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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY TUCKER,	)	NO. CV 12-5367-SVW (MAN)
	)	
Plaintiff,	)	MEMORANDUM AND ORDER DISMISSING
	)	
v.	)	COMPLAINT WITH LEAVE TO AMEND
	)	
CITY OF SANTA MONICA, et al.,	)	
	)	
Defendants.	)	
	)	
_____	)	

On June 25, 2012, plaintiff, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 ("Complaint"). Plaintiff sued the following defendants: City of Santa Monica ("City"); Timothy Jackman, former Chief of Santa Monica Police Department ("SMPD"); SMPD officers Louis Marioni, Scott McGowen, and Michael Chun; CSO Carlton Palmer; Terry White, described by plaintiff as City Attorney<sup>1</sup>; and Does 1 through 10.

<sup>1</sup> The Court takes judicial notice that Terry White actually is the Chief Deputy City Attorney, Criminal Division. See <http://www.smgov.net>.

1 Congress has mandated that courts perform an initial screening of  
2 *in forma pauperis* civil actions. This Court "shall" dismiss such an  
3 action "at any time," including before service of process, if it  
4 concludes that the complaint is frivolous, fails to state a claim upon  
5 which relief can be granted, or seeks relief against a defendant who is  
6 immune from the requested relief. 28 U.S.C. § 1915(e)(2).

7  
8 In screening a *pro se* civil rights complaint, the Court must  
9 construe its allegations liberally and must afford the plaintiff the  
10 benefit of any doubt. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir.  
11 2012). The standard applicable on screening is the standard for failure  
12 to state a claim under Rule 12(b)(6) of the Federal Rules of Civil  
13 Procedure. *Id.* The complaint need not contain detailed factual  
14 allegations, but it must contain sufficient factual matter to state a  
15 claim for relief that is plausible on its face. Ashcroft v. Iqbal, 556  
16 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009); Bell Atlantic Corp. v.  
17 Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007). If a  
18 complaint is dismissed, a *pro se* litigant must be given leave to amend  
19 unless it is absolutely clear that the deficiencies of the complaint  
20 cannot be cured by amendment. Karim-Panahi, 839 F.2d 621, 623 (9th Cir.  
21 1988); Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

#### 22 23 **ALLEGATIONS OF THE COMPLAINT**

24  
25 On Thursday, May 5, 2011, sometime between 9:30 and 10:00 p.m.,  
26 plaintiff was riding his bicycle on the Third Street Promenade in Santa  
27 Monica, when CSO Palmer jumped in front of him and shouted, "What the  
28 [obscenity] do you think you are doing!" (Complaint ¶ 7.) Plaintiff

1 turned his bicycle around and walked towards Santa Monica Boulevard.  
2 (*Id.*) Officers Marioni, Chun, and McGowen shouted "Stop," and plaintiff  
3 complied. (*Id.*) The officers ordered plaintiff to sit down. (*Id.*)  
4 When plaintiff asked whether he was being arrested and on what charges,  
5 the officers said he was not being arrested but would be if he did not  
6 sit down. (*Id.*) The officers handcuffed plaintiff and searched his  
7 backpack. (*Id.*) They placed plaintiff and his bicycle in a patrol  
8 vehicle and drove him to the police station, without telling him that  
9 he was under arrest. (*Id.* at ¶¶ 7, 8.) Plaintiff contends that the  
10 officers had no warrant for his arrest and knew that he had not  
11 committed any crime or public offense. (*Id.* at ¶ 31.) He asserts that  
12 the incident resulted in his "first and only criminal booking." (*Id.*  
13 at ¶ 37.)

14  
15 At the police station, defendants Marioni and McGowen subjected  
16 plaintiff to "multiple physical abuses," which included "being thrown  
17 to the floor in handcuffs, having arms and hands wrenched to  
18 deliberately and sadistically cause pain and suffering, and [being]  
19 thrown to the floor of a cell, uncuffed and threatened with a taser."  
20 (Complaint ¶ 8.)

21  
22 In custody, plaintiff repeatedly demanded and was refused access  
23 to a telephone. (Complaint ¶ 9.) He was not arraigned and remained in  
24 custody until 9:45 p.m. on May 6, 2011, when he was released after  
25 posting \$10,000 bail. (*Id.*) He was directed to appear in court and did  
26 so, but he discovered that no criminal charges had been filed. (*Id.*)  
27 The same day, plaintiff returned to the police station to file a formal  
28 complaint and was seen by the duty watch commander, who persuaded him

1 not to do so. (*Id.*) On November 7, 2011, plaintiff filed a tort claim  
2 for damages, which was rejected on December 20, 2011. (*Id.* at ¶¶ 9,  
3 30.) There was also an internal investigation. (*Id.* at ¶ 9.)  
4

5 Plaintiff asserts the following federal claims: (1) unreasonable  
6 seizure, due process deprivations, and conspiracy against all defendants  
7 (Claim One); and (2) unlawful custom and practice against Jackman and  
8 the City (Claim Two). (Complaint ¶¶ 11-24.) He asserts the following  
9 state law claims: (1) assault and battery against the City, Marioni,  
10 McGowen, Chun, Palmer, and Does 5 through 10 (Claim Three); (2) false  
11 imprisonment against the City, Marioni, McGowen, Chun, Palmer, and Does  
12 1 through 10 (Claim Four); (3) intentional infliction of emotional  
13 distress against all defendants (Claim Five); (4) negligence against all  
14 defendants (Claim Six); (5) negligent employment/retention/supervision  
15 against Jackman (Claim Seven); (6) violation of California Civil Code  
16 § 52.1 against all defendants (Claim Eight); (7) conversion against all  
17 defendants (Claim Nine); and (8) trespass to chattels against all  
18 defendants (Claim Ten). (*Id.* at ¶¶ 25-59.) Plaintiff seeks damages.  
19 (Complaint at 17.)  
20

## 21 DISCUSSION

### 22 23 I. PLAINTIFF FAILS TO STATE A CLAIM UNDER THE FIRST AMENDMENT OR THE 24 DUE PROCESS CLAUSE. 25

26 Plaintiff asserts claims under the First, Fourth, and Fourteenth  
27 Amendments. (Complaint ¶¶ 1, 12.) The Complaint contains no factual  
28 basis for a First Amendment claim under any cognizable legal theory.

1 See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
2 1990)(claims can be dismissed for lack of cognizable legal theory or  
3 insufficient facts supporting cognizable legal theory). Nor has  
4 plaintiff asserted a factual basis for a due process violation. Because  
5 plaintiff was not arraigned, his claims challenging his arrest and  
6 detention arise under the Fourth Amendment, not the Due Process Clause.  
7 See Pierce v. Multnomah County, 76 F.3d 1032, 1043 (9th Cir.  
8 1996)(holding that "the Fourth Amendment sets the applicable  
9 constitutional limitations on the treatment of an arrestee detained  
10 without a warrant up until the time such arrestee is released or found  
11 to be legally in custody based upon probable cause for arrest").  
12

13 At this early stage of the action, the Court finds that plaintiff's  
14 Fourth Amendment claims against defendants Palmer, Marioni, Chun, and  
15 McGowen based on his arrest and detention withstand screening.  
16 Plaintiff's First and Fourteenth Amendment claims, however, must be  
17 dismissed.  
18

19 **II. PLAINTIFF FAILS TO STATE A SECTION 1983 CLAIM AGAINST DEFENDANT**  
20 **WHITE.**  
21

22 Plaintiff names as defendant Terry White, the Chief Deputy City  
23 Attorney, Criminal Division. Plaintiff contends that White directed  
24 that plaintiff be held in custody without arraignment, although "the  
25 courts were open and available," to punish him for past litigation  
26 against SMPD officers. (Complaint ¶ 9; see also *id.* at ¶ 31:  
27 "Plaintiff was intentionally prevented from appearing before a judge at  
28 the direction of Defendant City Attorney Terry White.").

1 To state a claim under Section 1983, a plaintiff must allege that  
2 the defendant, acting under color of state law, deprived him of a right  
3 secured by the Constitution or laws of the United States. See West v.  
4 Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55 (1988); Jones v.  
5 Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant  
6 is not liable under Section 1983 unless the facts establish either the  
7 defendant's personal involvement in the constitutional deprivation, or  
8 a causal connection between the defendant's wrongful conduct and the  
9 alleged constitutional deprivation. See Hansen v. Black, 885 F.2d 642,  
10 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir.  
11 1978).

12  
13 Here, plaintiff does not contend that defendant White had anything  
14 to do with his arrest and detention. His claims against defendant White  
15 arise solely out of the failure to arraign him. Specifically, plaintiff  
16 complains that he was held all day on Friday, May 6, 2011 without being  
17 arraigned.

18  
19 In general, arraignment must take place within 48 hours of a  
20 warrantless arrest. California Penal Code § 825; County of Riverside  
21 v. McLaughlin, 500 U.S. 44, 52-56, 111 S. Ct. 1661, 1668-70 (1991)  
22 (Fourth Amendment requires judicial determination of probable cause for  
23 detention, which may be combined with arraignment, to be held within 48  
24 hours of arrest). According to the Complaint, however, plaintiff was  
25 released from custody 24 hours after his arrest and was never criminally  
26 charged. (Complaint ¶¶ 7, 9.) Thus, plaintiff was released well before  
27 the expiration of the 48-hour limit for pre-arraignment detention. See  
28 United States v. Guthrie, 265 Fed. Appx. 478, 479 (9th Cir., Jan. 23,

1 2008)(27-hour pre-arraignment detention presumptively constitutional).  
2 Moreover, he was never arraigned, because no criminal proceedings were  
3 initiated against him. Presumably, plaintiff is not seeking to hold  
4 White liable for the decision not to file charges, which is, in any  
5 event, protected by the doctrine of prosecutorial immunity. See Imbler  
6 v. Pachtman, 424 U.S. 409, 430-31, 96 S. Ct. 984, 995 (1976); Buckley  
7 v. Fitzsimmons, 509 U.S. 259, 273, 113 S. Ct. 2606, 2615 (1993).

8  
9 Plaintiff, therefore, has not alleged any constitutional violation  
10 -- or indeed, any wrongful act -- committed by defendant White. The  
11 Complaint contains no factual basis for holding White liable.  
12 Plaintiff's claims against defendant White, therefore, must be  
13 dismissed.

14  
15 **IV. PLAINTIFF FAILS TO STATE A SECTION 1983 CLAIM AGAINST THE CITY OR**  
16 **OFFICIAL CAPACITY CLAIMS AGAINST INDIVIDUAL DEFENDANTS.**

17  
18 Plaintiff has named the City as a defendant. In addition,  
19 plaintiff has asserted official capacity claims against defendants  
20 Jackman, Marioni, McGowen, and Chun. (Complaint at 1 & ¶ 2.)

21  
22 To allege a Section 1983 claim against an individual defendant, a  
23 plaintiff need only allege a constitutional deprivation inflicted on him  
24 by that defendant. To allege a Section 1983 claim against a  
25 municipality such as the City, more is needed. Plaintiff must allege  
26 a constitutional deprivation *and* a policy, custom, or practice of the  
27 City that was the "moving force" of the constitutional deprivation.  
28 Monell v. Department of Social Services, 436 U.S. 658, 694-95, 98 S. Ct.

1 2018, 2037-38 (1978); Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d  
2 950, 957 (9th Cir. 2008); Galen v. County of Los Angeles, 477 F.3d 652,  
3 667 (9th Cir. 2007).

4  
5 A municipality "may not be sued under § 1983 for an injury  
6 inflicted solely by its employees or agents. Instead, it is when  
7 execution of a government's policy or custom, whether made by its  
8 lawmakers or by those whose edicts or acts may fairly be said to  
9 represent official policy, inflicts the injury that the government as  
10 an entity is responsible under § 1983." Monell, 436 U.S. at 694, 98 S.  
11 Ct. at 2037-38. Thus, a local governmental entity is not liable for the  
12 acts of its employees unless "the action that is alleged to be  
13 unconstitutional implements or executes a policy statement, ordinance,  
14 regulation, or decision officially adopted or promulgated by that body's  
15 officers" or unless the alleged constitutional deprivation was "visited  
16 pursuant to a governmental 'custom' even though such a custom has not  
17 received formal approval through the body's official decisionmaking  
18 channels." *Id.* at 690-91, 98 S. Ct. at 2035-36.

19  
20 Here, plaintiff contends that the City has maintained policies that  
21 require and encourage the deprivation of constitutional rights and the  
22 employment and retention of police officers and jailers who have a  
23 "propensity for brutality, dishonesty, bigotry and numerous other  
24 serious abuses." (Complaint ¶ 21.) He alleges that the City, the SMPD,  
25 and Jackman: knew before this incident that officers Marioni, McGowen,  
26 Chun, and Palmer had committed "similar acts of criminality, dishonesty  
27 and abuse" against other members of the public; refused to adequately  
28 investigate misconduct and discipline SMPD officers; retaliated against



1 officers who reported abuse by other officers; did not adequately train  
2 or supervise SMPD officers; condoned the practice of prosecuting  
3 groundless criminal charges to insulate the City from civil liability  
4 and the practice of reducing criminal charges in return for releasing  
5 SMPD officials from civil liability; encouraged a conspiracy of silence;  
6 engaged in the practice of refusing to provide exculpatory and  
7 impeaching evidence to prosecutors and criminal defendants; and  
8 encouraged an atmosphere of lawlessness. (*Id.* at ¶ 9.)

9  
10 These allegations are too conclusory to support plaintiff's *Monell*  
11 claims against the City. See *Iqbal*, 556 U.S. at 680-81, 129 S. Ct. at  
12 1951 (requiring specific allegations regarding the policy at issue in  
13 a civil rights case). Moreover, policies pertaining to the prosecution  
14 of criminal charges and handling of evidence have nothing to do with  
15 what happened to plaintiff, who was never criminally charged. Plaintiff  
16 must describe policies or customs that were the "moving force" of the  
17 alleged constitutional deprivations inflicted on *him*; there must be a  
18 direct causal link between the policies and the alleged constitutional  
19 deprivations. See *Villegas*, 541 F.3d at 957. Plaintiff, therefore, has  
20 not alleged a plausible *Monell* claim against the City. See *Iqbal*, 556  
21 U.S. at 678, 129 S. Ct. at 1949; *Twombly*, 550 U.S. at 556, 127 S. Ct.  
22 at 1965.

23  
24 As for plaintiff's official capacity claims against defendants  
25 Jackman, Marioni, McGowen, and Chun, an official capacity claim for  
26 damages is merely another way of pleading a claim against the  
27 governmental entity of which the official is an agent. *Monell*, 436 U.S.  
28 at 690 n.55, 98 S. Ct. at 2035 n.55. Thus, plaintiff's official

1 capacity claims are, in effect, claims against the City, and fail for  
2 the same reasons.

3  
4 Accordingly, plaintiff's *Monell* claims against the City and his  
5 official capacity claims against defendants Jackman, Marioni, McGowen,  
6 and Chun must be dismissed.

7  
8 **III. PLAINTIFF FAILS TO STATE A SECTION 1983 CLAIM AGAINST DEFENDANT**  
9 **JACKMAN.**

10  
11 Plaintiff names as defendant Timothy Jackman, who was the SMPD  
12 Chief of Police at the time of the events giving rise to plaintiff's  
13 claims.

14  
15 Supervisory personnel generally are not liable under Section 1983  
16 on any theory of respondeat superior or vicarious liability in the  
17 absence of a state law imposing such liability. *See, e.g., Redman v.*  
18 *County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991). A supervisory  
19 official may be liable under Section 1983 only if he or she was  
20 personally involved in the constitutional deprivation, or if there was  
21 a sufficient causal connection between the supervisor's wrongful conduct  
22 and the constitutional violation. *Starr v. Baca*, 652 F.3d 1202, 1207  
23 (9th Cir. 2011), *cert. denied*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2101 (2012);  
24 *Hansen*, 885 F.2d at 646. Supervisory liability also may exist without  
25 overt personal participation if the supervisory official implements a  
26 policy so deficient that it is the moving force behind the  
27 constitutional violation. *Redman*, 942 F.2d at 1446. Thus, supervisors  
28 can be held liable for: (1) their own culpable action or inaction in

1 the training, supervision, or control of subordinates; (2) their  
2 acquiescence in the complained-of constitutional deprivation; and (3)  
3 conduct that showed a reckless or callous indifference to the rights of  
4 others. Cunningham v. Gates, 229 F.3d 1271, 1292 (9th Cir. 2000).

5  
6 Plaintiff does not allege that Jackman had any personal involvement  
7 in his arrest and detention. Rather, plaintiff contends that Jackman  
8 is responsible for the customs and polices described above alleged in  
9 connection with plaintiff's *Monell* claims. (See Complaint ¶¶ 22, 23.)  
10 However, plaintiff's allegations regarding the policies allegedly  
11 implemented by Jackman are largely conclusory, and plaintiff does not  
12 list any specific incidents of misconduct by SMPD officers of which  
13 Jackman was given notice.<sup>2</sup> There is no resemblance between the  
14 conclusory allegations in Paragraph 22, some of them patently inapposite  
15 to this action, and the detailed factual allegations deemed sufficient  
16 in Starr.<sup>3</sup> Nor has plaintiff shown a causal link between the policies  
17 allegedly implemented by Jackman and the harm to him; indeed, as

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18  
19 <sup>2</sup> See Henry A. v. Willden, 678 F.3d 991 (9th Cir. 2012)(foster  
20 children's allegations that supervisors of foster care system had  
21 knowledge of reports documenting systemic failures of foster care were  
22 insufficient to state a claim absent allegations that supervisors had  
23 personal knowledge of specific constitutional violations leading to  
24 injuries or had direct responsibility for training or supervising  
caseworkers); contrast Starr, 652 F.3d at 1208-10 (allegations  
describing specific incidents of inmate attacks caused by deputy  
misconduct as well as numerous instances of notice provided to Sheriff  
Baca were sufficient to state a claim against him).

25 <sup>3</sup> See Hydrick v. Hunter, 669 F.3d 937, 941 (9th Cir. 2012)  
26 (finding supervisory liability allegations insufficient and explaining  
27 that the decision in Starr depended on the "detailed factual  
28 allegations" of the complaint); Ramirez v. County of Los Angeles, 2012  
WL 2574826, at \*4 (C.D. Cal., July 3, 2012)(dismissing supervisory  
liability claim when plaintiff did not allege specific past incidents  
of excessive force of which Sheriff Baca was given notice).

1 previously discussed in connection with plaintiff's *Monell* claim, the  
2 alleged policies pertaining to the prosecution of criminal charges are  
3 plainly inapplicable to the facts of this case.

4  
5 Finally, although plaintiff alleges that Jackman "turned a blind  
6 eye" to proof of the officers' wrongdoing in connection with the  
7 investigation of plaintiff's citizen's complaint (Complaint ¶ 10),  
8 allegations that a supervisor ratified an officer's conduct through the  
9 handling of a subsequent investigation cannot show that the supervisor  
10 caused the officer's conduct. See Jones v. County of Sacramento, 2010  
11 WL 2843409, \*6-7 (E.D. Cal., July 20, 2010) (discussing applicable case  
12 law and concluding that a supervisor's "isolated and subsequent  
13 ratification" of an officer's conduct by failing to sustain a citizen's  
14 complaint "can never be sufficient to show that the supervisor caused  
15 the officer's conduct," especially after Iqbal).

16  
17 Accordingly, plaintiff's allegations are insufficient to state a  
18 plausible supervisory liability claim against defendant Jackman.  
19 Plaintiff's claims against him, therefore, must be dismissed.

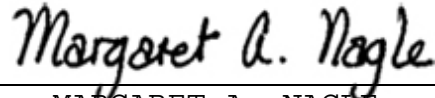
20  
21 **CONCLUSION**

22  
23 For the foregoing reasons, the Complaint is dismissed with leave  
24 to amend. If plaintiff wishes to pursue this action, he is granted  
25 thirty (30) days from the date of this Memorandum and Order within which  
26 to file a First Amended Complaint that attempts to cure the defects in  
27 the First Amended Complaint described herein. The First Amended  
28 Complaint, if any, shall be complete in itself. It shall not refer in

1 any manner to the original Complaint.

2  
3 Plaintiff is explicitly cautioned that failure to timely file a  
4 First Amended Complaint, or failure to correct the deficiencies  
5 described herein, may result in a recommendation that this action be  
6 dismissed pursuant to Fed. R. Civ. P. 41(b).

7  
8 DATED: July 20, 2012

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12 MARGARET A. NAGLE  
13 UNITED STATES MAGISTRATE JUDGE  
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