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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COREY D. SPECK,

Plaintiff,

No. 2:09-cv-3440 GEB EFB P

vs.

SHASTA COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

ORDER

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Plaintiff is a former inmate proceeding pro se with this civil rights action under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). See E.D. Cal. Local Rules, Appx. A, at (k)(4). Before the court is plaintiff’s amended complaint.

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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1 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
3 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words,  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
5 statements do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

6 Furthermore, a claim upon which the court can grant relief has facial plausibility.  
7 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
8 content that allows the court to draw the reasonable inference that the defendant is liable for the  
9 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a  
10 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
11 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to  
12 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

13 A *pro se* plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal  
14 Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain  
15 statement of the claim showing that the pleader is entitled to relief, in order to give the defendant  
16 fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,  
17 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

18 Here, the complaint names three Doe defendants. Plaintiff is hereby informed that the  
19 use of Doe defendants in federal court is problematic, *see Gillespie v. Civiletti*, 629 F.2d 637,  
20 642 (9th Cir. 1980), and ultimately unnecessary. Should plaintiff learn the identities of parties  
21 he wishes to serve, he must promptly move pursuant to Rule 15 of the Federal Rules of Civil  
22 Procedure to file an amended complaint to add them as defendants. *See Brass v. County of Los*  
23 *Angeles*, 328 F.3d 1192, 1197-98 (9th Cir. 2003). If the timing of his amended complaint raises  
24 questions as to the statute of limitations, plaintiff must satisfy the requirements of Rule 15(c),  
25 which is the controlling procedure for adding defendants whose identities were discovered after  
26 commencement of the action. Additionally, unknown persons cannot be served with process

1 until they are identified by their real names and the court will not investigate the names and  
2 identities of unnamed defendants.

3 The court has reviewed plaintiff's complaint for the limited purposes of § 1915A  
4 screening. The complaint alleges that defendants Kropholler and McQuillan, employees of the  
5 Shasta County Sheriff's Department of Shasta County, subjected plaintiff to an improper search  
6 and seizure. Liberally construed, the court finds that the complaint states potentially cognizable  
7 claims against defendants Kropholler and McQuillan.

8 The complaint's allegations against the remaining defendants, Tom Bosenko, the County  
9 of Shasta, and the Shasta Sheriff's Department, however, fail to state a cognizable claim for  
10 relief. Plaintiff claims that defendants Kropholler and McQuillan "had no adequate training  
11 regarding the arrest, investigatory stop, search, [and] seizure" and that defendants Bosenko,  
12 Shasta County and the Shasta County Sheriff's Department failed to adequately train and  
13 supervise defendants Kropholler and McQuillan. Dckt. No. 16 ¶¶ 73, 77, 91. It also alleges that  
14 the Sheriff's Department and the County "implemented careless and reckless policies, customs  
15 or practices, that included . . . allowing employees known to have provided false statements and  
16 information in official documents and proceedings . . . to continue to patrol the highways, free to  
17 stop without cause or reason, remove citizens from their vehicles without cause or reason,  
18 conduct a warrantless search not once, or twice, but three times, all without any reasonable  
19 suspicion or any articulable probable cause . . ." *Id.* ¶ 90.

20 An individual defendant is not liable on a civil rights claim unless the facts establish the  
21 defendant's personal involvement in the constitutional deprivation or a causal connection  
22 between the defendant's wrongful conduct and the alleged constitutional deprivation. *See*  
23 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th  
24 Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for  
25 the unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948  
26 (2009). Because respondeat superior liability is inapplicable to § 1983 suits, "a plaintiff must

1 plead that each Government-official defendant, through the official's own individual actions, has  
2 violated the Constitution.” *Id.* It is plaintiff's responsibility to allege facts to state a plausible  
3 claim for relief. *Iqbal*, 129 S. Ct. at 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
4 2009).

5 Here, plaintiff names Tom Bosenko as a defendant based on conclusory allegations that  
6 Bosenko failed to adequately train and supervise defendants Kropholler and McQuillan and that  
7 Bosenko should have known that Kropholler and McQuillan had lied in the past. Plaintiff's  
8 claims against defendant Bosenko must be dismissed because plaintiff fails to allege plausible  
9 facts showing Bosenko's involvement in the alleged deprivation of plaintiff's rights and  
10 improperly seeks to hold Bosenko liable under a theory of respondeat superior. Moreover, the  
11 allegations fail to show any connection between the alleged deprivation of plaintiff's rights, and  
12 the fact that Bosenko may have known that defendants Kropholler and McQuillan had lied in the  
13 past.

14 “Municipalities and other local government units . . . [are] among those persons to whom  
15 § 1983 applies.” *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, a  
16 municipal entity or its departments, is liable under § 1983 only if plaintiff shows that his  
17 constitutional injury was caused by employees acting pursuant to the municipality's policy or  
18 custom. *See Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 964 (9th Cir. 2008) (citing  
19 436 U.S. at 690-94). “[A]n act performed pursuant to a ‘custom’ that has not been formally  
20 approved by an appropriate decisionmaker may fairly subject a municipality to liability on the  
21 theory that the relevant practice is so widespread as to have the force of law.” *Board of Cty.*  
22 *Comm'rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 404 (1997). A local governmental entity may  
23 also be liable if it has a “policy of inaction and such inaction amounts to a failure to protect  
24 constitutional rights.” *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992) (citing *City of*  
25 *Canton v. Harris*, 489 U.S. 378 (1989)); *see also Monell*, 436 U.S. at 690-91. The custom or  
26 policy of inaction, however, must be the result of a “conscious,” *City of Canton*, 489 U.S. at 389,

1 or “deliberate choice to follow a course of action . . . made from among various alternatives by  
2 the official or officials responsible for establishing final policy with respect to the subject matter  
3 in question.” *Oviatt*, 954 F.2d at 1477 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469,  
4 483-84 (1986) (plurality opinion)).

5 Here, plaintiff fails to sufficiently demonstrate that he was injured as a result of  
6 employees acting pursuant to any policy or custom of Shasta County of the Shasta County  
7 Sheriff’s Department. Plaintiff’s threadbare recitals regarding an alleged policy or custom are  
8 unsupported by any specific facts and thus, fail to demonstrate that either the County or the  
9 Sheriff’s Department, systematically condoned unlawful detentions and searches. Plaintiff’s  
10 general claims of inadequate training or supervision are not enough because “[p]roof of a single  
11 incident of unconstitutional activity is not sufficient to impose liability under *Monell* . . . .” *City*  
12 *of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985). Plaintiff fails to allege any specific  
13 facts regarding “obvious” deficiencies in the Sheriff’s or the County’s training program. *See*  
14 *Canton*, 489 U.S. at 390-91 (“That a particular officer may be unsatisfactorily trained will not  
15 alone suffice to fasten liability on the city, for the officer’s shortcomings may have resulted from  
16 factors other than a faulty training program.”). Because a local government entity may not be  
17 held vicariously liable under § 1983 for the unconstitutional acts of its employees under the  
18 theory of respondeat superior, defendants Shasta County and Shasta County Sheriff’s  
19 Department must therefore be dismissed with leave to amend. *See Board of Cty. Comm’rs.*, 520  
20 U.S. at 403.

21 Accordingly, plaintiff may either proceed against defendants Kropholler and McQuillan  
22 only, or he may amend his complaint to attempt to cure the deficiencies in his claims against the  
23 other named defendants. Plaintiff is not obligated to amend his complaint. If plaintiff chooses to  
24 proceed against defendants Kropholler and McQuillan only, the court will construe plaintiff’s  
25 election as his voluntary dismissal of defendants Bosenko, Shasta County, and Shasta County  
26 Sheriff’s Department, without prejudice.

1 Any amended complaint must be written or typed so that it so that it is complete in itself  
2 without reference to any earlier filed complaint. L.R. 220. This is because an amended  
3 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
4 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
5 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
6 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
7 1967)).

8 Plaintiff may not change the nature of this suit by alleging new, unrelated claims in an  
9 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”  
10 complaints).

11 Accordingly, the court hereby orders that:

12 1. The allegations in the pleading are sufficient at least to state potentially cognizable  
13 claims against defendants Kropholler and McQuillan.

14 2. Defendants Bosenko, Shasta County, and Shasta County Sheriff’s Department are  
15 dismissed with leave to amend within 21 days of service of this order. Plaintiff is not obligated  
16 to amend his complaint.

17 3. With this order the Clerk of the Court shall provide to plaintiff a blank summons, a  
18 copy of the December 28, 2011 amended complaint, two USM-285 form and instructions for  
19 service of process on defendants Kropholler and McQuillan. Within 30 days of service of this  
20 order plaintiff may return the attached Notice of Submission of Documents with the completed  
21 summons, the completed USM-285 forms, and three copies of the complaint. The court will  
22 transmit them to the United States Marshal for service of process pursuant to Rule 4 of the  
23 Federal Rules of Civil Procedure. Defendants Kropholler and McQuillan will be required to  
24 respond to plaintiff’s allegations within the deadlines stated in Rule 12(a)(1) of the Federal Rules  
25 of Civil Procedure. In this event, the court will construe plaintiff’s election to proceed forthwith  
26 as his voluntary dismissal of defendants Bosenko, Shasta County, and Shasta County Sheriff’s

1 Department, without prejudice.

2 4. Failure to comply with this order may result in a recommendation that this action be  
3 dismissed.

4 Dated: November 19, 2012.



5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COREY D. SPECK,

Plaintiff,  
vs.

No. 2:09-cv-3440 GEB EFB P

SHASTA COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

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In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) \_\_\_\_\_ proceed only against defendants Kropholler and McQuillan, consent to the dismissal of defendants Bosenko, Shasta County, and Shasta County Sheriff's Department, and submits the following documents:

- 1 completed summons form
- 2 completed forms USM-285
- 3 copies of the December 28, 2011 amended complaint

**OR**

(2) \_\_\_\_\_ delay serving any defendant and files an amended complaint in accordance with the court's Screening Order.

Dated:

\_\_\_\_\_  
Plaintiff