



1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
2 490 U.S. at 327.

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

12 Plaintiff brings suit against the Sacramento Sheriff's Department, the Sacramento Police  
13 Department, and an individual named Brian Baldwin for wrongful arrest and police brutality.  
14 Plaintiff provides no specifics of the arrest in his single-sentence complaint other than to say he  
15 was personally injured and lost housing. Attached to plaintiff's complaint, though, are a number  
16 of exhibits, including an arrest report revealing that plaintiff was arrested on October 20, 2013 in  
17 Sacramento for assault with a deadly weapon after he struck another individual twice with an 8-  
18 iron golf club; plaintiff claimed he acted in self-defense. ECF No. 1 at 3, 7. At the time of his  
19 arrest, one of the arresting deputies, Deputy M. Heller, directed plaintiff to lie down on the floor.  
20 Id. at 9-10. Deputy Heller then struck plaintiff with a baton in his left bicep area after noticing  
21 that plaintiff's forearm and face muscles were tense and after plaintiff allegedly said, "Well, I  
22 guess we are going to fight." Id. at 9-10. Plaintiff counters that the use of force was unnecessary  
23 because he was in the process of complying with the order to get on the ground and because the  
24 only comment that he made to Deputy Heller was that he was disabled. Id. at 16-17. After the  
25 arrest, plaintiff filed a Citizen Complaint with the Sacramento County Sheriff's Department  
26 asserting police brutality, which he claims resulted in a mild stroke. Id.

27 Review of the plaintiff's complaint and attached exhibits convinces the court that the  
28 complaint must be dismissed albeit with leave to amend. This is because, first, although plaintiff

1 names Brian Baldwin as a defendant, there are no charging allegations as to this individual and  
2 none of the exhibits refer to him. Moreover, as to the Sacramento Sheriff's Department and the  
3 Sacramento Police Department, local governments are generally not liable for the constitutional  
4 torts of their employees under a respondeat superior theory. Monell v. Dep't of Social Servs., 436  
5 U.S. 658, 691 (1978). To establish liability of either of these two defendants ("municipal  
6 liability," or "Monell liability"), a plaintiff must show that "the action that is alleged to be  
7 unconstitutional implements or executes a policy statement, ordinance, regulation, or decision  
8 officially adopted and promulgated by that body's officers." Id. at 690.

9 Plaintiff has the burden of proving each element of Monell liability at trial and can  
10 generally establish a municipal policy in three ways: First, he can identify an explicit policy  
11 promulgated by a municipality that employees followed and that led to the deprivation of an  
12 individual's constitutional rights. Monell, 436 U.S. at 690. Second, he can show that even  
13 though no explicit policy can be identified, a permanent, widespread, and settled custom existed  
14 that employees followed and that led to the deprivation of constitutional rights. Thompson v.  
15 City of Los Angeles, 885 F.2d 1439, 1444 (9th Cir. 1989); Trevino v. Gates, 99 F.3d 911, 918  
16 (9th Cir. 1996) ("Liability for improper custom may not be predicated on isolated or sporadic  
17 incidents; it must be founded upon practices of sufficient duration, frequency and consistency that  
18 the conduct has become a traditional method of carrying out policy."). Third, he can show that  
19 the constitutional deprivation occurred pursuant to a directive by a decisionmaker with final  
20 authority to make binding policy. See, e.g., Davis v. City of Ellensburg, 869 F.2d 1230, 1235  
21 (9th Cir. 1989). Because plaintiff has not made any allegations establishing Monell liability as  
22 described, his claims against the Sacramento Sheriff's Department and the Sacramento Police  
23 Department must be dismissed for failure to state a claim.

24 As noted, plaintiff will be granted leave to amend. If plaintiff chooses to amend the  
25 complaint, plaintiff must set forth the jurisdictional grounds upon which the court's jurisdiction  
26 depends. Fed. R. Civ. P. 8(a). Further, plaintiff must demonstrate how the conduct complained  
27 of has resulted in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227  
28 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is

1 involved. There can be no liability under § 1983 unless there is some affirmative link between a  
2 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (9176); May v.  
3 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
4 1978). Plaintiff is also directed to be mindful of establishing Monell liability should he decide to  
5 continue with his claims against the Sacramento Sheriff's Department and the Sacramento Police  
6 Department.

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

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

- 15 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is granted;
- 16 2. Plaintiff's complaint is dismissed; and

17 3 Plaintiff is granted thirty days from the date of service of this order to file an amended  
18 complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the  
19 Local Rules of Practice; the amended complaint must bear the docket number assigned this case  
20 and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the  
21 amended complaint; failure to file an amended complaint in accordance with this order will result  
22 in a recommendation that this action be dismissed.

23 DATED: April 15, 2014

24   
25 ALLISON CLAIRE  
26 UNITED STATES MAGISTRATE JUDGE  
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