



1 The Court must review Plaintiff's First Amended Complaint because it supersedes the  
2 previously filed complaint. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v.*  
3 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

## 4 **II. Pleading Standards**

5 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
6 pleading must include a statement affirming the court's jurisdiction, "a short and plain statement of the  
7 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may  
8 include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a).

9 A complaint must give fair notice and state the elements of the plaintiff's claim in a plain and  
10 succinct manner. *Jones v. Cmty. Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The  
11 purpose of the complaint is to inform the defendant of the grounds upon which the complaint stands.  
12 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

13 Rule 8 does not require detailed factual allegations, but it demands more than an  
14 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
15 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.

16 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
17 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
18 268 (9th Cir. 1982). The Court clarified further,

19 [A] complaint must contain sufficient factual matter, accepted as true, to "state a claim  
20 to relief that is plausible on its face." [Citation]. A claim has facial plausibility when  
21 the plaintiff pleads factual content that allows the court to draw the reasonable  
22 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
23 plausibility standard is not akin to a "probability requirement," but it asks for more than  
a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint  
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.'

24 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should  
25 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal  
26 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a  
27 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,  
28 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

1 **III. Factual Allegations**

2 Plaintiff asserts he was arrested by officers with the Bakersfield Police Department’s Violent  
3 Criminal Apprehension Team (“VCAT”) on April 4, 2017. (Doc. 7 at 10) According to Plaintiff, he  
4 exited a motel room to smoke a cigarette, when he “noticed a suspicious SUV with blacked out tinted  
5 windows slowly approaching in [his] direction.” (*Id.*) Plaintiff alleges when the doors of the vehicle  
6 opened, he saw guns and heard someone say, “Get the fuck on the ground.” (*Id.*) He asserts that he  
7 “immediately [got] on the ground in a prone out position and yell[ed] that [he was] unarmed.” (*Id.*)

8 Plaintiff alleges that once the officers reached him, an officer kned him in the face, while  
9 another officer got on Plaintiff’s back and handcuffed his hands behind his back. (Doc. 7 at 10) He  
10 asserts that once “4 or 5 officers” were around him, an officer said “Welcome to the party” and started  
11 hitting Plaintiff “with his retractable police baton repeatedly while [he] was already handcuffed and  
12 held down.” (*Id.*) Plaintiff asserts the officer did not stop until Plaintiff suffered “multiple compound  
13 fractures” in his left leg. (*Id.*)

14 He reports he “was transported to Kern Medical Center via ambulance and was taken into  
15 surgery where [he] had to have a 16 inch rod put in [his] leg bone, along with multiple pins.” (Doc. 7  
16 at 10) Plaintiff alleges he “was in the hospital for about 10 days before being taken to county jail,  
17 where [he] was put in the infirmary.” (*Id.*) He asserts he is “still recovering from this beating,” nearly  
18 a year later, and “will never be able to walk normally.” (*Id.*)

19 According to Plaintiffs, his right to be free from the use of excessive force was violated by  
20 several Bakersfield Police Officers including Brent Thomas, Filipe Juarez, Adair Duenas, Mike  
21 Allred, Officer Aruizu (badge #1176), Officer Thomas (badge #1159), Officer Montgomery (badge  
22 #1151), Officer Gregory (badge # 1012), and CST Martinez. (Doc. 7 at 2, 8-9)

23 **IV. Section 1983 Claims**

24 Title 42 of the United States Code, Section 1983 provides “a method for vindicating federal  
25 rights elsewhere conferred,” such as civil rights arising under the Amendments to the Constitution of  
26 the United States. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). Section 1983 provides in relevant part:

27 Every person who, under color of any statute, ordinance, regulation, custom, or usage,  
28 of any State or Territory or the District of Columbia, subjects, or causes to be subjected,  
any citizen of the United States or other person within the jurisdiction thereof to the  
deprivation of any rights, privileges, or immunities secured by the Constitution and

1 laws, shall be liable to the party injured in an action at law, suit in equity, or other  
2 proper proceeding for redress.

3 To plead a Section 1983 violation, a plaintiff must allege facts from which it may be inferred that (1) a  
4 constitutional right was deprived, and (2) a person who committed the alleged violation acted under  
5 color of state law. *West v. Atkins*, 487 U.S. 42, 28 (1988); *Williams v. Gorton*, 529 F.2d 668, 670 (9th  
6 Cir. 1976).

7 A plaintiff must allege a specific injury was suffered, and show causal relationship between the  
8 defendant's conduct and the injury suffered. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

9 Thus, Section 1983 "requires that there be an actual connection or link between the actions of the  
10 defendants and the deprivation alleged to have been suffered by the plaintiff." *Chavira v. Ruth*, 2012  
11 U.S. Dist. LEXIS 53946, at \*3 (E.D. Cal. Apr. 17, 2012). An entity or individual deprives another of  
12 a federal right "if he does an affirmative act, participates in another's affirmative acts, or omits to  
13 perform an act which he is legally required to do so that it causes the deprivation of which complaint  
14 is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). In other words, "[s]ome culpable  
15 action or inaction must be attributable to defendants." *See Puckett v. Cororan Prison- CDCR*, 2012  
16 U.S. Dist. LEXIS 52572, at \*7 (E.D. Cal. Apr. 13, 2012). Here, Plaintiff asserts the individuals  
17 identified are liable for a violation of his right to be free from the use of excessive force. (Doc. 7 at 9)

18 **V. Discussion and Analysis**

19 The Supreme Court of the United States determined the Due Process Clause of the Fourteenth  
20 Amendment protects individuals who have not yet been convicted of a crime "from the use of excessive  
21 force that amounts to punishment." *Graham v. Connor*, 490 U.S. 386, 388 (1989). However,  
22 allegations of excessive force during the course of an arrest are analyzed under the Fourth Amendment,  
23 which prohibits arrests without probable cause or other justification. *Id.* ("claim[s] that law  
24 enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other  
25 'seizure' ... are properly analyzed under the Fourth Amendment's 'objective reasonableness'  
26 standard"); *see also Chew v. Gates*, 27 F.3d 1432, 1440 (9th Cir. 1994) ("the use of force to effect an  
27 arrest is subject to the Fourth Amendment's prohibition on unreasonable seizures"). The Supreme  
28 Court explained:

1 As in other Fourth Amendment contexts . . . the “reasonableness” inquiry in an excessive  
2 force case is an objective one: the question is whether the officers’ actions are  
3 “objectively reasonable” in light of the facts and circumstances confronting them, without  
4 regard to their underlying intent or motivation. An officer’s evil intentions will not make  
5 a Fourth Amendment violation out of an objectively reasonable use of force; nor will an  
6 officer’s good intentions make an objectively unreasonable use of force constitutional.

7 *Graham*, 490 U.S. at 396-97 (1989) (internal citations omitted). In applying this standard, the Ninth  
8 Circuit instructs courts to consider “the totality of the circumstances and . . . whatever specific factors  
9 may be appropriate in a particular case.” *Bryan v. MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010).

10 In *Graham*, the Supreme Court set forth factors to be considered in evaluating whether the force  
11 used was reasonable, “including the severity of the crime at issue, whether the suspect poses an  
12 immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or  
13 attempting to evade arrest by flight.” *Id.*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9  
14 (1985)). In addition, Court may consider “whether officers administered a warning, assuming it was  
15 practicable.” *George v. Morris*, 736 F.3d 829, 837-38 (9th Cir. 2013) (citing *Scott v. Harris*, 550 U.S.  
16 372, 381-82 (2007)). Ultimately, the “reasonableness” of the actions “must be judged from the  
17 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”  
18 *Graham*, 490 U.S. at 396.

#### 19 1. Liability of individual officers

20 Previously, Plaintiff did not identify any individual officers in his complaint. (*See generally*  
21 Doc. 1) The Court informed Plaintiff that “[t]o the extent [he] seeks to hold individual officers liable,  
22 he must name the officers *and* state what each person did to violate his constitutional rights. To state a  
23 claim against the individual officers, Plaintiff must facts supporting a conclusion that each defendant  
24 personally participated in the deprivation of his rights.” (Doc. 3 at 8, emphasis added) (citing *Iqbal*,  
25 556 U.S. at 678; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 2010))

26 Plaintiff has now provided a list of the officers he believes were involved in taking him into  
27 custody but fails to identify what each person did to violate his rights. Instead, Plaintiff merely re-filed  
28 the same narrative of the events previously provided to the Court. (*See* Doc. 1 at 6; Doc. 7 at 10) This  
is insufficient for the Court to determine which officer took what action(s). While the Court is able to  
identify that three took certain actions—including an officer who Plaintiff asserts kned him in the face,

1 an officer who handcuffed Plaintiff, and one who hit him with a baton—Plaintiff does not clarify who  
2 these officers are or what the other officers did that he claims violated his constitutional rights. The  
3 Court is unable to speculate as to the actions of each of the individuals identified in his list of  
4 defendants. Therefore, if Plaintiff elects to amend his complaint, he must link the actions of **each of**  
5 **the individual officers** to an alleged deprivation of rights. *See Rizzo*, 423 U.S. at 371.

## 6 2. Liability of the Bakersfield Police Department

7 Previously, Plaintiff identified the Bakersfield Police Department as a defendant in the action.  
8 However, the police department is not a proper defendant to Plaintiff’s claim for a violation of Section  
9 1983. Although municipalities, such as cities and counties, are amenable to suit, sub-departments or  
10 bureaus of municipalities—like the Bakersfield Police Department—are “not generally considered  
11 ‘persons’ within the meaning of Section 1983.” *United States v. Kama*, 394 F.3d 1236, 1240 (9th Cir.  
12 2005); *Hervey v. Estes*, 65 F.3d 784, 791 (9th Cir. 1995) (“Although municipalities, such as cities and  
13 counties, are amenable to suit . . . sub-departments or bureaus of municipalities, such as the police  
14 departments, are not generally considered ‘persons’ within the meaning of § 1983”); *see also Gonzales*  
15 *v. City of Clovis*, 2013 WL 394522 (E.D. Cal. Jan. 30, 2013) (holding that the Clovis Police  
16 Department is not a “person” for purposes of Section 1983); *Wade v. Fresno Police Dep’t*, 2010 WL  
17 2353525 at \*4 (E.D. Cal. June 9, 2010) (finding the Fresno Police Department to not be a “person”  
18 under Section 1983). Thus, the Court reminds Plaintiff that the Bakersfield Police Department is not a  
19 proper defendant in this action.

## 20 **VI. Conclusion and Order**

21 For the reasons set forth above, the Court is unable to find Plaintiff states a cognizable claim  
22 under Section 1983 against the officers identified in his First Amended Complaint. However, the  
23 factual deficiencies may be cured by amendment. *See Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th  
24 Cir. 1987); *Lopez*, 203 F.3d at 1128 (dismissal of a *pro se* complaint without leave to amend for failure  
25 to state a claim is proper only where it is obvious that an opportunity to amend would be futile).

26 Plaintiff is again advised that an amended complaint supersedes the original complaint.  
27 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th  
28 Cir. 1987). In addition, the amended complaint must be “complete in itself without reference to the

1 prior or superseded pleading.” Local Rule 220. Once Plaintiff files an amended complaint, the  
2 original pleading no longer serves any function in the case. The amended complaint must bear the  
3 docket number assigned this case and must be labeled “Second Amended Complaint.” Finally,  
4 Plaintiff is warned that “[a]ll causes of action alleged in an original complaint which are not alleged in  
5 an amended complaint are waived.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) (citing *London*  
6 *v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

7 Based upon the foregoing, the Court **ORDERS**:

- 8 1. Plaintiff’s First Amended Complaint is **DISMISSED** with leave to amend; and
- 9 3. Within thirty days from the date of service of this order, Plaintiff **SHALL** file a Second  
10 Amended Complaint.

11 **If Plaintiff fails to comply with this order to file an amended complaint, the action may be**  
12 **dismissed for failure to prosecute and failure to obey the Court’s order.**

13  
14 IT IS SO ORDERED.

15 Dated: May 22, 2018

/s/ Jennifer L. Thurston  
16 UNITED STATES MAGISTRATE JUDGE