cir. 2019) (medical discipline); *Igbanugo v. Minn. Off. of Laws. Pro. Resp.*, 56 F.4th 561, 565–66 (8th Cir. 2022) (attorney discipline); *Wassef v. Tibben*, 68 F.4th 1083, 1086–91 (8th Cir. 2023) (medical discipline); *Leonard v. Ala. State. Bd. of*

Pharm, 61 F.4th 902, 908–15 (11th Cir. 2023) (pharmacy ethics rules).

In effect, Roshan's "challenge amounts to an attack on California's administrative review procedures as a whole." *Baffert*, 332 F.3d at 619. But there is no *Younger* exception for California administrative proceedings. *See id.* at 621–22 (abstaining under *Younger* from a California administrative action suspending a horse-racing license). Thus, as a quasi- criminal enforcement proceeding, the DRE proceeding is "of a character to warrant federal-court deference." *Middlesex*, 457 U.S. at 434.

III. CONCLUSION

Because the *Younger* requirements are satisfied and Roshan has not made out a "showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate," the district court properly abstained. *Arevalo*, 882 F.3d at 765–66 (quoting *Middlesex*, 457 U.S. at 435).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
MAR 11 2025
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN,

Plaintiff - Appellant.

v.

DOUGLAS R. MCCAULEY,

Defendant – Appellee.

No. 24-659

D.C. NO. 4:23-cv-05819-JST

Northern District of California, Oakland

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

Appellant's motion to file a supplemental brief (Dkt. No. 55) is DENIED.

APPENDIX C
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEYMAN ROSHAN, *Plaintiff.* v. DOUGLAS R. MCCAULEY, *Defendant.*	Case. No. 23-cv-05819-JST **ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION; ORDER GRANTING MOTION TO DISMISS** Re: ECF Nos. 17, 28

Before the Court is Plaintiff Peyman Roshan's motion for preliminary injunction, ECF No. 17, and Defendant Commissioner Douglas R. McCauley's motion to dismiss, ECF No. 28. For the reasons stated below, the Court will deny Roshan's motion for preliminary injunction, and grant Commissioner McCauley's motion to dismiss.[1]

I. BACKGROUND

[1] The Court finds the motion suitable for disposition without oral argument and hereby vacates the February 15, 2024 motion hearing. *See* Fed. R. Civ. P. 78(b); Civil L.R. 7-1(b).

For the purpose of resolving the present motions, the Court accepts as true the following factual allegations from the complaint, ECF No. 1.

Roshan alleges that he "has obtained a license from the California Department of Real Estate ("DRE")," and "is an attorney admitted to practice in California." *Id.* ¶ 2. He brings this action against Douglas R. McCauley, the Commissioner of the DRE, as well as Does 1–10, whose "capacities and role in violating the rights of Plaintiff are unknown at this time." *Id.* ¶¶ 3–4.

On December 20, 2022, the DRE filed an accusation against Roshan, which is to be decided by an Administrative Law Judge in the Office of Administrative Hearings ("OAH"). *Id.* ¶¶ 6, 20, 53. Pursuant to California Business and Professions Code Section 10177, the accusation seeks to suspend or revoke Roshan's real estate license based upon the California Supreme Court's 2021 order suspending Roshan's license to practice law. *Id.* ¶¶ 5, 8. The accusation references the Supreme Court's order suspending Roshan's license to practice law. It does not, however, specifically identify which violation(s) Roshan was found to have committed by the State Bar Review Department. Roshan therefore contends that there is no "express finding of a violation of law" on which the DRE may discipline him. *Id.* ¶¶ 7, 12, 14.

Roshan's complaint further alleges that he served various subpoenas and requests for production of documents on the California State Bar, the DRE, the California State Bar Custodian of Records, and the California Supreme Court Custodian of Records. *Id.* ¶¶ 19–23. Because all of

Roshan's requests were denied, he alleges that he "has no procedural avenue in the DRE disciplinary proceedings to obtain evidence supporting [his] defenses." *Id.* ¶ 24. The remaining allegations in Roshan's complaint generally challenge the constitutionality of State Bar proceedings, as well as the California Supreme Court's suspension order. *See generally id.* ¶¶ 26– 47. Roshan's complaint seeks injunctive relief and relief under *Ex Parte Young* enjoining any disciplinary action by the DRE, as well as declaratory judgment that the DRE "does not have jurisdiction over attorney disciplinary matters," and that the attorney disciplinary proceedings initiated against him did not meet "minimum due process requirements." *Id.* at 25–28.

On November 11, 2023, Roshan filed a motion for a temporary restraining order and order to show cause for preliminary injunction that sought to enjoin Commissioner McCauley "from continuing any [DRE] proceedings based upon the California Supreme Court's order suspending Roshan's license to practice law." ECF No. 2 at 2. In denying Roshan's motion for a TRO and his order to show cause, the Court reasoned that Roshan "ha[d] not 'clearly show[n]' that the loss of his license [was] certainly impending before the adverse party [could] be heard in opposition." ECF No. 7 at 2 (quoting Fed. R. Civ. P. 65(b)(1)). The Court subsequently denied Roshan's motion for reconsideration on November 20, 2023. ECF Nos. 9, 12.

On December 7, 2023, Roshan filed a motion for preliminary injunction. ECF No. 17. He again asks the Court to issue a preliminary injunction "restraining and enjoining [Commissioner McCauley]

. . . from continuing any [DRE] proceedings based upon the California Supreme Court's order suspending Roshan's license to practice law." ECF No. 17 at 2. Six days later, on December 13, 2023, Commissioner McCauley filed a motion to dismiss Roshan's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). ECF No. 28. Because the two motions contain overlapping arguments, the Court will resolve them together.

II. JURISDICTION

Roshan alleges that this Court has subject matter jurisdiction under 28 U.S.C. § 1331.

III. LEGAL STANDARD

A. Motion for Preliminary Injunction

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

To grant preliminary injunctive relief, a court must find that "a certain threshold showing [has been] made on each factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). Assuming that this threshold has been met, 7"serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can

support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted).

B. Motion to Dismiss

1. Fed. R. Civ. P. 12(b)(1)

A motion to dismiss under Rule 12(b)(1) tests the subject matter jurisdiction of the Court. *See* Fed R. Civ. P. 12(b)(1). Subject matter jurisdiction is a threshold issue that goes to the power of the court to hear the case, and it must exist at the time the action is commenced. *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988).

A motion to dismiss on *Younger* abstention grounds may be brought under Rule 12(b)(1). *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 100 n.3 (1998) (treating *Younger* abstention as jurisdictional); *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1057 (9th Cir. 2016) (holding that "a *Younger* dismissal should be treated like a Rule 12(b)(1) dismissal for lack of subject-matter jurisdiction").

2. Fed. R. Civ. P. 12(b)(6)

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant

is liable for the misconduct alleged." *Id.* While this standard is not a probability requirement, "[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (internal quotation marks and citation omitted). In determining whether a plaintiff has met this plausibility standard, the Court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

IV. JUDICIAL NOTICE

Before turning to the merits, the Court addresses Commissioner McCauley's request for judicial notice. ECF No. 28-1. "Generally, district courts may not consider material outside the pleadings when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Judicial notice provides an exception to this rule. *Id.* Pursuant to Federal Rule of Evidence 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." If a fact is not subject to reasonable dispute, the court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2).

Commissioner McCauley requests judicial notice of (1) the complaint in *Roshan v. Lawrence,* Case No. 3:20-cv-04770-AGT (*Lawrence I*) (ECF No. 1); (2) the January 18, 2021 order in *Lawrence I* (ECF No. 34); the complaint in *Roshan v. Lawrence,* Case No. 4:21-cv- 01235-JST (*Lawrence II*) (ECF No. 1); the May 23, 2023 order dismissing Roshan's third amended complaint in *Lawrence II* (ECF No. 139); the September 26, 2023 order extending time to file a fourth amended complaint in Lawrence II (ECF No. 160); and the November 17, 2023 order relating cases in the present action, *Roshan v. McCauley,* Case No. 4:23-cv-5819-JST (ECF No. 8). ECF No. 24-1 at 1–2.

While the Court "may take judicial notice of the existence of unrelated court documents . . . it will not take judicial notice of such documents for the truth of the matter asserted therein." *In re Bare Escentuals, Inc. Sec. Lit.*, 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010). Accordingly, "[t]he judicially noticed fact in each instance is limited to the existence of the document, not the truth of the matters asserted in the documents." *Salas v. Gomez,* No. 14-CV- 01676-JST, 2016 WL 3971206, at *5 (N.D. Cal. July 25, 2016).

V . DISCUSSION

A. *Younger* Abstention

The central argument contested by the parties in both the motion for preliminary injunction and the motion to dismiss is whether this Court has subject matter jurisdiction to enjoin the ongoing state proceeding, or whether the Court must abstain from hearing Roshan's claims pursuant to *Younger v. Harris,* 401 U.S. 37 (1971). Having reviewed all arguments presented in each motion, the Court

determines that Younger applies to the present action, and abstention in favor of the state proceedings is required.

"*Younger* abstention is a jurisprudential doctrine rooted in overlapping principles of equity, comity, and federalism." *San Jose Silicon Valley Chamber of Com. Pol. Action Comm. v. City of San Jose*, 546 F.3d 1087, 1091 (9th Cir. 2008). "In *Younger v. Harris*, the Supreme Court reaffirmed the long-standing principle that federal courts sitting in equity cannot, absent exceptional circumstances, enjoin pending state criminal proceedings." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) (citing *Younger*, 401 U.S. at 43– 57). In a case known as *Middlesex County*, the Supreme Court expanded this abstention doctrine to apply to civil proceedings. *See Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). To assist courts in applying *Younger* to civil cases post-*Middlesex*, the Supreme Court issued guidance once again in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013). *Sprint* squarely held that *Younger* abstention is limited to "three exceptional categories" of cases, including: (1) "parallel, pending state criminal proceeding[s]," (2) "state civil proceedings that are akin to criminal prosecutions," and (3) state civil proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." *Id.* at 72–73. "In civil cases, therefore, *Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of its courts, (3)

implicate an important state interest, and (4) allow litigants to raise federal challenges." *ReadyLink Healthcare, Inc.*, 754 F.3d at 759. "If these 'threshold elements' are met, [courts] then consider whether the federal action would have the practical effect of enjoining the state proceedings and whether an exception to *Younger* applies." *Id.* With these principles in mind, the Court turns to the current dispute.

1. Ongoing State Proceedings

First, "*Younger* abstention requires that federal courts abstain when state court proceedings [are] ongoing at the time the federal action was filed." *Beltran v. State of Cal.*, 871 F.2d 777, 782 (9th Cir. 1988). Here, the DRE proceeding was "ongoing" for *Younger* purposes at the time Roshan's complaint was filed. As Commissioner McCauley points out, Roshan "concedes in his complaint and his declaration supporting this motion that the DRE proceeding was pending at the time he filed this lawsuit on November 11, 2023[.]" ECF No. 30 at 11; *see* ECF No. 1 ¶¶ 21–22. Accordingly, this element is satisfied.

2. Quasi-Criminal Action

Second, the Court must determine whether the present action is a "quasi-criminal enforcement action[] or involve[s] a state's interest in enforcing the orders and judgments of its courts[.]" *ReadyLink Healthcare, Inc.*, 754 F.3d at 759. In assessing whether an enforcement proceeding is quasi-criminal, courts evaluate whether the proceeding at issue shares three specific features of criminal prosecutions: (1) the action was initiated by the State in its sovereign capacity; (2) the action involves

sanctions against the federal plaintiff—*i.e.*, "the party challenging the state action"—for some wrongful act; and (3) the action commonly involves an investigation, often culminating in formal charges. *Sprint*, 561 U.S. at 79–80.

The administrative proceeding against Roshan is sufficiently "quasi-criminal" for *Younger* abstention to apply. First, the action was initiated by the DRE, a state agency tasked with conducting enforcement proceedings to suspend or revoke real-estate sales licenses in California. *See* Cal. Bus. & Prof. Code § 10100; *see also Middlesex*, 457 U.S. at 433–35 (holding that *Younger* barred a federal court from hearing a lawyer's challenge to a New Jersey state ethics committee's pending investigation of the lawyer); *Zummo v. City of Chicago*, 345 F. Supp. 3d 995, 1004 (N.D. Ill. 2018), *aff'd*, 798 F. App'x 32 (7th Cir. 2020) (finding proceeding "quasi- criminal" where it began with a police officer issuing a citation). In addition, if the DRE prevails in the enforcement proceedings, the result will entail sanctions against Roshan for violation of state ethics and statutory rules governing the conduct of licensed attorneys that also apply to real- estate professionals. Finally, it appears that the DRE conducted some form of investigation into Roshan's actions, as the accusation against Roshan references the California Supreme Court's order suspending Roshan's license to practice law. *See* ECF No. 1 ¶ 7.

Roshan's primary argument in opposition is that the DRE proceeding is not a "judicial proceeding to which *Younger* applies." ECF No. 31 at 8. He avers that *Sprint* holds that "the initial state proceeding must be judicial in nature," and that this

requirement must be "strictly met" for *Younger* to apply. *Id.* (internal quotations omitted). Roshan's reading of *Sprint* is incorrect. In concluding that *Younger* abstention did not apply in *Sprint*, the Supreme Court reasoned that the Iowa Utilities Board proceeding at issue did not constitute a "civil enforcement action" because it was (1) not initiated by the state; (2) no state authority conducted any investigation or filed a complaint; and (3) the proceeding was intended "to settle a civil dispute between two private parties, not to sanction Sprint for commission of a wrongful act." *Sprint*, 571 U.S. at 80– 81. In other words, the *Sprint* court determined that abstention was inappropriate, but not because the underlying state proceeding was insufficiently judicial in nature. Indeed, the Supreme Court in *Sprint* provided explicit "guid[ance] [to] other federal courts . . . that *Younger* extends to the three "exceptional circumstances" identified . . . but no further."[2] *Id.* at 82; *see Franklin v. City of Kingsburg*, No. 1:18-CV-0824 AWI SKO, 2020 WL 2793061, at *4 (E.D. Cal. May 29, 2020) ("*Younger* abstention can apply to administrative proceedings just as it can apply to judicial proceedings.").

Accordingly, the Court finds that the DRE proceedings are quasi-criminal for *Younger* purposes.

3. Important State Interests

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[2] As mentioned above, *see supra* Section V-A., these "exceptional circumstances" include: (1) "parallel, pending state criminal proceeding[s]," (2) "state civil proceedings that are akin to criminal prosecutions," and (3) state civil proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." *Id.* at 72–73.

Third, *Younger* abstention is appropriate where "important state interests are implicated so as to warrant federal-court abstention." *Middlesex*, 457 U.S. at 434. Whether a proceeding implicates important state interests "is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *Baffert v. California Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir. 2003) (citing *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989)). As Commissioner McCauley rightfully notes, "[t]he Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." ECF No. 30 at 12 (quoting *Harrington v. Dep't of Real Est.*, 214 Cal. App. 3d 394, 402 (Ct. App. 1989)). The State of California has a vested interest in ensuring the professional conduct of its real-estate licensees. Accordingly, the Court agrees with McCauley that "the standard requiring there to be an important state interest at issue is met." ECF No. 30 at 12.

4. Federal Constitutional Challenges

Next, the Court must determine whether Roshan had "an adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex*, 457 U.S. at 432. "[A] federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). "[T]he burden on this point rests on the federal plaintiff to show that state procedural law barred presentation of [their] claims." *Id.* at 14 (internal quotations omitted). While Roshan argues

that he was unable to obtain various documents and conduct certain depositions in his administrative proceeding, ECF No. 17 at 29, he does not contend that he did not have an adequate opportunity to raise his constitutional challenges before the ALJ. It is well-established that judicial review of an administrative proceeding "may be had by filing a petition for a writ of mandate." Cal. Gov. Code. § 11523. And further, the Ninth Circuit has made clear that "even if a federal plaintiff cannot raise his constitutional claims in state administrative proceedings . . . his ability to raise the claims via state judicial review of the administrative proceedings suffices." *Kenneally v. Lungren*, 967 F.2d 329, 332 (9th Cir. 1992); *see also Ohio Civil Rights Comm'n v. Dayton Christian Sch. Inc.*, 477 U.S. 619, 629 (1986). Accordingly, this element is also satisfied.

5. Practical Effect of Enjoining the State Proceedings

Having established that the four "threshold" *Younger* elements are met, the Court must determine whether the requested relief in the instant action would "enjoin—or have the practical effect of enjoining—ongoing state proceedings." *ReadyLink Healthcare, Inc.*, 754 F.3d at 758. Here, Roshan's motion for preliminary injunction seeks an order "restraining and enjoining [Commissioner McCauley] . . . from continuing any [DRE] proceedings based upon the California Supreme Court's order suspending Roshan's license to practice law." ECF No. 17 at 2. His complaint similarly seeks injunctive relief and relief under *Ex Parte Young* enjoining any disciplinary action by the DRE, as well as declaratory judgment that the DRE "does not have jurisdiction

over attorney disciplinary matters," and that the attorney disciplinary proceedings initiated against him did not meet "minimum due process requirements." ECF No. 1 at 25–28. Because Roshan's requested relief would "enjoin—or have the practical effect of enjoining— ongoing state proceedings," this requirement is met, and the Court must dismiss this case pursuant to the *Younger* abstention doctrine unless an exception applies. *ReadyLink Healthcare, Inc.*, 754 F.3d at 758; *see, e.g.*, *Herrera v. City of Palmdale*, 918 F.3d 1037, 1042 (9th Cir. 2019) ("when a court abstains under *Younger*, claims for injunctive and declaratory relief are typically dismissed.").

6. Extraordinary Circumstances

Finally, this case does not involve "extraordinary circumstances" that would warrant *Younger* abstention inappropriate. *Middlesex*, 457 U.S. at 437. The Supreme Court has recognized limited exceptions to mandatory abstention under *Younger* upon a "showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate[.]" *Id.* at 435. Such exceptions are "narrow." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 602 (1975). Because no exception applies here, the Court must abstain under *Younger*.

CONCLUSION

For the reasons set forth above, the Court finds each of the elements of *Younger* abstention is satisfied and that no exception applies. Because Roshan is unable to demonstrate a likelihood of success on any of his claims, or even serious questions going to the merits, the Court need go no further in denying his motion for preliminary

injunction. *See California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quoting *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)) ("Likelihood of success on the merits is 'the most important' factor; if a movant fails to meet this 'threshold inquiry,' we need not consider the other factors."); *Arkansas Dairy Co-op Ass'n, Inc. v. U.S. Dep't of Agr.*, 573 F.3d 815, 832 (D.C. Cir. 2009) (finding the court need not address "the other three preliminary injunction factors" when there is no likelihood of success on the merits).[3]

In regard to Commissioner McCauley's motion to dismiss, the Court declines to exercise jurisdiction in this case under the *Younger* abstention doctrine.[4] Accordingly, Commissioner McCauley's motion is granted. Because this action is barred by *Younger* abstention, the Court dismisses Roshan's complaint without leave to amend. *See Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) ("Because any amendment would be futile, there is no need to prolong the litigation by permitting further amendment."); *Saul v. United States*, 928

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[3] Commissioner McCauley also argues that this Court lacks subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine if the disposition in the state court proceeding is adverse to Roshan. ECF No. 30 at 14. While this may be true if the state court decision favors Commissioner McCauley, the Court declines to prematurely weigh-in on this argument. Similarly, because the Court finds that *Younger* applies to the present action, and abstention in favor of the state proceedings is required, it declines to reach Commissioner McCauley's argument regarding standing. *Id.* at 15.

[4] Because the Court finds that it does not have jurisdiction over this matter, it declines to reach Commissioner McCauley's Rule 12(b)(6) argument. ECF No. 28 at 10.

F.2d 829, 843 (9th Cir. 1991) (affirming denial of leave to amend "where the amendment would be futile or where the amended complaint would be subject to dismissal"). The Clerk of the Court is directed to enter judgment and close the case file.

IT IS SO ORDERED.

Dated: February 5, 2024

JON S. TIGAR
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
MAY 20 2025
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN,

Plaintiff - Appellant.

v.

DOUGLAS R. MCCAULEY,

Defendant – Appellee.

No. 24-659

D.C. NO. 4:23-cv-05819-JST

Northern District of California, Oakland

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40.

Appellant's petition for panel rehearing and petition for rehearing en banc are therefore DENIED.

APPENDIX E

Relevant Statutes and Constitutional Provisions

Supremacy Clause

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Supremacy Clause, U.S. Const. art. VI, cl.2.

Seventh Amendment

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Civil Rights Act of 1871

> Every person who, under color of any statute, ordinance, regulation, custom,

> or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

Relevant Provisions of the California Code.

California Code of Civil Procedure §395 provides:

> (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. If the action is for injury to person or personal

property or for death from wrongful act or negligence, the superior court ineither the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action. In a proceeding for dissolution of marriage, the superior court in the county where either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the superior court in the county where either the petitioner or the respondent resides at the commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the superior court in the county where the child resides is the proper court for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the superior court in the county where the child resides is the proper court for the trial of the action. Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides

at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if they reside in the state and the county where they reside is unknown to the plaintiff, the action may be tried in the superior court in any county that the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in the superior court in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the superior court in the county where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of either an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind or a

telephone call or electronic transmission made by the buyer or lessee in response to a solicitation by the seller, the superior court in the county where the buyer or lessee in fact signed the contract, wherethe buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action is the proper court for the trial of the action. In the superior court designated in this subdivision as the proper court, the proper court location for trial of a case is the location where the court tries that type of case that is nearest or most accessible to where the buyer or lessee resides, where the buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action. Otherwise, any location of the superior court designated as the proper court in this subdivision is a proper court location for the trial. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) Any provision of an obligation described in subdivision (b) waiving that subdivision is void and unenforceable.

Cal. Code Civ. Pro. §395.

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California Code of Civil Procedure §1094.5 provides:

> (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court...
>
> (b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

Cal. Code Civ. Pro. §1094.5.

California Business and Professions Code §10080.9 provides:

> (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person who does not possess a real estate license is engaged or has engaged in activities for which a real estate license is required, or that a person who does not possess a prepaid rental listing service license or a real estate broker license is engaged or has engaged in activities for which a license is required pursuant to Section 10167.2, or that a licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars ($2,500), which shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470). In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the

good faith of the person cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties.

(c) If, within 30 days from the receipt of the citation or the citation and fine, the person cited fails to notify the commissioner that he or she intends to request a hearing as described in subdivision (d), the citation or the citation and fine shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

> (e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of any administrative penalty imposed pursuant to subdivision (a) and an order compelling the person cited to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant issuing the judgment and order.
>
> (f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified by the commissioner, shall subject that person to disciplinary action by the commissioner. In no event may a license be issued or renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

Cal. Bus. & Prof. Code §10080.9.

Relevant Provisions of the California Code of Regulations.

California Code of Regulations, section 2907.1 provides:

> (a) A citation issued pursuant to Business and Professions Code Section 10080.9 will address a violation or violations of the Real Estate Law and Subdivided Lands Law (Division 4 of the

Business and Professions Code), and any regulations adopted pursuant to those laws. The Commissioner is authorized to issue a citation containing an order of correction and/or assessing a fine for the violation of the laws referred to above.

(b) A citation may be issued to a person or entity, including partnerships, corporations, or associations, whether licensed or unlicensed by the Bureau.

(c) The citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated.

(d) Service of a citation shall be made in accordance with the provisions of Sections 8311 and 11505(c) of the Government Code. Service of a citation issued under Business and Professions Code Section 10080.9 may be made by certified mail at the address of record of a licensee cited, or to the last known mailing, business, or residence address of an unlicensed person or entity cited.

(e) The time allowed to comply with an order of correction shall be specified in the citation, taking into account the nature of the correction required. Failure to correct the violation shall be grounds for further discipline under Section 10177(d) of the Code.

(f) The cited person or entity may request an

extension of the time to comply with the order if the cited person or entity is unable to complete the correction or pay the fine within the time set forth in the citation. The request must be made in writing, within the time set forth for correction or payment of fine, and must set forth extenuating circumstances and good cause warranting the extension. Determination of an extension is within the discretion of the Commissioner.

Cal. Code of Regs. §2907.1