

1 490 U.S. at 327.

2 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
3 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
4 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
5 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
6 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
7 this standard, the court must accept as true the allegations of the complaint in question, Hospital
8 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
9 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
10 McKeithen, 395 U.S. 411, 421 (1969).

11 In the first amended complaint, plaintiff brings suit against the Sacramento County Police
12 Department, the City of Sacramento, and the Sacramento County Public Law Library for
13 violations of his constitutional rights stemming from the May 23, 2013 "Notice of Trespass" he
14 received. Unfortunately, the amended pleading lacks essential details, rendering it difficult for
15 the court to analyze plaintiff's claims. For example, though plaintiff states that he received a
16 Notice of Trespass "due to his utilizing the Sacramento County Public Law Library for legal
17 research," the issuance of such a notice, without more, does not constitute a violation of
18 plaintiff's constitutional rights.

19 The court has therefore determined that the amended complaint, like the original pleading,
20 does not contain a short and plain statement as required by Federal Rule of Civil Procedure
21 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
22 notice and state the elements of the claim plainly and succinctly. Jones v. Community Redev.
23 Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
24 particularity overt acts which defendants engaged in that support plaintiff's claim. Id. Because
25 plaintiff has failed to comply with the requirements of Federal Rule of Civil Procedure 8(a)(2),
26 the first amended complaint must be dismissed. The court will, however, grant leave to file a
27 second amended complaint.

28 If plaintiff chooses to amend the first amended complaint, plaintiff must set forth the

1 jurisdictional grounds upon which the court's jurisdiction depends. Fed. R. Civ. P. 8(a). Further,
2 plaintiff must demonstrate how the conduct complained of has resulted in a deprivation of
3 plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must
4 allege in specific terms how each named defendant is involved. There can be no liability under §
5 1983 unless there is some affirmative link between a defendant's actions and the claimed
6 deprivation. Rizzo v. Goode, 423 U.S. 362 (9176); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
7 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

8 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
9 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
10 complaint be complete in itself without reference to any prior pleading. This is because, as a
11 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
12 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
13 longer serves any function in the case. Therefore, in an amended complaint, as in an original
14 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

15 Also pending is plaintiff's motion for default judgment. The Ninth Circuit Court of
16 Appeals has stated that Federal Rule of Civil Procedure 55 requires a "two-step process" to obtain
17 default judgment, consisting of: (1) seeking the clerk's entry of default, and (2) filing a motion for
18 entry of default judgment. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986) ("Eitel
19 apparently fails to understand the two-step process required by Rule 55."); Symantec Corp. v.
20 Global Impact, Inc., 559 F.3d 922, 923 (9th Cir. 2009) (noting "the two-step process of 'Entering
21 a Default' and 'Entering a Default Judgment' ").

22 In light of the requirement to obtain entry of default before seeking default judgment,
23 courts deny motions for default judgment where default has not been previously entered. See,
24 e.g., Marty v. Green, 2011 WL 320303, at *3 (E.D. Cal. Jan. 28, 2011) ("Plaintiff's motion for
25 default judgment is denied because plaintiff did not follow the procedural steps required to
26 properly file a motion for default judgment. Specifically, plaintiff failed to seek a clerk's entry of
27 default from the Clerk of Court prior to filing his motion for default judgment."); Norman v.
28 Small, 2010 WL 5173683, at *2 (S.D. Cal. Dec. 14, 2010) (denying plaintiff's motion for default

1 judgment because “the clerk has not entered default”); Bach v. Mason, 1901 F.R.D. 567, 574 (D.
2 Idaho 1999) (“Plaintiffs have improperly asked this court to enter a default judgment without first
3 obtaining an entry of default by the clerk. Since plaintiffs’ motion for entry of default judgment
4 is improper, it is denied.”).

5 In this case, default has not been entered against any of the defendants. Without first
6 obtaining an entry of default against the defendants, plaintiff’s motion for default judgment is
7 improperly before this court. See Bach, 190 F.R.D. at 574. Furthermore, entry of default may
8 not be obtained unless and until defendants have been served and have failed to plead or
9 otherwise defend as required by the Federal Rules of Civil Procedure. Fed. R. Civ. P. 55(a). This
10 case is not yet in that posture. Accordingly, this request will be denied.

11 In accordance with the above, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff’s first amended complaint is dismissed;
- 13 2. Plaintiff’s motion for default judgment (ECF No. 6) is denied; and
- 14 3. Plaintiff is granted thirty days from the date of service of this order to file a second
15 amended complaint that complies with the requirements of the Federal Rules of Civil
16 Procedure, and the Local Rules of Practice; the amended complaint must bear the
17 docket number assigned this case and must be labeled “Second Amended Complaint”;
18 plaintiff must file an original and two copies of the second amended complaint; failure
19 to file a second amended complaint in accordance with this order will result in a
20 recommendation that this action be dismissed.

21 DATED: February 6, 2014

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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