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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARTIN DANIEL WEEKLEY,	)	NO. SA CV 17-1337-ODW(E)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DISMISSING COMPLAINT
	)	
ORANGE COUNTY SHERIFF'S	)	WITH LEAVE TO AMEND
DEPARTMENT, et al.,	)	
	)	
Defendants.	)	
	)	

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For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(2).

**BACKGROUND**

Plaintiff, a state prisoner, brings this civil rights action pursuant to 42 U.S.C. section 1983 against the Orange County Sheriff's Department and Deputy Sheriff Gotts, whom Plaintiff designates as "Defendant #1" and "Defendant #2," respectively. Plaintiff sues Defendant Gotts in his individual and official capacities. Plaintiff's claims arise out of alleged events in August and September

1 of 2016 when Plaintiff assertedly was incarcerated at the Orange  
2 County Jail.<sup>1</sup>

3  
4 The Complaint contains two claims for relief. In Claim I,  
5 Plaintiff alleges that, after Plaintiff and another inmate assertedly  
6 engaged in a brief altercation, Defendant Gotts allegedly responded to  
7 the scene (Complaint, p. "5 of 6"). By the time Gotts allegedly  
8 arrived, Plaintiff assertedly was "proned out" on the floor (id.).  
9 Plaintiff allegedly never resisted or made any attempt to move (id.,  
10 p. "5 of 6(B)"). Gotts allegedly jumped on Plaintiff's back with a  
11 knee, assertedly driving Plaintiff's head into the stairwell with  
12 extreme force (id., p. "5 of 6"). Gotts allegedly lifted Plaintiff a  
13 few inches off the ground and drove Plaintiff into the concrete  
14 staircase head first while assertedly dropping Gotts' knees into  
15 Plaintiff's back, allegedly causing Plaintiff to suffer multiple  
16 facial and head lacerations (id.). Plaintiff allegedly could no  
17 longer see due to the blood assertedly running into his eyes (id.).  
18 Gotts allegedly handcuffed Plaintiff and dragged Plaintiff down the  
19 escalator to the Medical Ward (id., p. "5 of 6(B)"). Plaintiff  
20 allegedly was taken to the hospital where he assertedly was treated for  
21 head and facial lacerations and a concussion and kept under  
22 observation for two days (id.). Plaintiff allegedly lost vision in  
23 his left eye and still experiences headaches (id.). Plaintiff  
24 contends Defendants violated Plaintiff's Eighth Amendment right to be  
25 free from excessive force.

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> It is unclear whether Plaintiff was a pretrial detainee  
or a convicted prisoner at the time of the alleged wrongdoing.

1 In Claim II, Plaintiff alleges that unidentified deputies denied  
2 Plaintiff grievance forms and threatened to retaliate against  
3 Plaintiff for filing grievances (id., p. "5 of 6(C)"). Plaintiff also  
4 alleges that, upon Plaintiff's return from the hospital, unidentified  
5 deputies assertedly disregarded a "known danger sign" and placed  
6 Plaintiff in "regular non-medical housing" while ignoring Plaintiff's  
7 medical complaints and concerns, which allegedly caused Plaintiff to  
8 fall unconscious and go "Man Down" (id.).

9  
10 Plaintiff further alleges that the County ("Defendant #1") also  
11 committed the previously described asserted excessive force and  
12 allegedly returned Plaintiff from the hospital to Plaintiff's "same  
13 housing unit" which assertedly was "unsupervised by medical staff"  
14 (id., p. "5 of 6(D)"). After Plaintiff allegedly went "man down,"  
15 Plaintiff assertedly was taken to a medical facility (id.). Two days  
16 later, Plaintiff allegedly attempted to file a grievance claiming  
17 excessive force and inadequate medical care but the grievance "went  
18 unanswered" (id.). Plaintiff allegedly asked "Defendant #1" for  
19 grievance forms multiple times, and unidentified staff assertedly told  
20 Plaintiff that Plaintiff would "get on[e] later, or on 'next week'"  
21 (id.). Plaintiff allegedly never received a grievance form and there  
22 were no grievance forms on Plaintiff's housing unit (id.).  
23 Unidentified staff allegedly told Plaintiff that Plaintiff did "not  
24 want to file a grievance because 'we will fuck you up if you do'"  
25 (id.). Plaintiff purportedly was scared for his life (id.).

26  
27 The County ("Defendant #1") allegedly failed to train its  
28 officers properly concerning the use of force, grievance procedures,

1 proscription against retaliation and the provision of medical care to  
2 inmates (id.).

3  
4 Plaintiff seeks compensatory and punitive damages in the sum of  
5 \$2.5 million from Defendant Gotts and compensatory and punitive  
6 damages in the sum of \$5 million from the County (id., p. "6 of 6").  
7

#### 8 DISCUSSION

9  
10 The Court must construe Plaintiff's section 1983 official  
11 capacity claims against Defendant Gotts as claims against the County.  
12 See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). Plaintiff may  
13 not sue the County for alleged constitutional violations on a theory  
14 of respondeat superior, which is not a theory of liability cognizable  
15 under 42 U.S.C. section 1983. See Connick v. Thompson, 563 U.S. 51,  
16 60-61 (2011); Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009); Polk County  
17 v. Dodson, 454 U.S. 312, 325 (1981); Castro v. County of Los Angeles,  
18 833 F.3d 1060, 1073 (9th Cir. 2016) (en banc), cert. denied, 137 S.  
19 Ct. 831 (2017). The County may be held liable only if the alleged  
20 wrongdoing was committed pursuant to a municipal policy, custom or  
21 usage. See Board of County Commissioners of Bryan County, Oklahoma v.  
22 Brown, 520 U.S. 397, 402-04 (1997); Monell v. Dep't of Soc. Servs.,  
23 436 U.S. 658, 691 (1978) ("Monell"). A plaintiff seeking to impose  
24 liability on a municipality under Monell must allege facts showing  
25 that: (1) the constitutional violation was the result of a  
26 governmental policy or a longstanding practice or custom; (2) the  
27 individual who committed the constitutional violation was an official  
28 with final policy-making authority; or (3) an official with final

1 policy-making authority ratified the unconstitutional act. Gillette  
2 v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992), cert. denied, 510  
3 U.S. 932 (1993).

4  
5 Plaintiff's conclusory allegations do not suffice to plead a  
6 municipal liability claim against the County under these standards.  
7 See Ashcroft v. Iqbal, 556 U.S. at 678 (plaintiff must allege more  
8 than an "unadorned, the-defendant-unlawfully-harmed-me accusation"; a  
9 pleading that "offers labels and conclusions or a formulaic recitation  
10 of the elements of a cause of action will not do"); Starr v. Baca, 652  
11 F.3d 1202, 1216 (9th Cir. 2011) (en banc), cert. denied, 132 S. Ct.  
12 2101 (2012) ("allegations in a complaint or counterclaim may not  
13 simply recite the elements of a cause of action, but must contain  
14 sufficient allegations of underlying facts to give fair notice and to  
15 enable the opposing party to defend itself effectively").  
16 Additionally, liability under Monell may not be predicated on  
17 "isolated or sporadic incidents," but "must be founded upon practices  
18 of sufficient duration, frequency and consistency that the conduct has  
19 become a traditional method of carrying out policy." Gant v. County  
20 of Los Angeles, 772 F.3d 608, 618 (9th Cir. 2014). The Complaint does  
21 not contain sufficient factual allegations to plead a cognizable  
22 Monell claim.

23  
24 Additionally, Plaintiff's general and conclusory allegations that  
25 unidentified staff assertedly engaged in various acts of wrongdoing,  
26 including alleged denial of medical care, retaliation and interference  
27 with the grievance process, are insufficient. See McHenry v. Renne,  
28 84 F.3d 1172, 1178 (9th Cir. 1996) (complaint is subject to dismissal

1 for failure to state a claim if "one cannot determine from the  
2 complaint who is being sued, for what relief, and on what theory");  
3 see also E.D.C. Technologies, Inc. v. Seidel, 2016 WL 4549132, at \*9  
4 (N.D. Cal. Sept. 1, 2016) ("Courts consistently conclude that  
5 undifferentiated pleading against multiple defendants is improper")  
6 (citations, internal brackets and quotations omitted); Chevalier v.  
7 Ray and Joan Kroc Corps. Cmty. Ctr., 2012 WL 2088819, at \*2 (N.D. Cal.  
8 June 8, 2012) (complaint that failed to "identify which wrongs were  
9 committed by which Defendant" insufficient); Fed. R. Civ. P. 8.

10  
11 Finally, Plaintiff may not recover punitive damages against a  
12 governmental entity or an individual governmental officer sued in his  
13 or her official capacity. See City of Newport v. Fact Concerts, Inc.,  
14 453 U.S. 247, 271 (1981); Ruvalcaba v. City of Los Angeles, 167 F.3d  
15 514, 524 (9th Cir.), cert. denied, 528 U.S. 1003 (1999).

16  
17 **ORDER**  
18

19 The Complaint is dismissed with leave to amend. If Plaintiff  
20 still wishes to pursue this action, he is granted thirty (30) days  
21 from the date of this Order within which to file a First Amended  
22 Complaint in conformity with this Order. While the Court does not  
23 necessarily deem insufficient all of Plaintiff's allegations, the  
24 Court does require that any First Amended Complaint be complete in  
25 itself and not refer in any manner to the prior Complaint. Plaintiff  
26 may not add Defendants without leave of court. See Fed. R. Civ. P.  
27 21. Failure to file a timely First Amended Complaint in conformity  
28 with this Order may result in the dismissal of this action. See

1 Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002), cert.  
2 denied, 538 U.S. 909 (2003) (court may dismiss action for failure to  
3 follow court order); Simon v. Value Behavioral Health, Inc., 208 F.3d  
4 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir. 2000), cert.  
5 denied, 531 U.S. 1104 (2001), overruled on other grounds, Odom v.  
6 Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 552 U.S. 985  
7 (2007) (affirming dismissal without leave to amend where plaintiff  
8 failed to correct deficiencies in complaint, where court had afforded  
9 plaintiff opportunities to do so, and where court had given plaintiff  
10 notice of the substantive problems with his claims); Plumeau v. School  
11 District #40, County of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997)  
12 (denial of leave to amend appropriate where further amendment would be  
13 futile).

14  
15 DATED: October 2, 2017.

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19 \_\_\_\_\_  
20 OTIS D. WRIGHT, II  
21 UNITED STATES DISTRICT JUDGE

22 PRESENTED this 28th day of  
23 September, 2017, by:

24 \_\_\_\_\_  
25 /s/  
26 CHARLES F. EICK  
27 UNITED STATES MAGISTRATE JUDGE  
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