

1 based on an indisputably meritless legal theory or where the factual contentions are clearly
2 baseless. *Neitzke*, 490 U.S. at 327; 28 U.S.C. § 1915(e).

3 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
4 state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
5 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
6 true the material allegations in the complaint and construes the allegations in the light most
7 favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Hosp. Bldg. Co. v.*
8 *Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976); *Love v. United States*, 915 F.2d 1242, 1245 (9th
9 Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
10 *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the court need not accept as true
11 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Western*
12 *Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

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

14 A pleading which sets forth a claim for relief . . . shall contain (1) a
15 short and plain statement of the grounds upon which the court’s
16 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.

17 Fed. R. Civ. P. 8(a).

18 Here, liberally construed, plaintiff’s second amended complaint alleges that in October of
19 1998, Officer Harold Penny and Officer Corey Johnson arrested plaintiff’s father and transported
20 him to the Sacramento County Jail. Although plaintiff’s father repeatedly stated that he wanted to
21 die, Officer Penny and Officer Johnson did not notify jail staff that plaintiff’s father was at risk
22 for suicide. The second amended complaint also alleges that Officer Kathleen Fritzche was aware
23 that plaintiff’s father was at risk for suicide and also did not notify jail staff. Plaintiff’s father
24 later committed suicide while jailed at the Sacramento County Jail.²

25 ² Under California law, “a cause of action for . . . a person is not lost by reason of the
26 person’s death, but survives” Cal. Civ. Proc. Code § 377.20(a). “A cause of action that
27 survives the death of the person entitled to commence an action or proceeding passes to the
28 decedent’s successor in interest, subject to [the California Probate Code] . . . , and an action may
be commenced by the decedent’s personal representative or, if none, by the decedent’s successor
in interest.” Cal. Civ. Proc. Code § 377.30.

1 instead proceed only against Officer Penny, Officer Johnson and Officer Fritzche (see instructions
2 3-6, below). If plaintiff chooses to further amend so that he can sue the Sacramento County Jail,
3 the third amended complaint will also be subject to screening.

4 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
5 plaintiff's third amended complaint complete. Local Rule 220 requires that an amended
6 complaint be complete in itself without reference to any prior pleading. In the third amended
7 complaint, as in the original complaint, each claim and the involvement of each defendant must
8 be sufficiently alleged.

9 **3. If plaintiff elects to proceed now against Officer Penny, Officer Johnson and**
10 **Officer Fritzche**, then within thirty days plaintiff shall supply the U.S. Marshal with the
11 information detailed below. If plaintiff elects to proceed against Officer Penny, Officer Johnson
12 and Officer Fritzche, the court will construe plaintiff's election as consent to the dismissal of all
13 claims against the Sacramento County Jail without prejudice.

14 4. Service is appropriate for the following defendants: Officer Harold Penny, Officer
15 Corey Johnson and Officer Kathleen Fritzche.

16 5. The Clerk of the Court shall send plaintiff one USM-285 form for each defendant, one
17 summons, a copy of the second amended complaint filed October 26, 2015 (ECF No. 6), an
18 instruction sheet, and an appropriate form for consent to trial by a magistrate judge.

19 6. Plaintiff is directed to supply the U.S. Marshal, within 30 days from the date this order
20 is filed, all information needed by the Marshal to effect service of process, and shall file a
21 statement with the court that said documents have been submitted to the United States Marshal.

22 The court anticipates that, to effect service, the U.S. Marshal will require at least:

- 23 a. One completed summons for each defendant;
- 24 b. One completed USM-285 form for each defendant;
- 25 c. One copy of the endorsed filed complaint for each defendant, with an extra
26 copy for the U.S. Marshal; and
- 27 d. One copy of the instant order for each defendant.

28 7. In the event the U.S. Marshal is unable, for any reason whatsoever, to effectuate

1 service on any defendant within 90 days from the date of this order, the Marshal is directed to
2 report that fact, and the reasons for it, to the undersigned.

3 8. The Clerk of the Court is directed to serve a copy of this order on the U.S. Marshal,
4 501 "I" Street, Sacramento, Ca., 95814, Tel. No. (916) 930-2030.

5 9. Failure to comply with this order may result in a recommendation that this action be
6 dismissed for lack of prosecution and failure to comply with a court order.

7 DATED: June 7, 2016.

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9 EDMUND F. BRENNAN
10 UNITED STATES MAGISTRATE JUDGE
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