

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREDERICK MARCELES COOLEY,  
Plaintiff,  
v.  
CITY OF VALLEJO, et al.,  
Defendants.

No. 2:14-cv-0240 MCE DAD PS

ORDER

Plaintiff is proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has filed an unsigned document with the court seeking authorization for a “Frederick Marc Cooley” to act as a “legal assistant in this civil action” on behalf of plaintiff Frederick Marceles Cooley. (Dkt. No. 2.)<sup>1</sup>

Plaintiff is advised that all pleadings and non-evidentiary documents filed with the court must be signed. See Local Rule 131(b). Moreover, the right to represent oneself pro se is personal to the plaintiff and does not extend to other parties. Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008); see also Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962)

---

<sup>1</sup> The relationship between plaintiff “Frederick Marc Cooley” and “Frederick Marceles Cooley” is not explained in plaintiff’s filing. In any event, plaintiff cannot be represented by a non-lawyer other than himself.

1 (“A litigant appearing in propria persona has no authority to represent anyone other than  
2 himself.”). Moreover, a non-attorney “has no authority to appear as an attorney for others than  
3 himself.” C.E. Pope Equity Trust v. U.S., 818 F.2d 696, 697 (9th Cir. 1987). Individuals who are  
4 representing themselves in this court may not delegate the litigation of their claims to any other  
5 individual. Local Rule 183(a).

6 Plaintiff has also requested leave to proceed in forma pauperis pursuant to 28 U.S.C. §  
7 1915. (Dkt. No. 3.) After review, the court finds that plaintiff has submitted an in forma pauperis  
8 application that make the showing required by 28 U.S.C. § 1915(a)(1). Plaintiff’s request for  
9 leave to proceed in forma pauperis will therefore be granted.

10 The determination that plaintiff may proceed in forma pauperis does not complete the  
11 inquiry required by the statutes. The court must dismiss an in forma pauperis case at any time if  
12 the allegation of poverty is found to be untrue or if it is determined that the action is frivolous or  
13 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against  
14 an immune defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it  
15 lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin  
16 v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a  
17 complaint as frivolous where it is based on an indisputably meritless legal theory or where the  
18 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

19 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
20 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
21 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
22 true the material allegations in the complaint and construes the allegations in the light most  
23 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
24 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
25 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
26 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
27 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
28 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

1 The minimum requirements for a civil complaint in federal court are as follows:

2 A pleading which sets forth a claim for relief . . . shall contain (1) a  
3 short and plain statement of the grounds upon which the court's  
4 jurisdiction depends . . . , (2) a short and plain statement of the  
claim showing that the pleader is entitled to relief, and (3) a demand  
for judgment for the relief the pleader seeks. FED. R. CIV. P. 8(a).

5 Here, in his complaint alleges as follows. On August 12, 2012, plaintiff was standing in  
6 front of the residence located at 812 5th Street in Vallejo, CA, when defendant William Badour,  
7 an officer with the Vallejo City Police Department, approached plaintiff and fired a Taser at him  
8 without warning. (Compl. (Dkt. No. 1) at 1.) Plaintiff, who was able to avoid being struck by the  
9 Taser, retreated into the residence before eventually exiting, whereupon he was arrested for  
10 violating California Penal Code § 148. (Id. at 1-2.) The handcuffs defendant Badour applied to  
11 plaintiff while arresting him were extremely tight and plaintiff repeatedly requested that they be  
12 loosened. Defendant Badour refused to do so, causing plaintiff extreme pain, numbness and  
13 bruising. (Id.) Based on these allegations, the complaint alleges that plaintiff “will be seeking  
14 damages for Monell claims due to the City of Vallejo[’s] longstanding practice, policy or custom  
15 of allowing Vallejo Police Officers to use excessive force.” (Id.)

16 A municipality may be liable under § 1983 where the municipality itself causes the  
17 constitutional violation through a “policy or custom, whether made by its lawmakers or those  
18 whose edicts or acts may fairly be said to represent official policy.”<sup>2</sup> Pursuant to the decision in  
19 Monell v. Department of Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a §  
20 1983 case may be premised upon: (1) an official policy; (2) a “longstanding practice or custom  
21 which constitutes the standard operating procedure of the local government entity;” (3) the act of  
22 an “official whose acts fairly represent official policy such that the challenged action constituted  
23 official policy;” or (4) where “an official with final policy-making authority delegated that  
24 authority to, or ratified the decision of, a subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir.  
25 2008).

26 ////

27 \_\_\_\_\_  
28 <sup>2</sup> Although named as a defendant in the caption of plaintiff’s complaint, the City of Vallejo is not  
identified as a defendant in the body of that complaint.

1           The Ninth Circuit has “long recognized that a custom or practice can be ‘inferred from  
2 widespread practices or evidence of repeated constitutional violations for which the errant  
3 municipal officers were not discharged or reprimanded.’” Hunter v. County of Sacramento, 652  
4 F.3d 1225, 1233-34 (9th Cir. 2011) (quoting Nadell v. Las Vegas Metro. Police Dep’t, 268 F.3d  
5 924, 929 (9th Cir. 2001)). See also Hunter v. County of Sacramento, No. 2:06-cv-0457 GEB  
6 EFB, 2013 WL 3968663, at \*4 (E.D. Cal. July 31, 2013) (“Likewise, a county custom or practice  
7 may be inferred from evidence of repeated, but unreprimanded, constitutional violations.”).

8           A so-called Monell claim, however, must “contain sufficient allegations of underlying  
9 facts to give fair notice” and those factual allegations “taken as true must plausibly suggest an  
10 entitlement to relief . . . .” AE ex rel Hernandez v. County of Tulare, 666 F.3d 631, 637 (9th Cir.  
11 2012) (quoting Staff v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

12           Here, the Monell claim presented in plaintiff’s complaint fails to contain any allegations  
13 of underlying facts and simply recites the elements of such a claim. Cf. Howard v. City of  
14 Vallejo, No. CIV. S-13-1439 LKK/KJN, 2013 WL 6070494, at \*4 (E.D. Cal. Nov. 13, 2013)  
15 (“Plaintiff’s Monell claim against the City found is supported by his allegations, made on  
16 information and belief, that: (1) the City has failed to discipline defendants Greenberg and Kerr  
17 for the incident at bar; (2) members of the Vallejo Police Department, including defendants  
18 Greenberg and Kerr, have individually and together engaged in a repeated practice of using  
19 excessive force against individuals including plaintiff; (3) as a matter of official policy ‘rooted in  
20 an entrenched posture of deliberate indifference to the constitutional rights of primarily the  
21 minority citizens who live in the City of Vallejo’ the City has allowed its citizens to be abused by  
22 police officers, including defendants Greenberg and Kerr; (4) City police officers have injured  
23 and killed numerous citizens in 2012 and none of the officers involved have been disciplined or  
24 retrained; and (5) the City knew/had reason to know about the policies, etc. and the conduct  
25 complained of and resulting injuries.”); Bass v. City of Fremont, No. C12-4943 TEH, 2013 WL  
26 891090, at \*4 (N.D. Cal. Mar. 8, 2013) (“In support of his municipal liability claim, Bass alleges  
27 that prior to Bass’s arrest, Steckler, the Police Department, and the City had been given notice  
28 that Macciola and Alberti were engaged in a pattern and practice of using unnecessary and

1 excessive force and falsely reporting crimes, and that the municipal entities ‘demonstrated  
2 deliberate indifference to this pattern and practice of constitutional violations by failing to take  
3 necessary appropriate or adequate measures to prevent the continued perpetuation of this pattern  
4 of conduct.’ Bass further alleges that the municipal entities failed to adequately train the officers  
5 ‘in the necessity of having probable cause to detain, arrest or charge a citizen (such as Plaintiff)  
6 with a crime or infraction, and to further refrain from discriminating against African American  
7 citizens simply by virtue of their ethnicity and/or by virtue of a citizen’s right to verbally confront  
8 and/or question the performance of a public official.’ These allegations are plausible and are  
9 sufficient to give the municipal entities notice of the specific policies, customs, and practices that  
10 are alleged to have caused the deprivation of Bass’s rights; Bass has therefore stated a claim for  
11 relief under Monell.”); Wise v. Nordell, No. 12-CV-1209 IEG (BGS), 2012 WL 3959263, at \*9  
12 (S.D. Cal. Sept. 10, 2012) (“Plaintiffs allege that Nordell acted contrary to county policy and  
13 violated their constitutional rights, that he has acted in this manner for years, and that the County  
14 has condoned his conduct. Taking these allegations as true, Plaintiffs have sufficiently alleged a  
15 claim for municipal liability under Monell.”); East v. City of Richmond, No. C 10-2392 SBA,  
16 2010 WL 4580112, at \*4 (N.D. Cal. Nov. 3, 2010) (“However, Plaintiff’s claim is not predicated  
17 solely on Chief Magnus’ failure to act in this particular instance. Rather, the FAC alleges that  
18 Chief Magnus knew of other, repeated acts of misconduct by Officers Hauschild and Souza, but  
19 yet, failed to take any corrective action against these officers. Such allegations are sufficient to  
20 state a plausible claim for liability under Monell.”).

21 Moreover, although identified in plaintiff’s complaint as a defendant, there are no claims  
22 asserted against defendant Badour therein. Although the Federal Rules of Civil Procedure adopt a  
23 flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s claims  
24 and must allege facts that state the elements of each claim plainly and succinctly. FED. R. CIV. P.  
25 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading  
26 that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of action  
27 will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further  
28 factual enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S.

1 at 555, 557. A plaintiff must allege with at least some degree of particularity overt acts which the  
2 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

3 Accordingly, for the reasons explained above, plaintiff's complaint will be dismissed for  
4 failure to state a cognizable claim. The undersigned has carefully considered whether plaintiff  
5 may amend the complaint to state a claim upon which relief can be granted. "Valid reasons for  
6 denying leave to amend include undue delay, bad faith, prejudice, and futility." California  
7 Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also  
8 Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)  
9 (holding that while leave to amend shall be freely given, the court does not have to allow futile  
10 amendments). However, when evaluating the failure to state a claim, the complaint of a pro se  
11 plaintiff may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no  
12 set of facts in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745  
13 F.2d 1221, 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)). See also  
14 Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint  
15 without leave to amend is proper only if it is absolutely clear that the deficiencies of the  
16 complaint could not be cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202,  
17 1203-04 (9th Cir. 1988)).

18 Here, the court cannot yet say that it appears beyond doubt that leave to amend would be  
19 futile.<sup>3</sup> Plaintiff's complaint will therefore be dismissed, and he will be granted leave to file an

20 \_\_\_\_\_  
21 <sup>3</sup> It appears from the allegations of the complaint that plaintiff may be able to successfully amend  
22 to state a cognizable excessive use force claim against defendant Bardour. To state such a claim  
23 under 42 U.S.C. § 1983 for violation of the Fourth Amendment due to the excessive use of force,  
24 a complaint must allege that the amount of force used by a police officer was not objectively  
25 reasonable in light of the totality of the circumstances facing the officer, taking into account a  
26 range of factors to assess the amount of force used and the governmental interests at stake. See  
27 Graham v. Conner, 490 U.S. 386, 396 (1989); Moss v. U.S. Secret Service, 711 F.3d 941, 966  
28 (9th Cir. 2013). "[T]he most important single element" of the Graham framework is "whether the  
suspect poses an immediate threat to the safety of the officers or others." Moss, 711 F.3d at 966  
(quoting Chew v. Gates, 27 F.3d 1432, 1441 (9th Cir.1994)). It is also possible that plaintiff may  
be able to successfully amend his complaint to state a cognizable federal claim for unlawful  
seizure based upon a false arrest against defendant Bardour. To state such a claim a complaint  
must allege facts showing that the defendant "by means of physical force or show of authority . . .  
in some way restrained the liberty of" the identified plaintiff. Graham, 490 U.S. at 395, n. 10

1 amended complaint. Plaintiff is cautioned, however, that if he elects to file an amended  
2 complaint “the tenet that a court must accept as true all of the allegations contained in a complaint  
3 is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action,  
4 supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678. “While  
5 legal conclusions can provide the complaint’s framework, they must be supported by factual  
6 allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line from  
7 conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

8 In any amended complaint he elects to file, plaintiff must allege facts demonstrating how  
9 the conditions complained of resulted in a deprivation of his federal constitutional or statutory  
10 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Moreover, plaintiff must allege in  
11 specific terms how each named defendant was involved in the deprivation of his rights. There  
12 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection  
13 between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362  
14 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743  
15 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights  
16 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

17 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an  
18 amended complaint complete. Local Rule 220 requires that any amended complaint be complete  
19 in itself without reference to prior pleadings. The amended complaint will supersede the original  
20 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,  
21 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption  
22 and identified in the body of the complaint, and each claim and the involvement of each  
23 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file  
24 must also include concise but complete factual allegations describing the conduct and events  
25 which underlie plaintiff’s claims.

---

26 (citing Terry v. Ohio, 392 U.S. 1, 19, n. 16 (1968) and Brower v. County of Inyo, 489 U.S. 593,  
27 596 (1989)). “A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth  
28 Amendment, provided the arrest was without probable cause or other justification.” Dubner v.  
City and County of San Francisco, 266 F.3d 959, 964-65 (9th Cir. 2001).

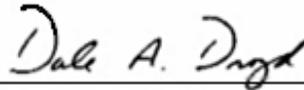
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's January 27, 2014, application to proceed in forma pauperis (Dkt. No. 3) is granted.
2. The complaint filed January 27, 2014 (Dkt. No. 1) is dismissed with leave to amend.
3. Within twenty-eight days from the date of this order, an amended complaint shall be filed that cures the defects noted in this order and complies with the Federal Rules of Civil Procedure and the Local Rules of Practice. The amended complaint must bear the case number assigned to this action and must be titled "Amended Complaint."
4. Failure to comply with this order in a timely manner may result in a recommendation that this action be dismissed.

Dated: April 2, 2014



\_\_\_\_\_  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

DAD:6  
Ddad1\orders.pro se\cooley0240.ifp.lta.ord.docx