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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BARRY HALAJIAN,	)	1:10cv01358 AWI DLB
	)	
	)	
Plaintiff,	)	ORDER DISMISSING COMPLAINT
	)	WITH LEAVE TO AMEND
v.	)	
	)	
THE CITY OF FRENZO, et al.,	)	
	)	
	)	
Defendants.	)	

Plaintiff Barry Halajian (“Plaintiff”), appearing pro se, filed the instant civil rights action on July 30, 2010. He names the City of Fresno, Fresno Police Chief Jerry Dyer, Fresno Police Officer Matt Pantages, Frontier Auto Body & Towing and Chris Clark as Defendants. Plaintiff paid the filing fee and is therefore not appearing in forma pauperis.

**DISCUSSION**

A. Screening Standard

A trial court may dismiss a claim sua sponte under [Fed. R. Civ. P. 12\(b\)\(6\)](#) where the claimant cannot possibly win relief. [Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 \(9th Cir. 1987\)](#); [Wong v. Bell, 642 F.2d 359, 361-62 \(9th Cir. 1981\)](#). A claim is legally frivolous when it lacks an arguable basis either in law or fact. [Neitzke v. Williams, 490 U.S. 319, 325 \(1989\)](#); [Franklin v. Murphy, 745 F.2d 1221, 1227-28 \(9th Cir. 1984\)](#). A federal court may dismiss a

1 claim as frivolous where it is based on an indisputably meritless legal theory or where the factual  
2 contentions are clearly baseless. [Nietzke, 490 U.S. at 327](#).

3 B. Plaintiff's Allegations

4 According to his complaint, Defendant Fresno Police Officer Matt Pantages made a  
5 traffic stop on October 29, 2009. Plaintiff was driving a 2004 Chevrolet pick up truck. When  
6 Officer Pantages discovered that Plaintiff had a suspended license, he called a tow truck.  
7 Plaintiff's truck was towed by Defendant Frontier Auto Body & Towing. Plaintiff alleges that  
8 Defendant Officer Pantages acted beyond the scope of his authority in having Plaintiff's vehicle  
9 towed. He also alleges that Defendants City of Fresno and Police Chief Dyer directed Officer  
10 Pantages to take actions that were beyond the scope of his authority and engage in unlawful  
11 activities. Plaintiff alleges that Defendants Chris Clark<sup>1</sup> and Frontier Auto Body & Towing acted  
12 under color of law and under the direction of the City of Fresno.

13 Plaintiff contends that the act of towing his truck violated the Fourth Amendment based  
14 on his belief that he does not fit the definitions of those required to have a driver's license.  
15 Specifically, he contends that he has a "right to travel on the highway, unless [he] transport[s]  
16 persons or property for hire." Complaint, at 7. Plaintiff also alleges that the towing of his  
17 vehicle deprived him of due process of law.<sup>2</sup>

18 Even if he was required to have a license, Plaintiff contends that the suspension was  
19 invalid because he was not afforded a hearing in violation of due process.

20 Plaintiff filed a complaint in the Fresno County Superior Court in November 2009. The  
21 court sustained Defendants' demurrer and dismissed the complaint because Plaintiff failed to  
22 name the City of Fresno and failed to exhaust his administrative remedies. He alleges that  
23 Defendants "refused to engage in any kind of dialog or do anything but demand money and  
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27 <sup>1</sup> According to an attachment to the complaint, Defendant Chris Clark is the co-owner of Frontier Auto  
28 Body & Towing. It is unclear whether he actually participated in the towing of Plaintiff's vehicle.

<sup>2</sup> Plaintiff does not challenge the validity of the traffic stop.

1 compliance with what they consider to be the law in California.” Complaint, at 8. Plaintiff  
2 alleges that he has exhausted his administrative remedies.<sup>3</sup>

3 Plaintiff requests that his truck be returned and that he be awarded damages in the amount  
4 of \$75,000.

5 C. Discussion

6 1. *Driver’s License Requirement*

7 Much of Plaintiff’s complaint is dedicated to supporting his argument that he did not  
8 need a driver’s license. According to his reading of various federal and state statutes, he  
9 contends that a license is only required for drivers who are transporting persons or property for  
10 hire. He contends that he is “not involved in the transportation of persons or property for hire,”  
11 and therefore did not need a license. Plaintiff therefore believes that Officer Pantages did not  
12 have authority to have his vehicle towed.

13 Plaintiff is advised that California law requires that a person may not drive a motor  
14 vehicle on a highway unless the person holds a valid driver’s license. Cal. Veh. Code  
15 § 12500(a). California law further provides that “Whenever a peace officer determines that a  
16 person was driving a vehicle while his or her driving privilege was suspended or revoked, ... the  
17 peace officer may ... immediately arrest that person and cause the removal and seizure of that  
18 vehicle ....” Cal. Veh. Code § 14602.6(a).

19 Therefore, pursuant to California law, Plaintiff was required to have a driver’s license and  
20 Officer Pantages was not acting beyond the scope of his authority in towing Plaintiff’s truck upon  
21 discovering that he was driving with a suspended license. He is therefore unable to state a cause  
22 of action based on these facts.

23 2. *Violation of Fourth Amendment*

24 Plaintiff argues that whether or not he was required to have a license, the towing of his  
25 vehicle violated the Fourth Amendment.

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28 <sup>3</sup> There may be preclusive effects from Plaintiff’s state law action, which is not described in detail in the  
complaint.

1 The impoundment of an automobile is a seizure under the Fourth Amendment. Miranda  
2 v. City of Cornelius, 429 F.3d 858 (9th Cir.2005). “An impoundment may be proper under the  
3 community caretaking doctrine if the driver’s violation of a vehicle regulation prevents the driver  
4 from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an  
5 exposed or public location.” Id. at 865.

6 Plaintiff admits that he was driving on a suspended license. He was therefore unable to  
7 lawfully operate the vehicle and the resulting seizure does not violate the Fourth Amendment.  
8 See also, South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (“The authority of police to seize  
9 and remove from the streets vehicles impeding traffic or threatening public safety and  
10 convenience is beyond challenge.”); Mohammed El v. Opdyke, 2004 WL 1465692, \*3  
11 (N.D.Cal.2004) (police officer did not violate plaintiff’s constitutional rights by impounding  
12 plaintiff’s vehicle, as authorized under California law, when plaintiff was operating vehicle  
13 without valid driver’s license).

14 Plaintiff is therefore unable to state a cause of action under the Fourth Amendment.

15 To the extent that Plaintiff suggests that the decision to suspend his license was invalid  
16 because he was not afforded a hearing, the issue will be discussed below.

17 3. *Due Process*

18 a. License Suspension Hearing

19 Plaintiff suggests that the suspension is invalid because he was not afforded a hearing.  
20 The named Defendants, however, were not involved in any administrative process related to the  
21 suspension. The California Department of Motor Vehicles is charged with investigations and  
22 hearings relating to suspension of a person’s license to operate a motor vehicle. Cal. Veh. Code  
23 § 13800, et seq.

24 Moreover, Plaintiff’s allegation is nothing more than a one sentence conclusory statement  
25 and does not satisfy the requirements of Federal Rule of Civil Procedure 8. A complaint must  
26 contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal  
27 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of  
28 the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th

1 [Cir. 1984](#)). Plaintiff must allege with at least some degree of particularity overt acts which the  
2 defendants engaged in that support Plaintiff's claim. [Id.](#) Although a complaint need not outline  
3 all elements of a claim, it must be possible to infer from the allegations that all elements exist  
4 and that there is entitlement to relief under some viable legal theory. [Walker v. South Cent. Bell](#)  
5 [Telephone Co., 904 F.2d 275, 277 \(5th Cir. 1990\)](#); [Lewis v. ACB Business Service, Inc., 135](#)  
6 [F.3d 389, 405-06 \(6th Cir. 1998\)](#).

7 Plaintiff's statement that he did not receive a hearing is insufficient to satisfy Rule 8. He  
8 fails to allege why he believes he was not afforded a hearing. [Dixon v. Love, 431 U.S. 105, 112](#)  
9 [\(1977\)](#) (due process clause applies to suspension of licenses by the state).<sup>4</sup> Plaintiff will,  
10 however, be given leave to amend this claim.

11 b. Hearing Related to Towing of Vehicle

12 Due process requires that certain procedures be followed before an individual can be  
13 deprived of property interests. [Mathews v. Eldridge, 424 U.S. 319, 332 \(1976\)](#). To determine  
14 what procedures are required, the Court balances the competing government and private interests.  
15 [Scofield v. City of Hillsborough, 862 F.2d 759, 762 \(9th Cir. 1988\)](#). The uninterrupted use of  
16 one's vehicle is a significant and substantial private interest, though this interest is burdened by  
17 numerous rules and regulations governing the use of the vehicle. [Id.](#)

18 Although Plaintiff alleges that the towing of his car was a due process violation, he does  
19 not provide facts to further explain his claim and it therefore fails to satisfy Rule 8. Plaintiff will  
20 be given leave to amend this claim.

21 4. *Defendants Frontier Auto Body & Towing and Chris Clark*

22 The towing company and its employee have a good faith defense for following Officer  
23 Pantages' instructions, even if there was a constitutional violation. [Clement v. City of Glendale,](#)  
24 [518 F.3d 1090, 1096-97 \(9th Cir. 2008\)](#). Once Officer Pantages discovered that Plaintiff was

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26 <sup>4</sup> Plaintiff is advised that the California Department of Motor Vehicles, as a state agency, is immune from  
27 suit under the Eleventh Amendment, [Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 \(9th Cir. 2007\)](#), and is  
28 not a 'person' within the meaning of section 1983, [Hydrick v. Hunter, 500 F.3d 978, 988 \(9th Cir. 2007\)](#). However,  
the Eleventh Amendment does not bar suits against state officials in their personal capacities. [Hafer v. Melo, 502](#)  
[U.S. 21, 30 \(1991\)](#); [Porter v. Jones, 319 F.3d 483, 491 \(9th Cir. 2003\)](#).

1 driving with a suspended license, he was authorized under California law to impound Plaintiff's  
2 vehicle without violating the Fourth Amendment. Plaintiff's complaint does not allege that  
3 Defendants Frontier and Clark had any reason to suspect that there would be a constitutional  
4 violation. Id. (explaining that the responsibility for providing notice falls to the police  
5 department).

6 Plaintiff is therefore unable to state a claim against Defendants Frontier Auto Body &  
7 Towing and Chris Clark.

8 5. *Defendants City of Fresno and Jerry Dyer*

9 Finally, Plaintiff's allegations against Defendants City of Fresno and Jerry Dyer are  
10 insufficient to state a claim. Plaintiff does not allege that either was directly involved in the  
11 impoundment of his truck, but instead contends that Defendant Dyer directed Officer Pantages to  
12 take actions that were beyond the scope of his authority and directed him to engage in unlawful  
13 behavior. Similarly, he alleges that the City of Fresno acted beyond the scope of its authority.

14 a. Chief Dyer

15 There is no pure respondeat superior liability under section 1983. A supervisor is liable  
16 only "if the supervisor participated in or directed the violations, or knew of the violations and  
17 failed to act to protect them." Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir.2007).

18 Although Plaintiff alleges that Chief Dyer "directed" Officer Pantages to act unlawfully,  
19 his allegation is nothing more than a conclusion. "A plaintiff must allege facts, not simply  
20 conclusions, that show that an individual was personally involved in the deprivation of his civil  
21 rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

22 b. City of Fresno

23 A local government unit may not be held responsible for the acts of its employees under a  
24 respondeat superior theory of liability. Monell v. Department of Social Services, 436 U.S. 658,  
25 691 (1978); Webb v. Sloan, 330 F.3d 1158, 1163-64 (9th Cir. 2003); Gibson v. County of  
26 Washoe, 290 F.3d 1175, 1185 (9th Cir. 2002). Rather, a local government unit may only be held  
27 liable if it inflicts the injury complained of. Gibson, 290 F.3d at 1185.

1 Generally, a claim against a local government unit for municipal or county liability  
2 requires an allegation that “a deliberate policy, custom, or practice . . . was the ‘moving force’  
3 behind the constitutional violation . . . suffered.” Galen v. County of Los Angeles, 477 F.3d 652,  
4 667 (9th Cir. 2007); City of Canton, Ohio, v. Harris, 489 U.S. 378, 385 (1989). Alternatively,  
5 and more difficult to prove, municipal liability may be imposed where the local government  
6 unit’s omission led to the constitutional violation by its employee. Gibson at 1186. Under this  
7 route to municipal liability, the “plaintiff must show that the municipality’s deliberate  
8 indifference led to its omission and that the omission caused the employee to commit the  
9 constitutional violation.” Id. Deliberate indifference requires a showing “that the municipality  
10 was on actual or constructive notice that its omissions would likely result in a constitutional  
11 violation.” Id.

12 Here, Plaintiff makes no such allegations. Although the Court questions whether Plaintiff  
13 can do so, the Court will grant him leave to amend his allegations as to Defendants City of  
14 Fresno and Chief Dyer.

15 D. Amendment

16 Based on the above, Plaintiff’s complaint is DISMISSED WITH LEAVE TO AMEND.  
17 In amending his complaint, Plaintiff is informed that the Court cannot refer to a prior pleading in  
18 order to make her amended complaint complete. Local Rule 220 requires that an amended  
19 complaint be complete in itself without reference to any prior pleading. This is because, as a  
20 general rule, an amended complaint supercedes the original complaint. See Loux v. Rhay, 375  
21 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended complaint, the original pleading no  
22 longer serves any function in the case.

23 Plaintiff may file an amended complaint within thirty (30) days of the date of service of  
24 this order. Plaintiff’s complaint should be clearly titled, “First Amended Complaint,” and shall  
25 refer to the case number assigned to this action. It must contain a short and plain statement of  
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1 his claims and must clearly set forth the causes of action alleged against each Defendant. If  
2 Plaintiff does not file an amended complaint within this time frame and in accordance with this  
3 order, the Court will recommend that this action be dismissed.

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5 IT IS SO ORDERED.

6 **Dated: August 5, 2010**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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