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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHENOA MARIE SMITH,	)	Case No. CV 15-00883-MMM (KK)
	)	
Plaintiff,	)	
	)	ORDER DISMISSING FIRST AMENDED
v.	)	COMPLAINT WITH LEAVE TO AMEND
	)	
	)	
SHERIFF BILL BROWN, et al.,	)	
	)	
Defendants.	)	
	)	

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On February 6, 2015, Plaintiff Chenoa Marie Smith ("Plaintiff"), proceeding pro se and in forma pauperis, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 ("Complaint"). Following the Court's screening of the Complaint pursuant to 28 U.S.C. § 1915(e)(2), the Court dismissed the Complaint with leave to amend. On February 25, 2015, Plaintiff filed a First Amended Complaint ("FAC"). After screening the FAC, the Court dismisses the FAC with leave to amend for the reasons set forth below.

**STANDARD OF REVIEW**

The Court's screening of a complaint under 28 U.S.C.

1 § 1915(e)(2) is governed by the following standards. A complaint  
2 may be dismissed as a matter of law for failure to state a claim  
3 "where there is no cognizable legal theory or an absence of  
4 sufficient facts alleged to support a cognizable legal theory."  
5 Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035,  
6 1041 (9th Cir. 2010) (internal quotation marks omitted); accord  
7 O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In  
8 considering whether a complaint states a claim, a court must  
9 accept as true all the factual allegations in it. Ashcroft v.  
10 Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868  
11 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).  
12 The court need not accept as true, however, "allegations that are  
13 merely conclusory, unwarranted deductions of fact, or  
14 unreasonable inferences." In re Gilead Scis. Sec. Litig., 536  
15 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks  
16 omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th  
17 Cir. 2012) (finding that district court properly dismissed claim  
18 when plaintiff's "conclusory allegations" did not support it).

19 Although a complaint need not include detailed factual  
20 allegations, it "must contain sufficient factual matter, accepted  
21 as true, to 'state a claim to relief that is plausible on its  
22 face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v.  
23 Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929  
24 (2007)). A claim is facially plausible when it "allows the court  
25 to draw the reasonable inference that the defendant is liable for  
26 the misconduct alleged." Iqbal, 556 U.S. at 678. "A document  
27 filed pro se is to be liberally construed, and a pro se  
28 complaint, however inartfully pleaded, must be held to less

1 stringent standards than formal pleadings drafted by lawyers."  
2 Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed.  
3 2d 1081 (2007) (citations and internal quotation marks omitted).

#### 4 DISCUSSION

##### 5 I. The FAC Again Fails to Comply with the Pleading Requirements 6 of Rule 8 of the Federal Rules of Civil Procedure

7 Rule 8(a) requires that a complaint contain "a short and  
8 plain statement of the claim showing that the pleader is entitled  
9 to relief." Further, Rule 8(d)(1) provides that "[e]ach  
10 allegation must be simple, concise, and direct." As the Supreme  
11 Court has held, Rule 8(a) "requires a 'showing,' rather than a  
12 blanket assertion, of entitlement to relief." See Twombly, 550  
13 U.S. at 555 n.3. Complaints that are "argumentative, prolix,  
14 replete with redundancy, and largely irrelevant" and that  
15 "consist[] largely of immaterial background information" are  
16 subject to dismissal under Rule 8. See McHenry v. Renne, 84 F.3d  
17 1172, 1177 (9th Cir. 1996).

18 Like the original Complaint, the FAC is unclear and  
19 difficult to understand. Plaintiff names the same two defendants  
20 (Santa Barbara County Board of Supervisors and Sheriff Bill  
21 Brown) under 42 U.S.C. section 1983 ("Section 1983") but again  
22 fails to provide sufficient detail regarding the basis for her  
23 claim. Rather, Plaintiff provides detailed information regarding  
24 facts that have no clear relationship to the named defendants.  
25 As a result, the FAC fails to comply with Rule 8's requirement of  
26 a "simple, concise, and direct" pleading.

27 As Plaintiff was previously informed, in order to state a  
28 claim for a civil rights violation under Section 1983, a

1 plaintiff must allege that a particular defendant, acting under  
2 color of state law, deprived plaintiff of a right guaranteed  
3 under the U.S. Constitution or a federal statute. 42 U.S.C. §  
4 1983; see West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101  
5 L. Ed. 2d 40 (1988). Here, Plaintiff does not specify what  
6 action a **named defendant** took; she does not specify on what date  
7 the **named defendant** allegedly took such action; nor does she  
8 specify what constitutional harm resulted from the alleged action  
9 of the **named defendant**.

10 As Plaintiff was previously advised, in amending the FAC  
11 Plaintiff must state each of her claims separately and for each  
12 claim should identify "clearly and precisely" and briefly the  
13 legal basis and the facts underlying it. See Bautista v. L.A.  
14 Cnty., 216 F.3d 837, 840-41 (9th Cir. 2000) ("Experience teaches  
15 that, unless cases are pleaded clearly and precisely, issues are  
16 not joined, discovery is not controlled, the trial court's docket  
17 becomes unmanageable, the litigants suffer and society loses  
18 confidence in the court's ability to administer justice.").  
19 Plaintiff should limit her allegations to the **named defendants**,  
20 and identify when the alleged harm was committed by a named  
21 defendant, which named defendant caused the alleged harm, what  
22 actions were committed by the named defendant, and what  
23 constitutional violation resulted from the named defendant's  
24 alleged action.

25 **II. Plaintiff Has Again Failed to State a Claim Against the**  
26 **Santa Barbara County Board of Supervisors**

27 Once again, Plaintiff sues the Santa Barbara County Board of  
28 Supervisors based upon a supervisory role. FAC at 1, 3.

1 Municipalities and other local government units are considered  
2 "persons" under § 1983 and therefore may be liable for causing a  
3 constitutional deprivation. Monell v. Dep't of Soc. Servs., 436  
4 U.S. 658, 690-91, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); Long  
5 v. Cnty. of L.A., 442 F.3d 1178, 1185 (9th Cir. 2006). However,  
6 because no respondeat superior liability exists under § 1983, a  
7 municipality is liable only for injuries that arise from an  
8 official policy or longstanding custom. Monell, 436 U.S. at 694;  
9 City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 103  
10 L. Ed. 2d 412 (1989). A plaintiff must show "that a [county]  
11 employee committed the alleged constitutional violation pursuant  
12 to a formal governmental policy or a longstanding practice or  
13 custom which constitutes the standard operating procedure of the  
14 local governmental entity." Gillette v. Delmore, 979 F.2d 1342,  
15 1346 (9th Cir. 1992) (internal quotation marks omitted). In  
16 addition, she must show that the policy was "(1) the cause in  
17 fact and (2) the proximate cause of the constitutional  
18 deprivation." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir.  
19 1996). "Liability for improper custom may not be predicated on  
20 isolated or sporadic incidents; it must be founded upon practices  
21 of sufficient duration, frequency and consistency that the  
22 conduct has become a traditional method of carrying out policy."  
23 Id. at 918; Thompson v. Los Angeles, 885 F.2d 1439, 1443-44 (9th  
24 Cir. 1989) ("Consistent with the commonly understood meaning of  
25 custom, proof of random acts or isolated events are [sic]  
26 insufficient to establish custom."), overruled on other grounds  
27 by Bull v. City & Cnty. of S.F., 595 F.3d 964, 981 (9th Cir.  
28 2010) (*en banc*).

1 As a preliminary matter, Plaintiff is once again advised  
2 that the entity that would be the real party in interest is  
3 ultimately Santa Barbara County (not the Board of Supervisors).  
4 Moreover, Plaintiff has once again failed to specifically  
5 identify any official policy or longstanding custom or practice  
6 of Santa Barbara County that is violative of her constitutional  
7 rights. Plaintiff thus has not properly stated a municipal  
8 claim. See Harris, 489 U.S. at 385 (to state claim against  
9 municipality, plaintiff must show that "there is a direct causal  
10 link between a municipal policy or custom and the alleged  
11 constitutional deprivation"); see also Iqbal, 556 U.S. at 678  
12 (vague and conclusory allegations not sufficient to state claim).  
13 Accordingly, her claims against the Santa Barbara County Board of  
14 Supervisors must be dismissed.

15 **III. Plaintiff Has Again Failed to State a Claim Against Sheriff**  
16 **Bill Brown in his Official Capacity**

17 Plaintiff again sues Sheriff Bill Brown in his official  
18 capacity. The U.S. Supreme Court has held an "official-capacity  
19 suit is, in all respects other than name, to be treated as a suit  
20 against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105  
21 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt,  
22 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985);  
23 Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991).  
24 Such a suit "is not a suit against the official personally, for  
25 the real party in interest is the entity." Graham, 473 U.S. at  
26 166. Moreover, a local government entity "may not be sued under  
27 § 1983 for an injury inflicted solely by its employees or agents.  
28 Instead, it is only when execution of a government's policy or

1 custom, whether made by its lawmakers or by those whose edicts or  
2 acts may fairly be said to represent official policy, inflicts  
3 the injury that the government as an entity is responsible under  
4 § 1983." Monell, 436 U.S. at 694.

5 Here, Plaintiff sues Sheriff Bill Brown in his official  
6 capacity. Accordingly, as Plaintiff was previously advised, the  
7 entity that would be the real party in interest in any  
8 official-capacity suit against the named individual defendants is  
9 ultimately Santa Barbara County (not the individual defendant).  
10 As discussed above, the Complaint fails to state a claim against  
11 any municipality. Therefore, Plaintiff's official capacity claim  
12 against Sheriff Bill Brown must be dismissed.

13 **IV. Plaintiff Has Again Failed to State a Claim Against Sheriff**  
14 **Bill Brown in his Individual Capacity**

15 Plaintiff again sues Sheriff Bill Brown in his individual  
16 capacity. Suits against government officials under Section 1983  
17 in their individual capacities "seek to impose personal liability  
18 upon a government official for actions he takes under color of  
19 state law." Graham, 473 U.S. at 165. "A person deprives another  
20 of a constitutional right, within the meaning of section 1983, if  
21 he does an affirmative act, participates in another's affirmative  
22 acts, or omits to perform an act which he is legally required to  
23 do that causes the deprivation of which [the plaintiff  
24 complains]." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
25 1978). In short, "there must be a showing of personal  
26 participation in the alleged rights deprivation . . . ." Jones  
27 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (internal citation  
28 omitted). See also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.

1 1989) ("Liability under section 1983 arises only upon a showing  
2 of personal participation by the defendant.").

3 Here, the FAC does not allege facts showing Sheriff Bill  
4 Brown was personally involved in the violation of Plaintiff's  
5 constitutional rights. Rather, the FAC again relies upon a  
6 theory of supervisory liability. FAC at 3. Such allegations are  
7 insufficient. Therefore, Plaintiff's individual capacity claim  
8 against Sheriff Bill Brown must also be dismissed.

9 **LEAVE TO FILE SECOND AMENDED COMPLAINT**

10 For the foregoing reasons, the FAC is subject to dismissal.  
11 As the court is unable to determine whether amendment would be  
12 futile, leave to amend is granted. See Lucas v. Dep't of Corr.,  
13 66 F.3d 245, 248 (9th Cir. 1995) (per curiam). However,  
14 Plaintiff is advised that because any Second Amended Complaint  
15 will be plaintiff's **second** opportunity to amend her complaint to  
16 rectify pleading deficiencies, the Court may not be disposed  
17 toward another dismissal without prejudice and with leave to  
18 amend. "[A] district court's discretion over amendments is  
19 especially broad 'where the court has already given a plaintiff  
20 one or more opportunities to amend his complaint.'" Ismail v.  
21 County of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012)  
22 (Valerie Baker Fairbank, J.) (quoting DCD Programs, Ltd. v.  
23 Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987)); see also Zavala  
24 v. Bartnik, 348 F. App'x 211, 213 (9th Cir. 2009) ("Dismissal  
25 with prejudice was proper because Zavala was given two prior  
26 opportunities to amend his complaint in order to correct the  
27 deficiencies identified by the district court but failed to do  
28 so.").



1           Accordingly, IT IS ORDERED THAT:

2           1)    On or before **March 17, 2015**, Plaintiff may file a  
3 Second Amended Complaint ("SAC") to attempt to cure the  
4 deficiencies discussed above. The Clerk of Court is directed to  
5 mail Plaintiff a blank Central District civil rights complaint  
6 form to use for filing the SAC, which plaintiff is encouraged to  
7 utilize.

8           2)    If Plaintiff chooses to file a SAC, Plaintiff must  
9 clearly designate on the face of the document that it is the  
10 "Second Amended Complaint," it must bear the docket number  
11 assigned to this case, and it must be retyped or rewritten in its  
12 entirety, preferably on the court-approved form. The SAC must be  
13 complete in and of itself, without reference to the original  
14 complaint or any other pleading, attachment or document.

15           An amended complaint supersedes the preceding complaint.  
16 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After  
17 amendment, the court will treat all preceding complaints as  
18 nonexistent. Id. Because the court grants Plaintiff leave to  
19 amend as to all his claims raised here, any claim that was raised  
20 in a preceding complaint is waived if it is not raised again in  
21 the First Amended Complaint. Lacey v. Maricopa Cnty., 693 F.3d  
22 896, 928 (9th Cir. 2012).

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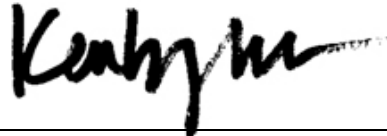
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1 Plaintiff is admonished that if she fails to timely file a  
2 sufficient SAC, the Court will recommend that this action be  
3 dismissed with prejudice on the grounds set forth above and/or  
4 for failure to diligently prosecute.

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7 DATED: March 3, 2015

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HON. KENLY KIYA KATO  
9 U.S. MAGISTRATE JUDGE  
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