



1 investigative actions; (3) immunity under California Government  
2 Code §856 for the determination to confine or not confine Joseph  
3 Mann for mental illness; and (4) defendants Tennis and Lozoya  
4 acted in self-defense and in defense of others.

5 "Immunity under § 1983 is governed by federal law;  
6 state law cannot provide immunity from suit for federal civil  
7 rights violations." Wallis v. Spencer, 202 F.3d 1126, 1144 (9th  
8 Cir. 2000) (citing Martinez v. California, 444 U.S. 277, 284  
9 (1980)). For the first three affirmative defenses, defendants  
10 assert they are immune under different sections of the California  
11 Government Code. State law cannot provide immunity for the  
12 federal claims asserted by the plaintiffs.

13 To hold a municipality to § 1983 liability under Monell  
14 v. Department of Social Services, 436 U.S. 658 (1978, there must  
15 be an underlying constitutional violation. See City of Los  
16 Angeles v. Heller, 475 U.S. 796, 799 ("If a person has suffered  
17 no constitutional injury at the hands of the individual police  
18 officer, the fact that the departmental regulations might have  
19 authorized the use of constitutionally excessive force is quite  
20 beside the point."); Long v. City and County of Honolulu, 511  
21 F.3d 901, 907 (9th Cir. 2007) ("If no constitutional violation  
22 occurred, the municipality cannot be held liable . . . .")

23 There is no underlying constitutional violation if the  
24 officers were justified in using self-defense against Joseph  
25 Mann. See Scott v. Henrich, 39 F.3d 912, 916 (9th Cir,  
26 1994) (finding municipality could not be held liable because  
27 Officers' decision to enter the building and use deadly forced  
28 complied with the requirements of the Fourth Amendment.); Fairley

1 v. Luman, 281 F.3d 913, 916 (9th Cir. 2002) (“Exoneration of  
2 Officer [] on the charge of excessive force precludes  
3 municipality liability for the alleged unconstitutional use of  
4 such force.”). The fourth affirmative defense will accordingly  
5 not be stricken.

6 IT IS THEREFORE ORDERED that plaintiff’s Motion to  
7 Strike Affirmative Defenses from the City of Sacramento and the  
8 Sacramento Police Department’s Answer to the Complaint be, and  
9 the same hereby is, GRANTED with respect to defendants’ first,  
10 second, and third defenses and DENIED with respect to the fourth  
11 defense.

12 Dated: September 19, 2017



13 **WILLIAM B. SHUBB**  
14 **UNITED STATES DISTRICT JUDGE**

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