

1 In his objections, plaintiff explains that he intended the fourth amended complaint to
2 supplement rather than supplant the third amended complaint, and that the former was intended to
3 sue the City whereas the latter was intended to sue the Jail. *See* Objs., ECF No. 29. In resolving
4 the defendants' motion to dismiss, the magistrate judge was correct to focus on the fourth
5 amended complaint, because "it is well-established that an 'amended complaint supersedes the
6 original, the latter being treated thereafter as non-existent.'" *Valadez-Lopez v. Chertoff*, 656 F.3d
7 851, 857 (9th Cir. 2011) (quoting *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)).
8 Moreover, the magistrate judge, in granting plaintiff leave to file the third amended complaint,
9 specifically informed plaintiff that the court cannot refer to a prior pleading in order to make an
10 amended complaint complete. ECF No. 8 at 4 ("Local Rule 220 requires that an amended
11 complaint be complete in itself without reference to any prior pleading."). The undersigned
12 adopts the magistrate judge's findings and recommendations regarding dismissal of the municipal
13 entities, because the fourth amended complaint fails to point to any policy, practice or custom that
14 led to the violation of plaintiff's constitutional rights. *See Monell v. Dep't of Soc. Servs. of*
15 *N.Y.C.*, 436 U.S. 658 (1978). Indeed, the only policy plaintiff points to is the Sacramento Police
16 Department Policy that he says defendants failed to follow. *See generally* Fourth Am. Compl.
17 ("FAC"), ECF No. 26. Dismissal is appropriate as to the Jail, City and County.

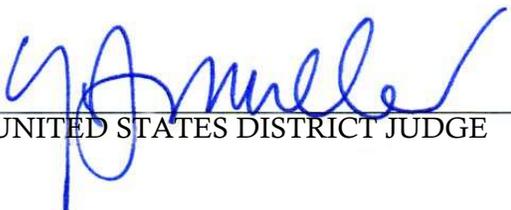
18 But in light of plaintiff's explanation, the third amended complaint is instructive in
19 making a fair determination of whether granting leave to amend would be futile. In this case, the
20 magistrate judge screened the third amended complaint and found it stated a claim against the
21 Jail. ECF No. 14. In concluding the fourth amended complaint cannot state a claim against the
22 Jail, the magistrate judge did not appear to consider the additional allegations found in the third
23 amended complaint. *See* ECF No. 28 at 5 n.4. The third amended complaint provides a number
24 of allegations missing from the fourth, including that the Jail failed to provide inmates with
25 adequate mental health care and that the Jail knew it. *See* Third Am. Compl. ("TAC"), ECF No.
26 11. Although defendants' motion to dismiss the third amended complaint argued those
27 allegations were conclusory, the magistrate judge never had occasion to address the allegations
28 not expressly included in the fourth amended complaint. Given the additional detail provided in

1 the third amended complaint, the undersigned concludes granting leave to amend would not be
2 futile.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed June 19, 2017 (ECF No. 28) are adopted to
5 the extent they conclude the fourth amended complaint states a claim against
6 defendants Kathleen Fritzche, Harold Penny and Corey Johnson and fails to state a
7 claim against City of Sacramento, the County of Sacramento and the Sacramento
8 County Jail.
- 9 2. Plaintiff may proceed to serve defendants Kathleen Fritzche, Harold Penny and Corey
10 Johnson, following instructions numbered 1 to 8 in the magistrate judge's findings and
11 recommendations. *See* ECF No. 28 at 5, ¶¶ 1-8. Alternatively, plaintiff may delay
12 serving the individual defendants to attempt one last time to state a cognizable claim
13 against the City, County and Jail.
- 14 3. If plaintiff elects to attempt to further amend his complaint to state a cognizable claim
15 against the City, County and Jail, he has thirty (30) days to do so. He is not obligated
16 to further amend his complaint, and may instead proceed now against the individual
17 defendants named above. If plaintiff chooses to further amend, a fifth amended
18 complaint will also be subject to screening. Plaintiff is reminded that, under Local
19 Rule 220, an amended complaint must be complete in itself without reference to any
20 prior pleading.

21 DATED: September 12, 2017.

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24 UNITED STATES DISTRICT JUDGE
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