The court has reviewed plaintiff's application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, plaintiff's request to proceed in forma pauperis is granted.

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## Screening

## I. Legal Standards

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Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

Although pro se pleadings are liberally construed, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it fails to set forth "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554, 562-563 (2007) (citing Conley v. Gibson, 355 U.S. 41 (1957)); see also Fed. R. Civ. P. 12(b)(6). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to support cognizable legal theories. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) "requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." Twombly, 550 U.S. at 562-563 (2007).

## II. Analysis

Plaintiff's first amended complaint (ECF No. 3) alleges that, on April 12, 2019 and while incarcerated in the Sacramento County Jail 'booking/intake' holding tank, a group of sheriff's deputies roused him from sleep and subjected him to excessive force. ECF No. 3 at 3.

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vaguely or implicitly associate them with wrongdoing that is not specified.

III. <u>Leave to Amend</u>

Plaintiff will be given 1

Plaintiff will be given leave to amend to address the foregoing deficiencies. He is cautioned that any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation).

Specifically, plaintiff alleges that the deputies – whose numbers and names are not specified –

threw him to the floor, jumped on his body, and tased him twice. *Id.* While these allegations,

taken as true, are sufficient to state a claim against any of the deputies allegedly involved, the

court cannot serve this complaint without identification of at least one defendant. In the caption

of the complaint, plaintiff names three deputies – Elliot, Smith, and Gutierrez. *Id.* at 1. He does

not, however, allege what role (if any) each played in the foregoing incident of excessive force.

The obvious inference is that these individuals were part of the group of deputies that used

excessive force against plaintiff. The court declines, however, to read allegations into the

complaint that plaintiff has not made explicit. Instead, it will require plaintiff to explicitly and

specifically describe what misconduct each of these defendants is alleged to have undertaken.

Plaintiff is cautioned that Rule 8 of the Federal Rules of Civil Procedure requires a "short and

plain statement of the claim" demonstrating that the plaintiff is entitled to relief and fair notice to

each defendant of the claims against her or him. Bell Atlantic Corp. v. Twombly, 550 U.S. 544,

554-55 (2007). It is insufficient, as plaintiff's complaint does, to name various defendants

The amended complaint must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended

1 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the 2 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114 3 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter 4 being treated thereafter as non-existent.") (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 5 1967)). 6 Any amended complaint should be as concise as possible in fulfilling the above 7 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual 8 background which has no bearing on his legal claims. He should also take pains to ensure that his 9 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing 10 and organization. Plaintiff should carefully consider whether each of the defendants he names 11 actually had involvement in the constitutional violations he alleges. A "scattershot" approach in 12 which plaintiff names dozens of defendants will not be looked upon favorably by the court. 13 Conclusion 14 Accordingly, it is ORDERED that: The findings and recommendations filed on December 5, 2019 (ECF No. 8) are 15 1. 16 vacated; 17 2. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is granted; 3. 18 Plaintiff's first amended complaint (ECF No. 3) is dismissed with leave to amend 19 within 30 days from the date of service of this order; and 20 4. Failure to file an amended complaint that complies with this order may result in 21 the dismissal of this action for the reasons stated herein. 22 DATED: April 22, 2020. Bil ma 23 EDMUND F. BRENNAN 24 UNITED STATES MAGISTRATE JUDGE 25 26

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