



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 ("FAC"), plaintiff describes three specific encounters with  
12 Butte County Sheriff's deputies in May and June 2013 that concern allegedly unlawful searches  
13 and seizures. Plaintiff, however, does not name any of these officers as defendants in this action.  
14 Instead, plaintiff names the Butte County Superior Court, the Butte County District Attorney's  
15 Office, and the Butte County Sheriff's Department for targeting and harassing him from 1995  
16 through 2013.

17 As to the Butte County Superior Court, plaintiff describes an incident in 1996 when an  
18 unidentified Butte County Superior Court judge made an improper ruling from the bench. See  
19 ECF No. 6 at 5-6. "Judges are immune from damage actions for judicial acts taken within the  
20 jurisdiction of their courts. . . . Judicial immunity applies however erroneous the act may have  
21 been, and however injurious in its consequences it may have proved to the plaintiff." Ashelman  
22 v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986). A judge can lose his or her immunity when acting  
23 in clear absence of jurisdiction, but one must distinguish acts taken in error or acts that are  
24 performed in excess of a judge's authority (which remain absolutely immune) from those acts  
25 taken in clear absence of jurisdiction. Mireles v. Waco, 502 U.S. 9, 12-13 (1991) ("If judicial  
26 immunity means anything, it means that a judge will not be deprived of immunity because the  
27 action he took was in error. . . or was in excess of his authority.") Thus, for example, in a case  
28 where a judge actually ordered the seizure of an individual by means of excessive force, an act

1 clearly in excess of his legal authority, he remained immune because the order was given in his  
2 capacity as a judge and not with the clear absence of jurisdiction. Id.; see also Ashelman, 793  
3 F.2d at 1075 (“A judge lacks immunity where he acts in the clear absence of all jurisdiction...or  
4 performs an act that is not judicial in nature.”) Therefore, plaintiff’s claim directed to the Butte  
5 County Superior Court, which appears to be based entirely on this single judge’s erroneous  
6 ruling, must be dismissed.

7 Similarly, plaintiff’s claim against the Butte County District Attorney’s office must be  
8 dismissed. Prosecutors are absolutely immune from liability under § 1983 when engaged in  
9 initiating a prosecution or presenting the state’s case. Imbler v. Pachtman, 424 U.S. 409, 431  
10 (1976); accord Buckley v. Fitzsimmons, 113 S. Ct. 2606, 2615 (1993). This immunity is  
11 necessary to assure that they can perform their function without harassment or intimidation. Fry  
12 v. Melaragno, 939 F.2d 832, 837 (9th Cir. 1991). If the prosecutor is performing acts “intimately  
13 associated with the judicial phase” of the litigation, he is entitled to absolute immunity from  
14 damage liability. Id. (citation omitted). Plaintiff’s allegation that the District Attorney’s Office  
15 misrepresented the number of strikes against plaintiff entails acts or omissions entitled to absolute  
16 immunity. Plaintiff’s § 1983 allegations as to this defendant shall accordingly be dismissed.

17 Lastly, plaintiff’s claims against the Butte County Sheriff’s Department<sup>1</sup> must also be  
18 dismissed. This is because, as presently worded, plaintiff’s claim rests on a theory of respondeat  
19 superior or vicarious liability, which cannot be a basis for a Section 1983 claim. See Monell v.  
20 Dep’t of Soc. Servs., 436 U.S. 658, 691-94 (1978). In order to prevail on his claim against the  
21 Sheriff’s Department, plaintiff must identify a specific policy or practice as the “moving force”  
22 behind the alleged civil rights violation. Id. 694. Therefore, this claim must be dismissed.  
23 Plaintiff will however be granted leave to amend as to this defendant.

24 If plaintiff chooses to amend the first amended complaint, plaintiff must set forth the  
25 jurisdictional grounds upon which the court’s jurisdiction depends. Fed. R. Civ. P. 8(a). Further,  
26 plaintiff must demonstrate how the conduct complained of has resulted in a deprivation of

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27 <sup>1</sup> Plaintiff also asserts a claim as to the Butte County Jail, though there are no charging allegations  
28 as to this entity.

1 plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must  
2 allege in specific terms how each named defendant is involved. There can be no liability under §  
3 1983 unless there is some affirmative link between a defendant's actions and the claimed  
4 deprivation. Rizzo v. Goode, 423 U.S. 362 (9176); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
5 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

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

- 14 1. Plaintiff's first amended complaint is dismissed; and
- 15 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
16 amended complaint that complies with the requirements of the Federal Rules of Civil  
17 Procedure, and the Local Rules of Practice; the amended complaint must bear the  
18 docket number assigned this case and must be labeled "Second Amended Complaint";  
19 plaintiff must file an original and two copies of the second amended complaint; failure  
20 to file a second amended complaint in accordance with this order will result in a  
21 recommendation that this action be dismissed.

22 DATED: October 31, 2013

23   
24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE

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