



1 **II. Screening Requirement**

2 When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and  
3 shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the  
4 action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . .  
5 seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). A  
6 claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible,  
7 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,  
8 504 U.S. 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
11 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short  
12 and plain statement of the claim showing the pleader is entitled to relief; and . . . a demand for the  
13 relief sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P.  
14 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less  
15 stringent standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

16 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
17 succinct manner, and identify the grounds upon which the complaint stands. *Swierkiewicz v. Sorema*  
18 *N.A.*, 534 U.S. 506, 512 (2002); *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir.  
19 1984). The Supreme Court noted,

20 Rule 8 does not require detailed factual allegations, but it demands more than an  
21 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
22 labels and conclusions or a formulaic recitation of the elements of a cause of action will  
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
factual enhancement.

23 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks and citations omitted).

24 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d  
25 266, 268 (9th Cir. 1982). The Court clarified further,

26 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
27 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
the plaintiff pleads factual content that allows the court to draw the reasonable  
28 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
plausibility standard is not akin to a “probability requirement,” but it asks for more than

1 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint  
2 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of  
the line between possibility and plausibility of ‘entitlement to relief.’

3 *Iqbal*, 566 U.S. at 678 (citations omitted). When factual allegations in a complaint are well-pled, a  
4 court should assume their truth and determine whether the facts would make the plaintiff entitled to  
5 relief. *Id.* However, legal conclusions are not entitled to the same assumption of truth. *Id.* Leave to  
6 amend a complaint may be granted when its deficiencies can be cured by an amendment. *Lopez v.*  
7 *Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

8 **IV. Section 1983 Claims**

9 Plaintiff seeks to proceed in this action under 42 U.S.C. § 1983 (“Section 1983”), which “is a  
10 method for vindicating federal rights elsewhere conferred.” *Albright v. Oliver*, 510 U.S. 266, 271  
11 (1994). Thus, an individual may bring an action for the deprivation of civil rights pursuant to Section  
12 1983, which states in relevant part:

13 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of  
14 any State or Territory or the District of Columbia, subjects, or causes to be subjected, any  
15 citizen of the United States or other person within the jurisdiction thereof to the  
16 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,  
shall be liable to the party injured in an action at law, suit in equity, or other proper  
proceeding for redress.

17 42 U.S.C. § 1983. To state a cognizable claim under Section 1983, a plaintiff must allege facts from  
18 which it may be inferred (1) he was deprived of a federal right, and (2) a person or entity who  
19 committed the alleged violation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988);  
20 *Williams v. Gorton*, 529 F.2d 668, 670 (9th Cir. 1976).

21 **V. Plaintiff’s Factual Allegations**

22 Plaintiff alleges that on October 11, 2013 at 8:10 a.m., Bakersfield Police officers knocked on  
23 his front door and inquired whether Plaintiff was suicidal or homicidal. (Doc. 1 at 1.) In response,  
24 Plaintiff said “no.” (*Id.*) Officer McCarthy then asked Plaintiff if he had an earache, to which Plaintiff  
25 responded he did not. (*Id.*) According to Plaintiff, Officer McCarthy became angry that Plaintiff  
26 would not allow him in the house, and asked if the truck out front belonged to Plaintiff. (*Id.*) When  
27 Plaintiff responded in the affirmative, Officer McCarthy “wrote... a parking ticket and left it on the  
28 window of [the] truck” for being parked more than 18 inches off the curb. (*Id.*)

1 After Plaintiff exited his home, Officer McCarthy’s partner explained that “they had received a  
2 call from a suicide hotline from Florida stating that [Plaintiff] had an earache and was going to kill  
3 [him]self.” (Doc. 1 at 1.) Plaintiff assured the officers that he did not call a hotline and was not going  
4 to kill himself, and the officers left. (*Id.*)

5 The next day at 6:12 p.m., Plaintiff noticed a police officer on his front lawn. (Doc. 1 at 1.)  
6 Believing he was going to receive another ticket, Plaintiff approached the officers. (*Id.*) Plaintiff  
7 alleges that “at this point three male officers came running up with their hands on their side arms [and]  
8 searched [Plaintiff] for weapons.” (*Id.*) The officers informed Plaintiff they were looking for a person  
9 named “Jason Gaines,” and that “they had a call from a suicide hotline from Cleveland Ohio.” (*Id.*)  
10 Again, Plaintiff told the officers he was not suicidal. (*Id.*)

11 According to Plaintiff, the officers “were very intent on wanting to search [his] house” and he  
12 told them “there was no way they were going into [his] house.” (Doc. 1 at 1.) Plaintiff asserts Sgt.  
13 Degiare and Officer Hernandez “looked at the ground” because they knew they had no right to search  
14 Plaintiff’s home, but “after about one minute,” Sgt. Degiare “looked up and said yeah well we are  
15 doing it any way.” (*Id.*) Plaintiff asserts that “two male officers drew their fire arms and forced their  
16 way into [his] home.” (*Id.*) The officers left after searching the home for “about two minutes.” (*Id.*)

## 17 **VI. Discussion and Analysis**

18 The Fourth Amendment provides: “The right of the people to be secure in their persons . . .  
19 against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon  
20 probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things  
21 to be seized.” *U.S. Constitution, amend. IV*. Thus, the Fourth Amendment prohibits unreasonable  
22 searches by governmental officials. For the protections of the Fourth Amendment to be applicable, an  
23 individual must have a reasonable expectation of privacy in the place that is invaded. *Espinosa v. City*  
24 *and County of San Francisco*, 598 F.3d 528, 533 (9th Cir. 2010) (citing *Minnesota v. Carter*, 525 U.S.  
25 83, 88, (1998)). In general, “a search of a home or residence without a warrant is presumptively  
26 unreasonable.” *Id.* (citing *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016 (9th Cir. 2008)).

27 Significantly, however, Plaintiff names only the City of Bakersfield as a defendant in this  
28 action. A claim against a local governmental unit for municipal liability requires an allegation that “a

1 deliberate policy, custom or practice ... was the ‘moving force’ behind the constitutional violation ...  
2 suffered.” *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th Cir.2007) (citing *Monell v. Dep’t*  
3 *of Soc. Servs.*, 436 U.S. 658, 694-95 (1978)). In this case, Plaintiff failed to allege facts demonstrating  
4 the violation of his Fourth Amendment right was caused by a deliberate policy, custom or practice  
5 instituted by the City of Bakersfield. At most, Plaintiff seems to attempt to impose liability on the  
6 municipality merely because it employed the officers who entered his home. This is insufficient to  
7 implicate *Monell* liability, because the municipality may not be held liable on a theory of *respondeat*  
8 *superior*. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir.1993); *Monell*, 436 U.S. at 691 (“a  
9 municipality cannot be held liable solely because it employs a tortfeasor”). Therefore, Plaintiff’s  
10 complaint fails to state a cognizable claim against the City of Bakersfield.

## 11 **VII. Conclusion and Order**

12 A plaintiff should be granted leave to amend when the deficiencies of the complaint can be  
13 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or  
14 a portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted  
15 if it appears beyond doubt that the Plaintiff can prove no set of facts, consistent with the allegations, in  
16 support of the claim or claims that would entitle her to relief. *See Hishon v. King & Spalding*, 467 U.S.  
17 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

18 In this case, it is unclear whether Plaintiff may allege facts supporting his claim for violations  
19 of the Fourth Amendment. Therefore, the Court will grant leave for Plaintiff to cure the deficiencies  
20 identified above by stating facts sufficient to support his claim. The amended pleading must bear the  
21 docket number assigned this case and must be labeled “First Amended Complaint.”

22 Plaintiff is advised that the Court cannot refer to a prior pleading in order to make an amended  
23 complaint complete. Local Rule 220 requires an amended complaint be “complete in itself without  
24 reference to the prior or superseded pleading.” In addition, Plaintiff is advised that the Court is not  
25 repository for his documents and/or evidence, and no exhibits shall be filed unless associated with a  
26 motion or otherwise ordered by the Court. Any exhibits that are filed with the amended pleading will  
27 be stricken.

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Based upon the foregoing, **IT IS HEREBY ORDERED:**

1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
2. The exhibits filed with Plaintiff's complaint (Docs. 3-4) are **STRICKEN**;
3. Plaintiff's Complaint is **DISMISSED** with leave to amend;
4. Plaintiff **SHALL** file a First Amended Complaint within thirty days from the date of service of this Order; and
5. Plaintiff is advised that the action may be dismissed for failure to comply with this Order. See e.g. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissing the action for failure to comply with an order requiring amendment of complaint).

IT IS SO ORDERED.

Dated: December 17, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE