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8	UNITED STATES DISTRICT COURT
9	EASTERN DISTRICT OF CALIFORNIA
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12	ROBERT MANN SR., VERN MURPHY- CIV. NO. 2:17-01201 WBS DB
13	MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN, ORDER RE: MOTION TO STRIKE
14	AFFRIMATIVE DEFENSES
15	V.
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17	CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT,
18	SAMUEL D. SOMERS JR., JOHN C. TENNIS, and RANDY R. LOZOYA
19	Defendants.
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23	Pursuant to Rule 12(f) of the Federal Rules of Civil
24	Procedure, plaintiffs move to strike the following affirmative
25	defenses from defendants City of Sacramento and Sacramento Police
26	Department's Answer to the Complaint: (1) immunity for management
27	decisions under California Government Code § 815.2.2; (2)
28	immunity under California Government Code § 821.6 for
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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.

"Immunity under § 1983 is governed by federal law; 5 state law cannot provide immunity from suit for federal civil 6 7 rights violations." Wallis v. Spencer, 202 F.3d 1126, 1144 (9th 8 Cir. 2000) (citing Martinez v. California, 444 U.S. 277, 284 (1980). For the first three affirmative defenses, defendants 9 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 F.3d 901, 907 (9th Cir. 2007) ("If no constitutional violation 21 22 occurred, the municipality cannot be held liable")

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

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1	<u>v. Luman</u> , 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 UNITED STATES DISTRICT JUDGE
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