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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

EUGENE FORTE,

Plaintiff,

v.

PATTERSON PD CHIEF TORI HUGHES,  
et al.,

Defendants.

Case No. 1:13-CV-01980-LJO-SMS

ORDER REQUIRING PLAINTIFF EITHER  
TO FILE AMENDED COMPLAINT OR  
TO NOTIFY COURT OF WILLINGNESS  
TO PROCEED ONLY ON CLAIMS  
FOUND TO BE COGNIZABLE

(Doc. 1)

**SCREENING ORDER**

Plaintiff Eugene E. Forte, proceeding *pro se* and *in forma pauperis* in this action under 42 U.S.C. § 1983, alleges excessive force in executing an arrest and eighteen other counts against defendants City of Patterson, Patterson Police Department, Stanislaus County Sheriff's Department, Police Chief Tori Hughes, Deputy Chris Schwartz, and Stanislaus County Sheriff Adam Christianson. The Court has screened the complaint and now dismisses it with leave to amend within thirty days.

**I. Screening Requirement**

The court has inherent power to control its docket and the disposition of its cases with economy of time and effort for both the court and the parties. *Landis v. North American Co.*, 299

1 U.S. 248, 254-55 (1936); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9<sup>th</sup> Cir.), *cert. denied*, 506 U.S.  
2 915 (1992). In cases in which the plaintiff is proceeding *in forma pauperis*, the Court must screen  
3 the complaint and dismiss it at any time that the Court concludes that the action is frivolous or  
4 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a  
5 defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). "Notwithstanding any filing  
6 fee, or portion thereof, that may have been paid, the court shall dismiss the case at any time if the  
7 court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be  
8 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

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10 In screening a complaint, the Court does not rule on the merits of the proposed action.  
11 Instead, it evaluates whether the complaint sets forth facts sufficient to render each claim cognizable.  
12 The screening process does not substitute for any subsequent Rule 12(b)(6) motion that a defendant  
13 may elect to bring later. *Teahan v. Wilhelm*, 481 F.Supp.2d 1115, 1120 (S.D.Cal. 2007).

## 14 **II. Pleading Standards**

15 Federal Rule of Civil Procedure 8(a) provides:

16 A pleading that states a claim for relief must contain:

- 17 (1) a short and plain statement of the grounds for the court's  
18 jurisdiction, unless the court already has jurisdiction and the claim  
19 needs no new jurisdictional support;
- 20 (2) a short and plain statement of the claim showing the pleader is  
entitled to relief; and
- 21 (3) a demand for the relief sought, which may include relief in the  
22 alternative or different types of relief.

23 "Each allegation must be simple, concise, and direct." F.R.Civ.P. 8(d).

24 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited  
25 exceptions," none of which applies here. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002).  
26 Pursuant to Rule 8(a), a complaint must contain "a short and plain statement of the claim showing  
27 that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a). "Such a statement must simply give  
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1 the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."  
2 *Swierkiewicz*, 534 U.S. at 512. Detailed factual allegations are not required, but "[t]hreadbare  
3 recitals of the elements of the cause of action, supported by mere conclusory statements, do not  
4 suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550  
5 U.S. 544, 555 (2007). "Plaintiff must set forth sufficient factual matter accepted as true, to 'state a  
6 claim that is plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555.  
7 While factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678

8  
9 Although accepted as true, "[f]actual allegations must be [sufficient] to raise a right to relief  
10 above the speculative level." *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff must set  
11 forth "the grounds of his entitlement to relief," which "requires more than labels and conclusions,  
12 and a formulaic recitation of the elements of a cause of action." *Id.* at 555-56 (*internal quotation*  
13 *marks and citations omitted*). To adequately state a claim against a defendant, a plaintiff must set  
14 forth the legal and factual basis for his or her claim.

### 15 **III. Factual Allegations**

16  
17 Plaintiff is the publisher of the *Badger Flats Gazette*, a blog that reports on the corruption of  
18 judicial officers, public officials, and police officers. In 2003, Plaintiff ran for governor of  
19 California on a platform of exposing the corruption of political and judicial officials. Plaintiff has a  
20 long history of poor relations with officials in the City of Los Banos and in Merced County,  
21 California, where he and his family formerly lived. Believing that continued residence in Merced  
22 County was not safe, Plaintiff and his family moved in July 2010, to the City of Patterson, Stanislaus  
23 County, California.

24 Since 1998, the Stanislaus County Sheriff's Department has contracted to provide police  
25 services to Patterson. [www.scsdonline/patterson/](http://www.scsdonline/patterson/) (January 2, 2014). Defendant Tori Hughes is the  
26 Patterson Police Services Chief. Defendant Adam Christianson is the Stanislaus County Sheriff.  
27 The complaint identifies Defendant Christopher Schwartz as both a Patterson police officer and a

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1 Stanislaus County Sheriff's deputy. In the summer and fall of 2012, Plaintiff had multiple  
2 interactions with Defendant Hughes and a Patterson Police officer named Randy Watkins.

3 On December 3, 2012, Plaintiff unsuccessfully attempted to call the FBI in Fresno twelve  
4 times. Each time, the receptionist hung up the phone when Plaintiff stated that he was recording the  
5 call. Plaintiff then sought to file a complaint with the Patterson Police Department to report the  
6 FBI's misconduct.

7 When officers arrived at Plaintiff's home, they refused to agree to Plaintiff's recording their  
8 conversation with him, even when Plaintiff explained that recording was for their own protection.  
9 Plaintiff also told the officers that he had been trying to reach Watkins and Defendant Hughes, but  
10 they had not responded to him. Disclaiming any ability to compel a response from Watkins or  
11 Defendant Hughes, the officers walked away from Plaintiff's front porch. According to the  
12 complaint, they were "laughing and mocking Plaintiff." Doc. 1 at 8, ¶38. When Plaintiff attempted  
13 to call them back, one office waved bye-bye like a child but did not turn back.

14 While driving with his wife that evening, Plaintiff saw a Patterson police car in front of him.  
15 Knowing that Watkins frequently worked nights, Plaintiff flashed his headlights, asking the officer  
16 to stop. When Plaintiff and Defendant Schwartz pulled over to speak at the curb, Plaintiff recalled  
17 that Defendant Schwartz had taken Plaintiff's report of threats made against Plaintiff, his family, and  
18 friends by a person from Monterey County. Plaintiff audio-recorded Schwartz, and Mrs. Forte  
19 video-recorded the meeting on her cell phone. According to the complaint, Schwartz was aware that  
20 he was being recorded.

21 Plaintiff asked Schwartz if he knew where Watkins was that night. The complaint alleges  
22 that Schwartz replied "brashly" and "in a rude tone" that he did not know if Watkins was on duty,  
23 but asked if he could help. Plaintiff explained that he had been leaving messages for Watkins but  
24 that Watkins had not called him back. Schwartz said that since September 10, 2012, Watkins had  
25 been given specific instructions for dealing with any police report Forte made concerning Merced  
26 County. As a result, Schwartz could not help Plaintiff, who would have to speak directly with  
27 Watkins. The complaint continues:

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45. Deputy Schwartz said in an insulting, combative tone that he was "aware of all the nonsense[.]" The exchange continued with Schwartz becoming more insulting and mocking with Schwartz getting back into his patrol car while [Plaintiff] was still asking for Schwartz to explain what "nonsense" was he aware of.

46. Schwartz then in rude tones of voice, and with prodding hyperboles told [Plaintiff] that he should understand why Chief Hughes and Deputy Watkins had not called back was not because they were not doing their job but because it was not a law enforcement matter.

47. Schwartz told [Plaintiff] in a mocking voice that the FBI was not going to help him, the DA was not going to help him and they weren't going to help him. Schwartz told [Plaintiff] with prodding hyperbole that if [Plaintiff's] problem was with law enforcement, why did he keep coming back to them[?]

Doc. 1 at 9-10, ¶¶ 45, 46 and 47.<sup>1</sup>

Plaintiff responded, "What would you want me to do? Get a gun and shoot you guys? I am certainly not going to do that!" Doc. 1 at 10 ¶ 48. At that remark, Schwartz swung open his door, knocking Plaintiff backward. Plaintiff backed up six to ten feet and twice asked Schwartz why he had done that. Schwartz did not respond but grabbed for the recorder in Plaintiff's hand. Plaintiff had already handed it off to his wife. Schwartz pushed and pulled Plaintiff, who did not resist but attempted to avoid being injured.

Although Schwartz did not tell Plaintiff that he was under arrest, Schwartz told Plaintiff to put his hands behind his back to be handcuffed. Schwartz did not respond to Plaintiff's questions about why he was being arrested. When Plaintiff had been handcuffed, Schwartz pushed Plaintiff face first into the ground, jumped on Plaintiff's back, and slammed his elbow into Plaintiff's head. Plaintiff continued to ask why he was being arrested. Schwartz finally responded that Plaintiff could not threaten to shoot police officers. Then, "[Plaintiff] was taken up off the ground and while standing in a neutral position, Schwartz then attacked [Plaintiff] by legging sweeping [*sic*] [Plaintiff]

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<sup>1</sup> In the quoted material and elsewhere, Plaintiff uses a term, "prodding hyperbole," with which the Court is unfamiliar. In his amended complaint, Plaintiff is encouraged either to use a more easily understandable term or to define "prodding hyperbole."

1 backward so that he landed on his back." Doc. 1 at 11, ¶ 57. During the course of the altercation,  
2 Watkins arrived, and an ambulance was called for Plaintiff.

3 Schwartz drove Plaintiff to Modesto Hospital, then to the county jail. Instead of taking  
4 Plaintiff directly to the hospital, Schwartz drove over bumpy roads for an hour, intent on causing  
5 Plaintiff pain.

6 Throughout the trip, Schwartz verbally abused, harassed, and humiliated Plaintiff by saying  
7 things such as "You need to understand, we're the boss. We're in charge"; "You and your family  
8 should move up in the mountains away from everybody, get out of Patterson"; and "Your kids  
9 wouldn't be so proud of you now seeing you in handcuffs."<sup>2</sup> Doc. 1 at 11 ¶¶ 58 and 59. Schwartz  
10 also told Plaintiff that, while Schwartz would be going home to a nice dinner, Plaintiff would be  
11 eating bologna sandwiches and drinking sour milk, and that Plaintiff would be in jail for a long time  
12 unless he was independently wealthy. Schwartz's statements were intended to "provoke, demean,  
13 humiliate, harass and cause emotional distress." Doc. 1 at 11 ¶ 61. According to the complaint, they  
14 worked as intended: Plaintiff feared that Schwartz would stop the car and beat him again.  
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16  
17 Upon arriving at the hospital, Schwartz allowed Plaintiff to trail behind him "seeming to  
18 taunt [Plaintiff] into 'making a break for it' so that Schwartz could have a reason to shoot [Plaintiff],  
19 or tase him." Doc. 1 at 12 ¶ 67. Plaintiff suffered lumps on his head, lacerations on his arms and  
20 legs, back pain, and elevated blood pressure.<sup>3</sup> His buttocks were bruised. He had a sharp pain in his  
21 neck, and pain and paralysis from his left elbow to his left thumb.

22  
23 Upon arrival at the county jail, Schwartz told Plaintiff he had been arrested for "felony  
24 stupid." Doc. 1 at 11 ¶ 62. Schwartz patted down Plaintiff, found the recorder that had been running  
25 for the entire trip to the jail, and removed its batteries.

26  
27 <sup>2</sup> The complaint also alleges a comment regarding Plaintiff's burning his bra and panties in Berkeley. In part because  
Plaintiff's handwritten corrections are illegible, the Court is uncertain of the content of that statement.

28 <sup>3</sup> The complaint adds that Plaintiff has had open heart surgery. The allegation does not clearly indicate whether Plaintiff  
is alleging that he required open heart surgery as a result of his injuries or that he had open heart surgery on some prior  
date.

1 At booking, Plaintiff learned he had been arrested for threatening a public officer in violation  
2 of California Penal Code § 71. Plaintiff was later released on \$20,000 bail. On February 5, 2013,  
3 Stanislaus District Attorney Birgit Fladager elected not to proceed with the prosecution of Plaintiff.

4 **IV. Counts One, Two, Three, and Four: Excessive Force in Course of Arrest**

5 Plaintiff contends that by intentionally beating Plaintiff, Defendants Schwartz, Hughes, and  
6 Christianson violated his Fourth, Fifth, and Eighth Amendment rights. Excessive force in the course  
7 of arrest implicates the Fourth Amendment to the U.S. Constitution, which governs citizens' rights in  
8 the course of searches and seizures. The Fifth Amendment, which addresses due process, grand jury  
9 indictments, self-incrimination, double jeopardy, and just compensation for property seizures is not  
10 applicable here. The Eighth Amendment, which addresses conditions of confinement, is also  
11 inapplicable.  
12

13 Under the Fourth Amendment, made applicable to the states by the Fourteenth Amendment,  
14 people are to be secure against unreasonable searches and seizures. *Maryland v. Pringle*, 540 U.S.  
15 366, 369 (2003); *Mapp v. Ohio*, 367 U.S. 643 (1961). An officer may arrest a person without a  
16 warrant only if there is probable cause to believe that the person has committed or is committing an  
17 offense. *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979). Each case is determined on its specific  
18 facts and circumstances. *Ornelas v. United States*, 517 U.S. 690, 695-96 (1996). Those facts and  
19 circumstances will determine the Fourth Amendment's reach in a particular case. *Terry v. Ohio*, 392  
20 U.S. 1, 29 (1968).  
21

22 A seizure occurs when the government ends a person's freedom of movement by  
23 intentionally applied means. *Scott v. Harris*, 550 U.S. 372, 381 (2007); *Brower v. County of Inyo*,  
24 489 U.S. 593, 596-97 (1989). A claim of excessive force in the course of a seizure is properly  
25 analyzed under the Fourth Amendment's "objective reasonableness" standard. *Scott*, 550 U.S. at  
26 381; *Graham v. Connor*, 490 U.S. 386, 388 (1989). This means that the Court must consider  
27 whether the officer's actions were objectively reasonable in light of the facts and circumstances of  
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1 the arrest, without regard to their underlying intent or motivation. *Scott*, 550 U.S. at 381; *Graham*,  
2 490 U.S. at 387. The reasonableness of the type of force used is evaluated from the perspective of  
3 an officer on the scene and must include allowance for the fact that police officers are often forced to  
4 make a split-second determination of the amount of force necessary to make the arrest. *Graham*,  
5 490 U.S. at 387.

6 The complaint alleges facts sufficient to state a cognizable claim that Defendant Schwartz  
7 used excessive force in effecting his arrest of Plaintiff on December 3, 2012. None of the alleged  
8 facts support an excessive force claim against Hughes or Christianson, however.

9 Section 1983 plainly requires an actual connection or link between each defendant's actions  
10 and the harm allegedly done to the plaintiff. *See Monell v. Department of Social Services of City of*  
11 *New York*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). "A person 'subjects' another  
12 to the deprivation of a constitutional right, within the meaning of §1983, if he does an affirmative  
13 act, participates in another's affirmative act or omits to perform an act which he is legally required to  
14 do that causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743  
15 (9<sup>th</sup> Cir. 1978).

16 Plaintiff can establish each defendant's "requisite causal connection" either by detailing that  
17 defendant's direct, personal participation in an act or omission, or by demonstrating that the  
18 defendant knowingly set in motion a series of acts by others that the defendant knew or reasonably  
19 should have known would cause the others to inflict constitutional injury on Plaintiff. A defendant  
20 cannot be liable under § 1983 unless an affirmative link or connection exists between that  
21 defendant's actions and the claimed injury to Plaintiff. *May v. Enomoto*, 633 F.2d 164, 167 n. 3 (9<sup>th</sup>  
22 Cir. 1980); *Johnson*, 588 F.2d at 743.

23 No facts alleged in the complaint link Hughes or Christianson to the beating coincident with  
24 Schwartz's arrest of Plaintiff. Accordingly, the complaint fails to state a Fourth Amendment claim  
25 for excessive force in effectuating an arrest against either Hughes or Christianson.  
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1 The difference between counts one and two is that count one requests compensatory damages  
2 and count two requests exemplary damages. "A plaintiff who establishes liability for deprivations of  
3 constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages  
4 for all injuries suffered as a consequence of those deprivations." *Borunda v. Richmond*, 885 F.2d  
5 1384, 1389 (9<sup>th</sup> Cir. 1988). Compensatory damages include the plaintiff's actual losses, mental  
6 anguish and humiliation, impairment of reputation, and out-of-pocket losses. *Id.* at 1389; *Knudson*  
7 *v. City of Ellensburg*, 832 F.2d 1142, 1149 (9<sup>th</sup> Cir. 1987); *Chalmers v. City of Los Angeles*, 762  
8 F.2d 753, 760-61 (9<sup>th</sup> Cir. 1985). "[D]amages in § 1983 actions are not to be assessed on the basis of  
9 the abstract 'value' or 'importance' of the infringed constitutional right." *Sloman v. Tadlock*, 21 F.3d  
10 1462, 1472 (9<sup>th</sup> Cir. 1994).

12 Punitive (exemplary) damages are also available under § 1983. *See Pacific Mut. Life Ins. Co.*  
13 *v. Haslip*, 499 U.S. 1, 17 (1991); *Kentucky v. Graham*, 473 U.S. 159, 167 n. 13 (1985); *Dang v.*  
14 *Cross*, 422 F.3d 800, 807 (9<sup>th</sup> Cir. 2005); *Morgan v. Woessner*, 997 F.2d 1244, 1255 (9<sup>th</sup> Cir. 1993),  
15 *cert. dismissed*, 510 U.S. 1033 (1994); *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 577 n. 21  
16 (9<sup>th</sup> Cir. 1984), *cert. denied*, 471 U.S. 1054 (1985). Punitive damages are awarded in the jury's  
17 discretion. *See Smith v. Wade*, 461 U.S. 30, 54 (1983); *Woods v. Graphic Communications*, 925  
18 F.2d 1195, 1206 (9<sup>th</sup> Cir. 1991).

20 Both counts one and two state cognizable claims for excessive force in violation of the  
21 Fourth Amendment. These may move forward against Defendant Schwartz. The Court will dismiss  
22 counts one and two against Defendants Hughes and Christianson but grants Plaintiff leave to amend  
23 the complaint to allege facts linking Hughes and Christianson if such facts exist.

25 Counts three and four seek to distinguish Plaintiff's constitutional claims from statutory  
26 claims for violation of civil rights. Statutory claims based on 42 U.S.C. § 1983 necessary depend on  
27 violations of specific provisions of the United States Constitution. As such, claims three and four  
28 simply restate, albeit in different language, the civil rights claims set forth in claims one and two.

1 Although the Court acknowledges that Plaintiff may have intended to allege a violation of a statutory  
2 provision other than § 1983, the complaint does not identify any other statute. Accordingly, the  
3 Court will dismiss counts three and four with leave to amend to identify the statutory basis for the  
4 claim and to allege specific facts sufficient to establish the elements of a claim under such other  
5 statute.

6 **V. Counts Five, Twelve (in part), and Seventeen: Inadequate Training and Supervision**

7  
8 In count five, Plaintiff alleges that City of Patterson, Patterson Police Department, Stanislaus  
9 County Sheriff's Department, and Christianson engaged in a policy or practice of authorizing certain  
10 officers to employ excessive force in the course of arrests, including those arrests that lacked  
11 probable cause. Despite the language of the claim, however, count five does not name the City of  
12 Patterson, Patterson Police Department, or the Stanislaus County Sheriff's Department as defendants  
13 against whom this claim is brought, but names only Schwartz, Hughes, and Christianson. The Court  
14 interprets claim five to be one alleging supervisory liability for Schwartz's use of excessive force;  
15 however, alleging that Schwartz had supervisory liability for his own acts makes no sense. To the  
16 extent that Plaintiff did not intend claim five to allege supervisory liability against Schwartz,  
17 Hughes, and Christianson, the allegations of the amended complaint must more clearly set forth the  
18 nature of claim five and its factual basis.

19  
20 The complaint separately sets forth allegations of *respondeat superior* liability against  
21 Defendants City of Patterson, Patterson Police Department, and the Stanislaus County Sheriff's  
22 Department in count twelve. In count twelve, Plaintiff alleges, among other things, that Defendants  
23 City of Patterson, Patterson Police Department, or the Stanislaus County Sheriff's Department knew  
24 of its officers' propensity to use excessive force and acquiesced in the officers' behavior. Claim  
25 twelve sets forth simply the legal conclusion, however, without alleging any factual basis.

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1 In count seventeen, Plaintiff alleges that Defendants City of Patterson, Patterson Police  
2 Department, and the Stanislaus County Sheriff's Department failed to provide adequate training and  
3 supervision to its officers, entitling Plaintiff to exemplary damages.

4 Supervisory personnel are generally not liable under § 1983 for the actions of their  
5 employees under a theory of *respondeat superior*. *Taylor v. List*, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir.  
6 1989). For defendants in supervisory positions, a plaintiff must specifically allege a causal link  
7 between each defendant and his claimed constitutional violation. *See Fayle v. Stapley*, 607 F.2d 858,  
8 862 (9<sup>th</sup> Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9<sup>th</sup> Cir. 1978), *cert. denied*, 442 U.S. 941  
9 (1979). To state a claim for relief under § 1983 for supervisory (*respondeat superior*) liability, a  
10 plaintiff must allege facts indicating (1) that the plaintiff possessed a constitutional right of which he  
11 or she was deprived; (2) that the municipality had a policy; (3) that the policy amounted to a  
12 deliberate indifference to the plaintiff's constitutional right; and (4) that the policy was the moving  
13 force behind the constitutional violation. *Plumeau v. School District No. 40 County of Yamhill*, 130  
14 F.3d 432, 438 (9<sup>th</sup> Cir. 1997). Plaintiffs bear the burden of proof and must identify facts that would  
15 allow the court to conclude that the municipality had such a policy or practice. *Board of County*  
16 *Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 404 (1997).

17  
18  
19 Inadequate training may qualify as a constitutional violation under § 1983 if it is sufficiently  
20 inadequate to constitute "deliberate indifference" to the rights of persons with whom the police come  
21 in contact. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 380 (1989). A municipality is deliberately  
22 indifferent when "the need for more or different training is so obvious, and the inadequacy [of  
23 current procedure] so likely to result in the violation of constitutional rights, that the policy makers  
24 of the city can reasonably be said to have been deliberately indifferent to the need." *Id.* at 396.

25  
26 For a municipality to be liable under § 1983, a plaintiff must allege facts showing either that  
27 "the action that is alleged to be unconstitutional implements or executes a policy statement,  
28 ordinance, regulation, or decision officially adopted and promulgated by that body's officers," or

1 that the discriminatory governmental practices are so persistent and widespread as to constitute  
2 custom or usage with the force of law. *Monell*, 436 U.S. at 690-91. "To state a claim under *Monell*,  
3 a party must identify the challenged policy or custom, explain how it was deficient, explain how it  
4 caused the plaintiff harm, and reflect how it "amounted to deliberate indifference, i.e. [,] explain . . .  
5 how . . . the deficiency involved was obvious and the constitutional injury was likely to occur."  
6 *Jarreau-Griffin v. City of Vallejo*, 2013 WL 6423379 at \* 5 (E.D.Cal. December 9, 2013) (No. 2:12-  
7 cv-02979-KJM-KJN), *quoting Young v. City of Visalia*, 687 F.Supp.2d 1141, 1149 (E.D.Cal. 2009).  
8 Plaintiff must allege "sufficient . . . underlying facts to give fair notice and to enable the opposing  
9 party to defend itself adequately." *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9<sup>th</sup>  
10 Cir. 2012). The allegations may not simply recite the elements for *Monell* liability without alleging  
11 the specific facts of the particular claim being alleged. *Jarreau-Griffin*, 2013 WL 6423379 at \*6.

12  
13 The allegations in counts five, twelve (in part), and seventeen are totally devoid of any  
14 factual allegations to support the alleged legal conclusions. As a result, counts five, twelve (in part),  
15 and seventeen fail to state cognizable claims. In preparing his amended complaint, Plaintiff may  
16 find the discussions of inadequate pleadings in cases such as *Turner* and *Jarreau-Griffin* to provide  
17 helpful guidance. Plaintiff is reminded that his personal opinion is not sufficient; the complaint must  
18 set forth facts sufficient to support his legal conclusion.  
19

20 **VI. Count Six: Conspiracy**

21 In a single conclusory paragraph, Plaintiff alleges that Defendants Schwartz, Hughes, and  
22 Christianson conspired to violate his civil rights. Because of Plaintiff's failure to allege facts  
23 establishing the elements of conspiracy, count six does not state a cognizable claim and must be  
24 dismissed.  
25

26 To prevail on a conspiracy claim under California law, a plaintiff must show (1) the  
27 formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant to the  
28 conspiracy, and (3) the damage resulting from the act or acts. *Wasco Products, Inc. v. Southwall*

1 *Technologies, Inc.*, 435 F.3d 989, 992 (9<sup>th</sup> Cir.), *cert. denied*, 549 U.S. 817 (2006). In the context of  
2 claims brought under § 1983, the complaint must allege material facts that show an agreement  
3 among the alleged conspirators to deprive the party of his or her civil rights. *Margolis v. Ryan*, 140  
4 F.3d 850, 853 (9<sup>th</sup> Cir. 1998).

5 A conspiracy claim brought under §1983 requires proof of “an agreement or ‘meeting of the  
6 minds’ to violate constitutional rights,” *Franklin v. Fox*, 312 F.3d 423, 441 (9<sup>th</sup> Cir. 2002), *quoting*  
7 *United Steel Workers of Amer. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9<sup>th</sup> Cir.), *cert.*  
8 *denied*, 493 U.S. 809 (1989) (*citation omitted*), as well as an “actual deprivation of constitutional  
9 rights resulting from the alleged conspiracy.” *Hart v. Parks*, 450 F.3d 1059, 1071 (9<sup>th</sup> Cir. 2006),  
10 *quoting Woodrum v. Woodward County, Okla.*, 866 F.2d 1121, 1126 (9<sup>th</sup> Cir. 1989). “To be liable,  
11 each participant in the conspiracy need not know the exact details of the plan, but each participant  
12 must at least share the common objective of the conspiracy.” *Franklin*, 312 F.3d at 441, *quoting*  
13 *United Steel Workers*, 865 F.2d at 1541.

14  
15 To state a cognizable claim of conspiracy, Plaintiff must allege factual evidence that the  
16 Schwartz, Hughes, and Christenson conspired to violate his civil rights. Although the complaint  
17 alleges that Schwartz stated that Watkins had been given “specific instructions as to how to deal with  
18 [Plaintiff],” nothing in the complaint indicates that those instructions contemplated any violation of  
19 Plaintiff’s civil rights. If Plaintiff elects to amend claim six, as this order permits him to do, he must  
20 include factual allegations to support his conclusion that those instructions contemplated violation of  
21 his civil rights as well as facts indicating a common agreement between Schwartz, Hughes, and  
22 Christianson.  
23

## 24 **VII. State Claims**

25  
26 In counts seven through sixteen, and eighteen, Plaintiff alleges various claims under  
27 California state law. Section 1983 does not provide a cause of action for violations of state law. *See*  
28 *Weilburg v. Shapiro*, 488 F.3d 1202, 1207 (9<sup>th</sup> Cir. 2007); *Galen v. County of Los Angeles*, 477 F.3d

1 652, 662 (9<sup>th</sup> Cir. 2007); *Ove v. Gwinn*, 264 F.3d 817, 824 (9<sup>th</sup> Cir. 2001); *Sweaney v. Ada County*,  
2 *Idaho*, 119 F.3d 1385, 1391 (9<sup>th</sup> Cir. 1997); *Lovell v. Poway Unified School Dist.*, 90 F.3d 367, 370  
3 (9<sup>th</sup> Cir. 1996); *Draper v. Coombs*, 792 F.2d 915, 921 (9<sup>th</sup> Cir. 1986); *Ybarra v. Bastian*, 647 F.2d  
4 891, 892 (9<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 857 (1981). Pursuant to 28 U.S.C. § 1367(a), however, in  
5 any civil action in which the district court has original jurisdiction, the district court “shall have  
6 supplemental jurisdiction over all other claims in the action within such original jurisdiction that  
7 they form part of the same case or controversy under Article III,” except as provided in subsections  
8 (b) and (c).  
9

10 “[O]nce judicial power exists under § 1367(a), retention of supplemental jurisdiction over  
11 state law claims under 1367(c) is discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9<sup>th</sup>  
12 Cir. 1997). “The district court may decline to exercise supplemental jurisdiction over a claim under  
13 subsection (a) if . . . the district court has dismissed all claims over which it has original  
14 jurisdiction.” 28 U.S.C. § 1367 (c)(3). The Supreme Court has cautioned that “if the federal claims  
15 are dismissed before trial . . . the state claims should be dismissed as well.” *United Mine Workers of*  
16 *Amer. v. Gibbs*, 383 U.S. 715, 726 (1966). If, in the course of its litigation, the complaint fails to  
17 allege any cognizable federal claims, the Court is likely to dismiss the case for lack of federal  
18 jurisdiction.  
19

20 **A. California Tort Claims Act**

21 As a condition precedent to filing tort claims against government entities, officials, or  
22 employees, a plaintiff must comply with the notice provisions of the California Tort Claims Act  
23 (California Government Code § 945, *et seq.*), which requires the timely presentation of a written  
24 claim. A plaintiff may not pursue a tort claim against such defendants in a civil action without  
25 alleging his or her compliance with the notice requirements. *Karim-Panahi v. Los Angeles Police*  
26 *Dep't*, 839 F.2d 621, 627 (9<sup>th</sup> Cir. 1988). The complaint alleges (Doc. 1 at 3 ¶11) that plaintiff filed  
27 a claim in March 2013 but does not allege that the claim encompassed the many torts and defendants  
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1 alleged in this complaint. If Plaintiff elects to amend his complaint, as this order permits him to do,  
2 he must supplement his allegation of compliance to state specifically each claim for which the claim  
3 was made and each defendant against whom each claim was made.

4 **B. Counts Seven and Eight: Assault and Battery**

5 In counts seven and eight, the complaint alleges that through the beating and verbal abuse  
6 incident to Plaintiff's arrest, Defendants Schwartz, Hughes, and Christianson committed assault and  
7 battery. Count seven seeks compensatory damages; count eight seeks exemplary damages.

8 Under California law, "[a]n assault is an unlawful attempt, coupled with a present ability, to  
9 commit a violent injury on the person of another" and "[a] battery is any willful and unlawful use of  
10 force or violence upon the person of another." Cal. Penal Code §§ 240, 242 (West 2005); 5 B. E.  
11 Witkin, Summary of California Law, Torts § 346 (9th ed. 1988). To allege a cognizable assault  
12 claim under California law, a plaintiff must show that (1) the defendant threatened to touch him in a  
13 harmful or offensive manner; (2) it reasonably appeared to the plaintiff that the defendant was about  
14 to carry out the threat; (3) the plaintiff did not consent to the conduct; (4) the plaintiff was harmed;  
15 and (5) the defendant's conduct was a substantial factor in causing the harm. *Tekle v. U.S.*, 511 F.3d  
16 839, 855 (9th Cir. 2007) (*citation omitted*). For battery, a plaintiff must show that (1) the defendant  
17 intentionally did an act that resulted in harmful or offensive contact with the plaintiff's person; (2)  
18 the plaintiff did not consent to the contact; and (3) the contact caused injury, damage, loss, or harm  
19 to the plaintiff. *Id.* (*citation and quotations omitted*).

20 A law enforcement officer "may use reasonable force to make an arrest, prevent escape or  
21 overcome resistance, and need not desist in the face of resistance." *Brown v. Ransweiler*, 171  
22 Cal.App.4<sup>th</sup> 516, 526-27 (2009). In a claim of battery against an officer, a plaintiff must show that  
23 the officer used unreasonable force. *Edson v. City of Anaheim*, 63 Cal.App.4<sup>th</sup> 1269, 1272 (1998).

24 Since the claim against Defendant Schwartz for violating the 4th Amendment by using  
25 excessive force in the course of arrest is cognizable, the battery claim against him is also cognizable.  
26

1 Because the complaint includes no factual allegations that Schwartz threatened harm to Plaintiff, the  
2 assault claim against Schwartz is not cognizable. Because the complaint alleges no facts to support  
3 claims of assault or battery against Hughes or Christianson, those claims are not cognizable.

4 **C. Counts Nine and Ten: Intentional Infliction of Emotional Distress**

5 In counts nine and ten, Plaintiff alleges that through the beating and verbal abuse incident to  
6 his arrest, Defendants Schwartz, Hughes, and Christianson intentionally inflicted emotional distress  
7 on Plaintiff. Count nine seeks compensatory damages; count ten seeks exemplary damages.

8 As was the case for prior claims, the complaint includes no factual allegations that Hughes or  
9 Christianson participated in the beating and verbal abuse of Plaintiff incident to his arrest on  
10 December 3, 2012. Accordingly, counts nine and ten do not state cognizable claims against Hughes  
11 or Christianson.

12 To state a cognizable claim for intentional infliction of emotional distress, a plaintiff must  
13 allege facts supporting the following elements: (1) the defendant engaged in extreme and outrageous  
14 conduct with the intent to cause, or with reckless disregard for the probability of causing, emotional  
15 distress; (2) the plaintiff suffered extreme or severe emotional distress; and (3) the defendant's  
16 extreme and outrageous conduct was the actual and proximate cause of the plaintiff's extreme or  
17 severe emotional distress. *Yun Hee So v. Sook Ja Shin*, 212 Cal.App.4<sup>th</sup> 652, 671 (2013).

18 "Outrageous conduct" is conduct that is intentional or reckless and so extreme as to exceed  
19 "all bounds of decency in a civilized community." *Id.* "Where reasonable persons may differ, the  
20 trier of fact is to determine whether the conduct has been sufficiently extreme and outrageous to  
21 result in liability." *Tekle*, 511 F.3d at 855. When an officer's actions incident to the plaintiff's arrest  
22 are reasonable as a matter of law, the plaintiff cannot establish that the officer engaged in extreme or  
23 outrageous conduct. *Long v. City and County of Honolulu*, 511 F.3d 901, 908 (9<sup>th</sup> Cir. 2007), *cert.*  
24 *denied*, 555 U.S. 816 (2008). *See also Mejia v. City of San Bernardino*, 2012 WL 1079341 at \* 13  
25 (C.D.Cal. March 30, 2012) (No. EDCV 11-00452 VAP).



1 "Generally, a plaintiff may not recover for intentional infliction of emotional distress unless  
2 the distress suffered has been extreme." *Hailey v. California Physicians' Service*, 158 Cal.App.4<sup>th</sup>  
3 452, 476 (2007). Severe distress is emotional distress that is "of such substantial quantity or  
4 enduring quality that no reasonable man in a civilized society should be expected to endure it." *Id.*  
5 *See, e.g., Lawler v. Montblanc North America LLC*, 704 F.3d 1235, 1246 (9<sup>th</sup> Cir. 2013) (holding  
6 that allegations of anxiety, sleeplessness, upset stomach, and occasional muscle twitches were not  
7 sufficient to establish severe emotional distress); *Hughes v. Pair*, 46 Cal.4<sup>th</sup> 1035, 1051 (2009)  
8 (allegations of discomfort, worry, anxiety, upset stomach, concern, and agitation insufficient); *Wong*  
9 *v. Tai Jing*, 189 Cal.App.4<sup>th</sup> 1354, 1376 (2010) (allegations of emotional upset, lost sleep, stomach  
10 upset, and general anxiety insufficient); *Saari v. Jongordon Corp.*, 5 Cal.App.4<sup>th</sup> 797, 806-07 (1992)  
11 (complete disruption of life and diagnosis of depression sufficient); *Kelly-Zurian v. Wohl Shoe Co.*,  
12 22 Cal.App.4<sup>th</sup> 397, 410 (1994) (anxiety, chest tightness, heart palpitations, panic attacks,  
13 depression, insomnia, and diagnosis of post-traumatic stress disorder sufficient); *Bass v. City of*  
14 *Fremont*, 2013 WL 891090 at \* 7 (N.D.Cal. March 8, 2013) (No. C12-4943 THE) (allegations of  
15 severe emotional and mental stress, fear, terror, anxiety, humiliation, embarrassment, anger,  
16 indignity, loss of freedom, and sense of helplessness insufficient); *Campbell v. Feld Entertainment*  
17 *Inc.*, 2013 WL 5513218 at \*12 (N.D.Cal. October 4, 2013) (Nos. 12-cv-4233-LHK and 13-cv-0233-  
18 LHK) (allegations of lasting severe stress, anxiety, depression, and loss of sleep insufficient). In this  
19 case, the complaint fails to allege specific facts describing the emotional distress that Plaintiff  
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23 experienced as a result of his arrest, stating only that he was humiliated and suffered mental cruelty.

24 Conclusory allegations that a plaintiff suffered severe emotional distress are insufficient to  
25 state a cognizable claim. *See Steel v. City of San Diego*, 726 F.Supp.2d 1172, 1191-92 (S.D.Cal.  
26 2010). To state a cognizable claim, the complaint must include factual allegations describing the  
27 nature of the severe emotional distress that the plaintiff is alleged to have experienced. *Harvey G.*  
28

1 *Ottovich Revocable Living Trust Dated May 12, 2006 v. Washington Mutual, Inc.*, 2010 WL  
2 3769459 at \*6 (N.D.Cal. September 22, 2010) (No. C 10-02843 WHA).

3 **D. Counts Eleven, Twelve (in part), Fifteen, and Sixteen: *Respondeat Superior***  
4 **Liability**

5 In counts eleven and twelve, Plaintiff alleges that Defendants City of Patterson, Patterson  
6 Police Department, and the Stanislaus County Sheriff's Department are liable for the intentional torts  
7 of Defendants Schwartz, Hughes, and Christianson. In counts fifteen and sixteen, Plaintiff alleges  
8 that Defendants City of Patterson, Patterson Police Department, and the Stanislaus County Sheriff's  
9 Department are liable for compensatory damages to Plaintiff under the theory of *respondeat superior*  
10 for the negligence of Defendants Schwartz, Hughes, and Christianson.<sup>4</sup>

11 "A public entity is liable for injury proximately caused by an act or omission of an employee  
12 of the public entity within the scope of his employment if the act or omission would, apart from this  
13 section, have given rise to a cause of action against that employee or his personal representative."  
14 California Government Code § 815.2(a). Since this screening has determined that several of  
15 Plaintiff's state tort claims against Defendant Schwartz are cognizable, the vicarious liability claims  
16 against these public entities may proceed with regard to those claims. *Bass*, 2013 WL 891090 at \* 8.

17 **E. Counts Thirteen and Fourteen: Negligence**

18 In counts thirteen and fourteen, Plaintiff alleges that Defendants Schwartz, Hughes, and  
19 Christianson acted negligently in using excessive force when arresting Plaintiff. Count thirteen  
20 seeks compensatory damages; count fourteen seeks exemplary damages.  
21

22 As was the case for prior claims, the complaint includes no factual allegations that Hughes or  
23 Christianson participated in Plaintiff's arrest. Accordingly, neither Hughes nor Christianson could  
24 have acted negligently in the course of Plaintiff's arrest. Counts thirteen and fourteen do not state  
25 cognizable claims against Hughes or Christianson.  
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28 <sup>4</sup> If Plaintiff elects to amend this complaint, he may wish to correct the heading of count fifteen, which indicates that the relevant defendants are Schwartz, Hughes, and Christianson.

1 Under California law, the elements of negligence are (1) a legal duty to use due care; (2) a  
2 breach of that legal duty; and (3) the breach as the proximate or legal cause of the resulting injury.  
3 *Evan F. v. Hughson United Methodist Church*, 8 Cal.App.4<sup>th</sup> 828, 834 (1992). Whether Defendant  
4 Schwartz breached a legal duty to use different tactics or less force in arresting Plaintiff requires the  
5 same analysis as determining whether his actions were reasonable for Fourth Amendment purposes.  
6 *Hernandez v. City of Pomona*, 46 Cal. 4<sup>th</sup> 501, 513 (2009). See also *Robinson v. Solano County*, 278  
7 F.3d 1007, 1016 (9<sup>th</sup> Cir. 2002). Thus, Plaintiff also states a cognizable claim against Schwartz for  
8 negligence in the use of excessive force in Plaintiff's arrest.  
9

10 **F. Count Eighteen (in part): Malicious Abuse of Process**

11 In count eighteen, among other allegations, Plaintiff alleges that Defendants Schwartz,  
12 Hughes, and Christianson maliciously abused process to intimidate Plaintiff, to cover up their own  
13 wrongdoing, and to avoid civil and criminal liability. Because "malicious abuse of process" is not a  
14 recognized cause of action, the Court is not certain whether Plaintiff intended to alleged malicious  
15 prosecution or abuse of process, both of which are recognized torts.  
16

17 Abuse of process occurs when a defendant misuses or misapplies process to accomplish an  
18 objective for which it was intended. *Garcia v. City of Merced*, 637 F.Supp.2d 731, 750 (E.D.Cal.  
19 2008). Under California law, a plaintiff bringing an abuse of process claim must show the defendant  
20 "(1) contemplated an ulterior motive in using the judicial process, and (2) committed a 'willful act in  
21 the use of th[at] process not proper in the regular conduct of the proceedings.'" *Estate of Tucker ex*  
22 *rel. Tucker v. Interscope Records, Inc.*, 515 F.3d 1019, 1037 (9<sup>th</sup> Cir.), *cert. denied*, 555 U.S. 827  
23 (2008), *quoting Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.*, 42 Cal.3d  
24 1157, 1159 (1986). An abuse of process claim "requires misuse of *judicial* process." *Estate of*  
25 *Tucker*, 515 F.3d at 1037, *quoting Stolz v. Wong Communications Ltd. Prtnrshp*, 25 Cal.App.4<sup>th</sup>  
26 1811, 1822 (1994).  
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1 In contrast, California law requires a plaintiff claiming malicious prosecution to establish that  
2 "the prior action (1) was commenced by or at the direction of the defendant and was pursued to legal  
3 termination in his, plaintiff's, favor; (2) was brought without probable cause; and (3) was initiated  
4 with malice." *Sheldon Appel Co. v. Albert & Oliker*, 47 Cal.3d 863, 871 (1989) (*internal quotations*  
5 *omitted*). A plaintiff may not simply allege a conclusion of malice but allege facts supporting its  
6 existence.

7  
8 Whichever tort Plaintiff intended, California law provides that "[a] public employee is not  
9 liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding  
10 within the scope of his employment, even if he acts maliciously and without probable cause."  
11 California Government Code § 821.6. *See also Scannell v. County of Riverside*, 152 Cal.App.3d 596  
12 (1984). If an officer is immune from a claim of malicious prosecution or abuse of process, his  
13 employer is also immune. California Government Code § 815.2(d). Since the named defendants are  
14 immune, the claim of malicious prosecution set forth in count 18 is not cognizable.

15  
16 **G. Count Eighteen (in part): False Arrest or False Imprisonment**

17 In count eighteen, among other allegations, Plaintiff alleges that Defendants Schwartz,  
18 Hughes, and Christianson falsely arrested and falsely imprisoned Plaintiff.

19 Under California law, false imprisonment is the "unlawful violation of the personal liberty  
20 of another." *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998), *quoting Asgari*  
21 *v. City of Los Angeles*, 15 Cal.4th 744, 757 (1997). False arrest is not a different tort. *Martinez*, 141  
22 F.3d at 1379. Rather, "it is merely one way of committing a false imprisonment." *Id.* In  
23 California, an officer typically cannot be held liable for false imprisonment if he or she acted within  
24 the scope of employment and had "reasonable cause to believe the arrest was lawful." California  
25 Penal Code § 847(b).

26  
27 "There are two bases for claiming false imprisonment: imprisonment pursuant to a false  
28 arrest and unreasonable delay in bringing the arrested person before a judicial officer." *Estate of*

1 *Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). The elements ““of false imprisonment  
2 are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3)  
3 for an appreciable period of time, however brief.”” *Young v. County of Los Angeles*, 655 F.3d 1156,  
4 1169 (9th Cir. 2011), *quoting Easton v. Sutter Coast Hosp.*, 80 Cal.App.4th 485, 496 (2000).

5 Nothing in the complaint links Defendants Hughes and Christianson to Plaintiff’s arrest or  
6 imprisonment. According to the facts, only Schwartz arrested Plaintiff and transported him to the  
7 County Jail, at which point Plaintiff remained in custody until bail was set by judicial process. In the  
8 absence of any factual allegations linking Hughes or Christianson to Plaintiff’s arrest and detention,  
9 the complaint fails to state a cognizable claim against either.

10  
11 The complaint adequately alleges facts establishing that Schwartz intentionally confined  
12 Plaintiff, without Plaintiff’s consent, for an appreciable amount of time. The remaining element is  
13 that the arrest and confinement had to occur without lawful privilege. The facts alleged in the  
14 complaint indicate that Plaintiff and Schwartz had an uneventful conversation until Plaintiff referred  
15 to a potential need to shoot police officers to make his point (apparently, FBI corruption). At that  
16 time, Schwartz initiated an arrest for threatening a public officer. California Penal Code § 71.  
17 Plaintiff denies that he violated section 71, noting that the district attorney later ultimately did not  
18 prosecute.

19  
20 Although the issue of lawful privilege is likely to be disputed as this case proceeds, Plaintiff  
21 has stated a cognizable claim of false imprisonment or false arrest under California law against  
22 Defendant Schwartz.

23  
24 **H. Count Nineteen: Denial of Medical Treatment**

25 In count nineteen, Plaintiff alleges that Defendants Schwartz, Hughes, and Christianson  
26 deliberately denied him medical treatment. This claim is inconsistent with the complaints’ factual  
27 allegation that following the arrest, an ambulance was called to the scene of the arrest but that  
28 Defendant Schwartz transported Plaintiff to Modesto Hospital before taking him to the Stanislaus

1 County Jail. In the absence of any other factual allegations that Plaintiff was denied medical  
2 attention, count nineteen is not cognizable.

3 **VIII. Conclusion and Order**

4 As discussed above and summarized in the order below, only certain counts within Plaintiff's  
5 complaint state cognizable claims and those claims are presently cognizable against less than all  
6 defendants named by Plaintiff as liable under those claims. The Court will provide Plaintiff with the  
7 opportunity to file an amended complaint curing the deficiencies identified in this order. Plaintiff  
8 may not change the nature of this suit by adding new, unrelated claims in his amended complaint.  
9 *George v. Smith*, 507 F.3d 605, 607 (7<sup>th</sup> Cir. 2007).  
10

11 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding only  
12 with those counts found to be cognizable, Plaintiff may so notify the Court in writing, and the Court  
13 will issue a recommendation for dismissal from this action of all claims found not cognizable. The  
14 Court will then forward to Plaintiff the necessary summonses and USM-285 forms for completion  
15 and return. Upon receipt of the completed forms, the Court will direct the United States Marshal to  
16 initiate service of process on the appropriate defendants.  
17

18 If Plaintiff elects to file an amended complaint, Plaintiff is advised that an amended  
19 complaint supersedes the original complaint and must be "complete in itself without reference to the  
20 prior or superseded pleading," Local Rule 15-220. Plaintiff is warned that all causes of action  
21 alleged in an original complaint which are not alleged in an amended complaint will be deemed  
22 waived.  
23

24 Based on the foregoing, it is HEREBY ORDERED that:

- 25 1. Counts one and two, alleging a § 1983 claim of the use of excessive force in the  
26 course of arrest in violation of the Fourth Amendment, state a cognizable claim  
27 against Defendant Schwartz;  
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2. Counts one and two, alleging a § 1983 claim of the use of excessive force in the course of arrest in violation of the Fourth Amendment, do not state cognizable claims against Defendants Hughes and Christianson, and are dismissed with leave to amend;
3. Counts three and four, alleging claims under an unidentified statute other than § 1983 for the use of excessive force in the course of arrest, fail to state a cognizable claim against any Defendant and are dismissed with leave to amend;
4. Counts five, twelve (in part), and seventeen, alleging § 1983 claims of inadequate training and supervision, fail to state a cognizable claim against any Defendant and are dismissed with leave to amend;
5. Count six, alleging conspiracy to violate Plaintiff's civil rights under § 1983 or California law or both, fails to state a cognizable claim against any Defendant and is dismissed with leave to amend;
6. Counts seven and eight, alleging assault and battery under California law, state cognizable claims against Defendant Schwartz;
7. Counts seven and eight, alleging assault and battery under California law, do not state cognizable claims against Defendants Hughes and Christianson, and are dismissed with leave to amend;
8. Counts nine and ten, alleging intentional infliction of emotional distress under California law, fail to state a cognizable claim against any Defendant and are dismissed with leave to amend;
9. Counts eleven, twelve (in part), fifteen, and sixteen, alleging *respondeat superior* liability against Defendants City of Patterson, Patterson Police Department, and Stanislaus County Sheriff's Department, are cognizable only with regard to any cognizable tort claims under California law that shall proceed against Defendant Schwartz;

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10. Counts thirteen and fourteen, alleging negligence in the course of arrest, state a cognizable claim against Defendant Schwartz;
11. Counts thirteen and fourteen, alleging negligence in the course of arrest, do not state cognizable claims against Defendants Hughes and Christianson, and are dismissed with leave to amend;
12. Count eighteen (in part), alleging malicious abuse of process, is not cognizable because Defendants Schwartz, Hughes, and Christianson are immune from liability pursuant to California Government Code §§ 815.2(d) and 821.6, and is dismissed with prejudice;
13. Count eighteen (in part), alleging false arrest or false imprisonment, states a cognizable claim against Defendant Schwartz;
14. Count eighteen (in part), alleging false arrest or false imprisonment, does not state cognizable claims against Defendants Hughes and Christianson, and is dismissed with leave to amend;
15. Count nineteen, alleging denial of medical treatment, fails to state a cognizable claim against any Defendant and is dismissed with leave to amend;
16. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
  - a. File an amended complaint curing the deficiencies identified by the Court in this order, or
  - b. Notify the Court in writing that he does not wish to file an amended complaint and wishes to proceed only against Defendant Schwartz on counts one, two, seven, eight, thirteen, fourteen, and eighteen (in part, false arrest or false imprisonment), and against Defendants City of Patterson, Patterson Police Department, and Stanislaus County Sheriff's Department on counts eleven, twelve (in part), fifteen, and sixteen; and



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17. If Plaintiff fails to comply with this order, this action will be dismissed without prejudice for failure to obey a Court order.

IT IS SO ORDERED.

Dated: January 9, 2014

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE