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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

AARON T. WARREN,
Plaintiff,
vs.
SWAT, T.P.D., et al.,
Defendants.

No. CIV 10-076-TUC-CKJ

ORDER

On February 5, 2010, Plaintiff Aaron T. Warren ("Warren") filed a pro se Complaint. On March 30, 2010, Warren filed an Amended Complaint. Warren has also submitted a Motion to Proceed *in Forma Pauperis* [Doc. # 6].

In Forma Pauperis

The Court may allow a plaintiff to proceed without prepayment of fees when it is shown by affidavit that he "is unable to pay such fees[.]" 28 § 1915(a)(1). Warren's statement, made under penalty of perjury, establishes that Warren receives \$536.00 per month unemployment payments and \$360.00 per month in food stamps. The Court finds Warren is unable to pay the fees. The Motion to Proceed In Forma Pauperis will be granted.

Screening Order

This Court is required to dismiss a case if the Court determines that the allegation of poverty is untrue, 28 U.S.C. § 1915(e)(2)(A), or if the Court determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii)

1 seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. §
2 1915(e)(2)(B).

3
4 *General Requirements*

5 A complaint is to contain a "short and plain statement of the claim showing that the
6 pleader is entitled to relief[.]" Rule 8(a), Fed.R.Civ.P. Especially where the pleader is *pro*
7 *se*, the pleading should be liberally construed in the interests of justice. *Johnson v. Reagan*,
8 524 F.2d 1123 (9th Cir. 1975). Nonetheless, a complaint must set forth a set of facts that
9 serves to put defendants on notice as to the nature and basis of the claim(s). Furthermore,
10 all allegations of a claim are to be set forth in numbered paragraphs that should be limited
11 to a single set of circumstances. Rule 10(a), Fed.R.Civ.P. "Each claim . . . shall be stated
12 in a separate count . . . whenever a separation facilitates the clear presentation of the matters
13 set forth." *Id.* Failure to set forth claims in such a manner places the onus on the court to
14 decipher which, if any, facts support which claims, as well as to determine whether a
15 plaintiff is entitled to the relief sought. *Haynes v. Anderson & Strudwick, Inc.*, 508 F.Supp.
16 1303 (D.C.Va. 1981). Enforcement of this rule is discretionary with the Court, but such
17 enforcement is appropriate where it is necessary to facilitate a clear presentation of the
18 claims. *See, Benoit v. Ocwen Financial Corp., Inc.*, 960 F.Supp. 287 (S.D.Fla. 1997),
19 affirmed 162 F.3d 1177 (compliance with rule required where allegations were so confusing
20 and conclusory, claims were commingled, and impossible to determine nature of claims).

21 Moreover, "[t]he title of the complaint must name all the parties; the title of other
22 pleadings, after naming the first party on each side, may refer generally to other parties."
23 Fed.R.Civ.P. 10(a). Warren's Amended Complaint fails to include the names of all the
24 parties in the caption.

25 The Court will dismiss the Amended Complaint to allow Warren to comply with
26 these requirements. If a court determines that dismissal is appropriate, a plaintiff must be
27 given at least one chance to amend a complaint when a more carefully drafted complaint
28 *might* state a claim.. *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991). Moreover, when

1 dismissing with leave to amend, a court is to provide reasons for the dismissal so a plaintiff
2 can make an intelligent decision whether to file an amended complaint. *See Bonanno v.*
3 *Thomas*, 309 F.2d 320 (9th Cir. 1962); *Eldridge v. Block*, 832 F.2d 1132 (9th Cir. 1987).

4
5 *Requirement that Action State a Claim on Which Relief Can be Granted*

6 The United States Supreme Court has determined that, in order to survive a motion
7 to dismiss for failure to state a claim, a plaintiff must allege “enough facts to state a claim
8 to relief that is plausible on its facts.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127
9 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).¹ While a complaint need not plead “detailed
10 factual allegations,” the factual allegations it does include “must be enough to raise a right
11 to relief above the speculative level.” *Id.* at 1964-65. Indeed, Fed.R.Civ.P. 8(a)(2) requires
12 a showing that a plaintiff is entitled to relief “rather than a blanket assertion” of entitlement
13 to relief. *Id.* at 1965 n. 3. The complaint “must contain something more . . . than . . . a
14 statement of facts that merely creates a suspicion [of] a legally cognizable right to action.”
15 *Id.* at 1965. Although a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), has not been
16 filed in this case, the Court screens the Complaint in light of *Twombly* and must determine
17 if Warren has “nudge[d] [his] claims across the line from conceivable to plausible.” *Id.* at
18 1974. The Court also considers that the Supreme Court has cited *Twombly* for the
19 traditional proposition that “[s]pecific facts are not necessary [for a pleading that satisfies
20 Rule 8(a)(2)]; the statement need only ‘give the defendant fair notice of what the . . . claim
21 is and the grounds upon which it rests.’” *Erickson v. Pardue*, 551 U.S. 89, 127 S.Ct. 2197,
22 2200, 167 L.Ed.2d 929 (2007).

23 In discussing *Twombly*, the Ninth Circuit has stated:

24 “A claim has facial plausibility,” the Court explained, “when the plaintiff pleads
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26 ¹The holding in *Twombly* explicitly abrogates the well established holding in *Conley*
27 *v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), that “a complaint should
28 not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff
can prove no set of facts in support of his claim which would entitle him to relief.”

1 factual content that allows the court to draw the reasonable inference that the
2 defendant is liable for the misconduct alleged.” 129 S.Ct. at 1949. “The plausibility
3 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer
4 possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S.
5 at 556, 127 S.Ct. 1955). “Where a complaint pleads facts that are ‘merely consistent
6 with’ a defendant’s liability, it ‘stops short of the line between possibility and
7 plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557, 127
8 S.Ct. 1955).

9 In sum, for a complaint to survive a motion to dismiss, the non-conclusory “factual
10 content,” and reasonable inferences from that content, must be plausibly suggestive
11 of a claim entitling the plaintiff to relief. *Id.*

12 *Moss v. U.S. Secret Service*, 572 F.3d 962 (9th Cir. 2009).

13 This Court must take as true all allegations of material fact and construe them in the
14 light most favorable to Warren. *See Cervantes v. United States*, 330 F.3d 1186, 1187 (9th
15 Cir. 2003). In general, a complaint is construed favorably to the pleader. *See Scheuer v.*
16 *Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), *overruled on other*
17 *grounds*, 457 U.S. 800. Nonetheless, the Court does not accept as true unreasonable
18 inferences or conclusory legal allegations cast in the form of factual allegations. *Western*
19 *Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Furthermore, the Court is not
20 to serve as an advocate of a *pro se* litigant, *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.
21 1987), in attempting to decipher a complaint.

22 *Claims – 42 U.S.C. § 1983*²

23 The construes Warren’s Complaint as alleging a Fourth Amendment excessive force
24 violation, a Fourth Amendment unreasonable search violation, a Fourth Amendment
25 unreasonable seizure violation, a Fifth Amendment due process violation, an Eighth
26 Amendment cruel and unusual punishment violation, a Fourteenth Amendment due process

27 ²42 U.S.C. § 1983 is not itself a source of substantive rights, but merely provides a
28 method for vindicating federal rights elsewhere conferred. *Graham v. Connor*, 490 U.S. 386,
393-94, 109 S.Ct. 1865, 1870, 104 L.Ed.2d 443 (1989). To state a claim under § 1983, a
plaintiff must allege: (1) the violation of a right secured by the Constitution and laws of the
United States and (2) the alleged deprivation was committed by a person action under color
of state law. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

1 violation, and a Fourteenth Amendment equal protection violation. Warren also appears
2 to be alleging the tort claim of defamation. The Court will discuss these claims.

3
4 *Fourth Amendment – Excessive Force*

5 The Fourth Amendment protects the “right of the people to be secure in their persons,
6 houses, papers, and effects, against unreasonable searches and seizures.” United States
7 Constitution, 4th Amend. To state a Fourth Amendment excessive force claim, a plaintiff
8 must allege that a defendant’s use of force was unreasonable. *Graham v. Connor*, 490 U.S.
9 386, 396 (1989). “The Fourth Amendment requires police officers making [a seizure] to use
10 only an amount of force that is objectively reasonable in light of the circumstances facing
11 them.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 477 (9th Cir. 2007). In determining
12 whether the use of force was reasonable, “the nature and quality of the intrusion on the
13 individual’s Fourth Amendment interests against the countervailing government interests at
14 stake” are to be balanced. *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104
15 L.Ed.2d 443 (1989), *internal quotation marks omitted*. Relevant factors in this inquiry
16 include “the severity of the crime at issue, whether the suspect poses an immediate threat
17 to the safety of the officers or others, and whether he is actively resisting arrest or
18 attempting to evade arrest by flight.” *Id.*

19 Warren asserts that he was restrained with plastic ties that were too tight.³ The Ninth
20 Circuit has determined that “detaining a person in handcuffs during the execution of a
21 warrant to search for evidence is permissible, but only when justified by the totality of the
22 circumstances.” *Meredith v. Erath*, 342 F.3d 1057, 1062-63 (9th Cir. 2003). Moreover,
23 Warren alleges that an officer threw him down on the floor and slammed his face on the
24 floor. While these facts may state a claim that the use of force was unreasonable, Warren
25 has failed to allege any individual who used force upon him. An allegation of an affirmative

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³Warren also alleges that Officer Wakefield subsequently removed the plastic ties and placed handcuffs on Warren.

1 link is needed between the injury and the conduct of a defendant. *Rizzo v. Goode*, 423 U.S.
2 362, 371-72, 377 (1976); *see also Jones v. Williams*, 297 F.3d 930, 935 (9th Cir. 2002)
3 (officer cannot be held liable without a showing of individual participation, i.e., integral
4 participation, in unlawful conduct); *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979)
5 (section 1983 liability arises where there is personal involvement). The Court finds Warren
6 has failed to state a claim upon which relief can be granted.

7
8 *Fourth Amendment – Unreasonable Search*

9 To state a claim for a Fourth Amendment unreasonable search violation, a plaintiff
10 must allege that a defendant conducted an unreasonable search. *Samson v. California*, 547
11 U.S. 843, 126 S.Ct. 2192, 2197, 165 L.Ed.2d 250 (2006); *see also Branch v. Tunnell*, 937
12 F.2d 1382, 1387 (9th Cir. 1991) (where an officer knowingly or recklessly submits false
13 information in an affidavit supporting an application for a warrant, the individual’s Fourth
14 Amendment rights are violated), *overruled on other grounds*. Under the Fourth
15 Amendment, courts examine the totality of circumstances to determine whether a search is
16 reasonable. *Id.* Furthermore, reasonableness is determined by weighing the intrusion on the
17 individual’s privacy right against the promotion of a legitimate governmental interest. *Id.*

18 Warren alleges that the officers had a bad warrant and no valid evidence to support
19 probable cause. Warren further alleges that the officers acted with malice and in reckless
20 disregard for whether the contents of the warrant were true. Although *pro se* pleadings are
21 liberally construed, *Haines v. Kerner*, 404 U.S. 519 (1972), conclusory and vague
22 allegations will not support a cause of action. *Ivey v. Board of Regents of the University of*
23 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *Rhodes v. Robinson*, 612 F.2d 766, 772 (3d Cir.
24 1979). Warren’s allegations as to the officers acting with malice and in reckless disregard
25 for the truth are merely conclusory. *See also Burns v. County of King*, 883 F.2d 819, 821
26 (9th Cir. 1989). Moreover, Warren has not alleged an affirmative link between the injury
27 and the conduct of a specific defendant. The Court finds Warren has failed to state a claim
28 upon which relief can be granted.

1 *Fourth Amendment – Unreasonable Seizure*

2 Warren asserts that his Fourth Amendment rights were violated by his unlawful
3 arrest. Warren alleges that Officers Robles and Wakefield integrally participated in his
4 arrest. Under the Fourth Amendment, to arrest a suspect on probable cause, the facts and
5 circumstances within the officer's knowledge must be sufficient to warrant a prudent person,
6 or one of reasonable caution, in believing, in the circumstances shown, that the suspect has
7 committed, is committing or is about to commit an offense. *Michigan v. DeFillippo*, 443
8 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979). In considering alleged violations of the
9 Fourth Amendment, the court undertakes an objective assessment of an officer's actions in
10 light of the facts and circumstances then known to the officer. *Scott v. United States*, 436
11 U.S. 128, 137, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978).

12 Police may arrest a person without a warrant if the arrest is supported by probable
13 cause. *See United States v. Hoyos*, 892 F.2d 1387 (9th Cir.1989). Indeed, probable cause
14 to arrest is a complete defense to the liability of a police officer for an action under § 1983
15 arising out of an arrest. *Owen v. City of Independence*, 445 U.S. 622, 637, 100 S.Ct. 1398,
16 63 L.Ed.2d 673 (1980); *United States v. Del Vizo*, 918 F.2d 821, 825 (9th Cir.1990). An
17 officer has probable cause to arrest when the officer has knowledge of facts and
18 circumstances sufficient to cause a reasonable person to believe an offense has been
19 committed. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); *Henry v.*
20 *United States*, 361 U.S. 98, 102, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959); *Brinegar v. United*
21 *States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). In evaluating a custodial
22 arrest executed by state officials, federal courts must determine the reasonableness of the
23 arrest in reference to state law governing the arrest. *United States v. Mota*, 982 F.2d 1384,
24 1388 (9th Cir.1993); *see also Barry v. Fowler*, 902 F.2d 770, 771 (9th Cir.1990) (finding
25 that arrest without probable cause that the arrestee committed a crime constitutes a violation
26 of the Fourth Amendment).

27 In this case, Warren has alleged that probable cause did not support the search or
28 seizure of any personal property of the home. Although implied, Warren has not alleged

1 that probable cause did not exist for his arrest. Because the Amended Complaint does not
2 comply with procedural requirements, the Court will dismiss this claim with leave to amend.

3
4 *Fifth Amendment and Fourteenth Amendment Due Process*

5 “The Fifth Amendment prohibits the federal government from depriving persons of
6 due process[.]” *Castillo v. McFadden*, 370 F.3d 882, 889 n.5 (9th Cir. 2004). Because
7 Warren’s allegations are not against federal officials, the Court will discuss a Fourteenth
8 Amendment due process claim.⁴ The United States Supreme Court has found that, to state
9 a claim for a violation of the Due Process Clause of the Fourteenth Amendment, a plaintiff
10 must allege that a defendant denied plaintiff a specific right protected by the federal
11 constitution without procedures required by the Constitution to ensure fairness (procedural
12 due process), or deliberately abused his power without any reasonable justification in aid
13 of any government interest or objective and only to oppress in a way that shocks the
14 conscience (substantive due process). *Sandin v. Connor*, 515 U.S. 472, 483-84, 115 S.Ct.
15 2293, 132 L.Ed.2d 418 (1995); *Daniels v. Williams*, 474 U.S. 327 (1986); *Board of Regents*
16 *of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). To
17 allege a procedural due process claim, a plaintiff must allege that there is a liberty or
18 property interest protected by the Constitution, there has been a deprivation of the interest
19 by the government, and a lack of process. *Portman v. County of Santa Clara*, 995 F.2d 898,
20 904 (9th Cir. 1993). Substantive due process rights are those not otherwise constitutionally
21 protected but which are deeply rooted in this country’s history and tradition and “implicit
22 in the concept of ordered liberty” such that “neither liberty or justice would exist if it were
23 sacrificed. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772
24 (1997). Negligence is not sufficient to state a claim for substantive due process. *See e.g.*,
25 *Daniels v. Williams*, 474 U.S. 327, 333 (1986); *Maddox v. City of Los Angeles*, 792 F.2d

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⁴Fifth Amendment due process claims and Fourteenth Amendment due process claims
are analyzed in the same way. *Paul v. Davis*, 424 U.S. 693, 702 n. 3, 96 S.Ct. 1155, 47
L.Ed.2d 405 (1976).

1 1408, 1413 (9th Cir. 1986).

2 Warren appears to be alleging a substantive due process claim based on false
3 information providing the basis for the search warrant. However, where an officer
4 knowingly or recklessly submits false information in an affidavit supporting an application
5 for a warrant, the Fourth Amendment rights of the individual subject to the warrant are
6 violated. *See Branch*, 937 F.2d at 1387. Because a claim for a Fourth Amendment violation
7 is available to Warren, this due process claim is “otherwise constitutionally protected.” The
8 Court finds, therefore, that Warren has failed to state a claim upon which relief can be
9 granted.

10
11 *Eighth Amendment Cruel and Unusual Punishment*

12 The treatment a prisoner receives in *prison* and the conditions under which he is
13 confined are subject to scrutiny under the Eighth Amendment. *Helling v. McKinney*, 509
14 U.S. 25, 31, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993); *see also Spain v. Procnier*, 600 F.2d
15 189, 193-94 (9th Cir. 1979) (“Whatever rights one may lose at the prison gates, . . . the full
16 protections of the eighth amendment most certainly remain in force. The whole point of the
17 amendment is to protect persons convicted of crimes.”). The Due Process Clauses of the
18 Fifth and Fourteenth Amendments prohibit the punishment of persons prior to a judgment
19 of conviction; the Due Process Clauses govern conditions or restrictions of pretrial
20 detention. *See Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

21 In this case, Warren does not allege any pre-conviction or post-conviction
22 confinement violation. Rather, Warren asserts a violation based on an officer throwing him
23 down on the floor and slamming his face on the floor.⁵ The Court finds Warren has failed
24 to state a claim upon which relief could be granted.

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⁵The Court has also discussed this claim as a Fourth Amendment excessive force
28 claim.

1 *Fourteenth Amendment – Equal Protection*

2 “The Equal Protection Clause of the Fourteenth Amendment . . . is essentially a
3 direction that all persons similarly situated should be treated alike.” *City of Cleburne v.*
4 *Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).
5 ““To state a claim . . . for a violation of the Equal Protection Clause . . . a plaintiff must
6 show that the defendants acted with an intent or purpose to discriminate against the plaintiff
7 based upon membership in a protected class.”” *Lee v. City of Los Angeles*, 250 F.3d 668,
8 686 (9th Cir. 2001), *quoting Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).
9 The Equal Protection Clause also forbids unequal enforcement of valid laws where such
10 unequal enforcement is the product of improper motive. *Yick Wo v. Hopkins*, 118 U.S. 356,
11 6 S.Ct. 1064, 30 L.Ed. 220 (1886); *see also United States v. Bourgeois*, 964 F.2d 935 (9th
12 Cir. 1992); *Church of Scientology of California v. C.I.R.*, 823 F.2d 1310 (9th Cir. 1987).

13 Warren has not alleged that any defendant acted with an intent or purpose to
14 discriminate against his based upon membership in a protected class or even that he is a
15 member of a protected class. *See generally Barren v. Harrington*, 152 F.3d 1193,1194 (9th
16 Cir. 1998). The Court finds Warren has failed to state a claim on which relief can be
17 granted.

18
19 *Defamation*

20 Warren asserts a claim of defamation in his Second Amended Complaint.
21 “Oversimplifying, libel is a written or visual defamation, while slander is an oral
22 defamation.” *Boswell v. Phoenix Newspapers, Inc.*, 152 Ariz. 1, 6 n. 4, 730 P.2d 178 n. 4
23 (App. 1985). ““One who publishes a false and defamatory communication concerning a
24 private person . . . is subject to liability, if, but only if, he (a) knows that the statement is
25 false and it defames the other, (b) acts in reckless disregard of these matters, or (c) acts
26 negligently in failing to ascertain them.”” *Dube v. Likins*, 216 Ariz. 406, 167 P.3d 93 (App.
27 2007), *citations omitted*.

28 In making his defamation claim, Warren does not assert who is alleged to have

1 defamed him. It appears Warren is alleging that one or more officers made false statements
2 to the property manager, but this is not clearly alleged; similarly, the alleged false statements
3 are not set forth in the Second Amended Complaint. The Court finds Warren has failed to
4 state a claim upon which relief can be granted.

5
6 *SWAT and TPD Defendants*

7 Warren has included SWAT and TPD as defendants in this case. Supervisory
8 officials may be liable if they “implement a policy so deficient that the policy 'itself is a
9 repudiation of constitutional rights' and is 'the moving force of the constitutional violation.’”
10 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir.1991), cert. denied, 112 S.Ct.
11 972 (1992) (*quotations omitted*); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989)
12 (a supervisor may be liable under § 1983 if he "knew of the violations and failed to act to
13 prevent them."). "[L]ocal governments can be sued [under § 1983 only where] the action
14 that is alleged to be unconstitutional implements or executes a policy statement, ordinance,
15 regulation, or decision officially adopted and promulgated by that body's officers." *Monell*
16 *v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611
17 (1978). Material facts must be presented that a policy expressly sanctioned, enacted, or
18 authorized by the municipality has led to an alleged injury. *Pembaur v. City of Cincinnati*,
19 475 U.S. 469, 480, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986); *Ulrich v. City and County of San*
20 *Francisco*, 308 F.3d 968 (9th Cir. 2002). Warren has not alleged any unconstitutional
21 policy statement, ordinance, regulation or decision officially adopted and promulgated by
22 either SWAT or TPD. *See Ortez v. Washington County, State of Oregon*, 88 F.3d 804 (9th
23 Cir. 1996) (pre-*Twombly*, the Ninth Circuit found that a claim of municipal liability was
24 sufficiently alleged even though the claim was based on nothing more than bare allegations),
25 *citing Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). The
26 Court finds Warren has failed to state a claim on which relief can be granted.

1 *Second Amended Complaint*

2 The Court finds that dismissal with leave to amend is appropriate. *See Noll v.*
3 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (leave to amend is liberally granted unless
4 absolutely clear deficiencies cannot be cured by amendment). The Court has provided the
5 reasons for the dismissal so Warren can make an intelligent decision whether to file a
6 Second Amended Complaint. *See Bonanno v. Thomas*, 309 F.2d 320 (9th Cir. 1962);
7 *Eldridge v. Block*, 832 F.2d 1132 (9th Cir. 1987). Furthermore, Warren is advised that all
8 causes of action alleged in the original or amended complaints which are not alleged in any
9 Second Amended Complaint will be waived. *Hal Roach Studios v. Richard Feiner & Co.*,
10 896 F.2d 1542, 1546 (9th Cir. 1990) ("an amended pleading supersedes the original"); *King*
11 *v. Atiyeh*, 814 F.2d 565 (9th Cir. 1987). Any Second Amended Complaint filed by Warren
12 must be retyped or rewritten in its entirety and may not incorporate any part of the original
13 complaint by reference. Any Second Amended Complaint submitted by Warren shall be
14 clearly designated as a Second Amended Complaint on the face of the document.

15 Warren should take notice that if he fails to timely comply with every provision of
16 this Order, this action will be dismissed pursuant to Fed.R.Civ.P. 41(b). *See Ferdik v.*
17 *Bonzelet*, 963 F.2d 1258 (9th Cir.) (district court may dismiss action for failure to comply
18 with any order of the Court), *cert. denied*, 506 U.S. 915 (1992).

19
20 Accordingly, IT IS THEREFORE ORDERED:

- 21 1. Warren's Motion to Proceed *in Forma Pauperis* [Doc. # 6] is GRANTED.
- 22 2. Warren's Amended Complaint is DISMISSED WITHOUT PREJUDICE,
23 WITH LEAVE TO AMEND. Warren shall have thirty (30) days from the date of filing this
24 Order to file a Second Amended Complaint.
- 25 3. Any Second Amended Complaint must be retyped or rewritten in its entirety
26 and may not incorporate any part of the prior complaints or subsequent pleadings by
27 reference. All causes of action alleged in the original or amended complaints which are not
28 alleged in any Second Amended Complaint will be waived. Any Second Amended

1 Complaint submitted by Warren shall be clearly designated as a Second Amended
2 Complaint on the face of the document. Any Second Amended Complaint shall comply
3 with the requirements of Fed.R.Civ.P. 8(a), 10(a), and 11(a).

4 4. The Clerk of the Court is DIRECTED to enter a judgment of dismissal,
5 without prejudice, without further notice to Warren, if Warren fails to file a Second
6 Amended Complaint within thirty (30) days of the filing date of this Order.

7 5. A clear, legible copy of every pleading or other document filed SHALL
8 ACCOMPANY each original pleading or other document filed with the Clerk for use by the
9 District Judge to whom the case is assigned. *See* L.R.Civ. 5.4. **Failure to submit a copy**
10 **along with the original pleading or document will result in the pleading or document**
11 **being stricken without further notice to Warren.**

12 6. At all times during the pendency of this action, Warren shall immediately
13 advise the Court of any change of address and its effective date. Such notice shall be
14 captioned "NOTICE OF CHANGE OF ADDRESS". The notice shall contain only
15 information pertaining to the change of address and its effective date. The notice shall not
16 include any motions for any other relief. Warren shall serve a copy of the Notice of Change
17 of Address on all served opposing parties. Failure to file a NOTICE OF CHANGE OF
18 ADDRESS may result in the dismissal of the action for failure to prosecute pursuant to
19 Fed.R.Civ.P. 41(b).

20 DATED this 13th day of May, 2010.

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23 _____
24 Cindy K. Jorgenson
25 United States District Judge
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