

1 taking me to the courthouse to see the magistrate but instead took me to county jail.” (Id. at 6.)
2 Plaintiff characterizes this as a false arrest in which he was denied his federal due process rights,
3 among other rights. (Id. at 4.)

4 Plaintiff further alleges:

5 I was bruised by the handcuffs and forced to sit in an uncomfortable
6 position unable to move my arms. I was placed under moral duress
7 when Sgt. Nevins placed his hand on his weapon making angry
8 veiled threats to me in front of a witness. I have suffered
9 financially due to my kidnapping and the ransoming of my
10 automobile, and multiple court dates.

9 (Id. at 6.) Plaintiff was never given a copy of the ticket until his third arraignment in September.

10 (Id. at 8.) Plaintiff sues defendants in their individual and official capacities and seeks \$1 million
11 in damages. (Id. at 4, 6.)

12 II. DISCUSSION

13 In order to survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a
14 complaint must contain more than a “formulaic recitation of the elements of a cause of action”; it
15 must contain factual allegations sufficient to “raise a right to relief above the speculative level.”
16 Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). “The pleading must contain something
17 more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable
18 right of action.” Id., quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp.
19 235-236 (3d ed. 2004).

20 Defendants argue that the complaint fails to state a claim under this standard. First, as the
21 Eleventh Amendment prohibits damage actions against state officials in their official capacities,
22 Stivers v. Pierce, 71 F.3d 732, 749 (9th Cir. 1995), plaintiff’s official capacity claims must be
23 dismissed. Second, as defendants are not federal officials, plaintiff’s Bivens claims must be
24 dismissed.¹ Third, as the complaint fails to allege any facts showing the involvement of
25 defendants Morrison or Steffenson, these defendants must be dismissed. Moreover, insofar as

26 ¹ Bivens is the federal analog to suits brought against state officials under 42 U.S.C. § 1983.
27 Ashcroft v. Iqbal, 556 U.S. 662, 676-76 (2009). “Only federal officials who actually participate in
28 alleged violations are subject to a Bivens-type suit.” O’Neal v. Eu, 866 F.2d 314 (9th Cir. 1989)
(collecting cases).

1 plaintiff's claims are based on alleged state law violations, they are not actionable under § 1983.
2 Cornejo v. County of San Diego, 504 F.3d 853, 855 n. 3 (9th Cir. 2007) (“[A] claim for violation
3 of state law is not cognizable under § 1983.”)

4 As to the § 1983 claims against Bice and Nevins, plaintiff's allegations do not show that
5 these defendants committed any constitutional violation. The Civil Rights Act provides:

6 Every person who, under color of [state law] ... subjects, or causes
7 to be subjected, any citizen of the United States ... to the
8 deprivation of any rights, privileges, or immunities secured by the
Constitution ... shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

9 42 U.S.C. § 1983. To state a § 1983 claim, a plaintiff must allege facts showing each named
10 defendant either exhibited some sort of “direct personal participation in the deprivation” or “set[]
11 in motion a series of acts by others which the actor [knew] or reasonably should [have known]
12 would cause others to inflict the constitutional injury.” Johnson v. Duffy, 588 F.2d 740, 743-744
13 (9th Cir. 1978). There must be an actual causal link between the actions of the named defendants
14 and the alleged constitutional deprivation. See Monell, 436 U.S. at 691–92 (1978). Here,
15 plaintiff's vague and conclusory allegations as to Bice and Nevins fail to state cognizable claims
16 under § 1983.

17 Another defect of the complaint is its failure to meet Rule 8 pleading requirements. Fed.
18 R. Civ. P. 8 sets forth general rules of notice pleading in the federal courts. See Swierkiewicz v.
19 Sorema, 534 U.S. 506 (2002). Complaints are required to set a forth (1) the grounds upon which
20 the court's jurisdiction rests, (2) a short and plain statement of the claim showing entitlement to
21 relief; and (3) a demand for the relief plaintiff seeks. Rule 8 requires only “sufficient allegations
22 to put defendants fairly on notice of the claims against them.” McKeever v. Block, 932 F.2d 795,
23 798 (9th Cir. 1991).

24 In his opposition to the motion, plaintiff asserts that the complaint meets Rule 8 pleading
25 requirements and “sufficiently alleges consumer harm and damage.” (ECF No. 17 at 1.)
26 However, as discussed at the hearing, this is not a consumer or contract case. Plaintiff's affidavit
27 adds little to the complaint's factual allegations and does not cure the defects outlined above.
28 Thus defendants' motion should be granted.

1 III. LEAVE TO AMEND

2 If the court finds that a complaint should be dismissed for failure to state a claim, the court
3 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-
4 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the
5 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see
6 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given
7 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely
8 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.
9 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). Here, plaintiff will be granted an opportunity to
10 amend the complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional
12 grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a).
13 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
14 of plaintiff’s rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

15 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
16 make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an amended
17 complaint be complete in itself without reference to any prior pleading. This is because, as a
18 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
19 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
20 longer serves any function in the case. Therefore, in an amended complaint, as in an
21 original complaint, each claim and the involvement of each defendant must be sufficiently
22 alleged.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Defendants’ amended motion to dismiss (ECF No. 10) is granted;
- 25 2. The complaint is dismissed for failure to state a claim;
- 26 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
27 complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the
28 Local Rules of Practice; the amended complaint must bear the docket number assigned this case

1 and must be labeled "Amended Complaint"; failure to file an amended complaint in accordance
2 with this order will result in a recommendation that this action be dismissed; and

3 4. The Initial Scheduling Conference set for March 21, 2018 is hereby vacated, to be reset
4 as needed.

5 Dated: February 20, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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