

■ Fitzwater v. City and County of San Francisco
 C.A.9 (Cal.),2001.

This case was not selected for publication in the Federal Reporter. Please use FIND to look at the applicable circuit court rule before citing this opinion. (FIND CTA9 Rule 36-3.)

United States Court of Appeals, Ninth Circuit.
Michael FITZWATER, Plaintiff-Appellant,
 v.
 CITY AND COUNTY OF SAN FRANCISCO,
 Defendant-Appellee.
 No. 99-16114.
 D.C. No. CV-95-02098-WHO.

Submitted Dec. 13, 2000 [FN**](#).

[FN**](#) The panel unanimously found this case suitable for decision without oral argument. See [Fed. R.App. P. 34\(a\)\(2\)](#).
 Submission Deferred Dec. 22, 2000.

Resubmitted May 22, 2001.

Decided May 24, 2001.

The United States District Court for the Northern District of California, [William H. Orrick, Jr., J.](#), dismissed detainee's § 1983 action against the city and county, and detainee appealed. The Court of Appeals held that city and county were not entitled to Eleventh Amendment immunity on detainee's § 1983 claim based on allegation that he was subjected to excessive use of force by sheriff's deputies while detained at the county jail.

Reversed and remanded.

West Headnotes

Federal Courts 170B 270

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(A\)](#) In General

[170Bk268](#) What Are Suits Against States

[170Bk270](#) k. Cities or Other Political Subdivisions, Actions Involving. [Most Cited Cases](#)
 City and county were not entitled to Eleventh

Amendment immunity on detainee's § 1983 claim based on allegation that he was subjected to excessive use of force by sheriff's deputies while detained at the county jail. [U.S.C.A. Const.Amend. 11; 42 U.S.C.A. § 1983](#).

*695 Appeal from the United States District Court for the Northern District of California William H. Orrick, Jr., District Judge, Presiding.

Before [THOMPSON](#), [O'SCANNLAIN](#), and [TASHIMA](#), Circuit Judges.

ORDER

**1 This case is resubmitted for decision effective May 22, 2001.

MEMORANDUM [FN*](#)

[FN*](#) This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by [Ninth Circuit Rule 36-3](#).

Michael Fitzwater appeals the district court's order dismissing his action against the City and County of San Francisco alleging that he was subjected to excessive use of force by sheriff's deputies while detained at the San Francisco County Jail. *696 We have jurisdiction pursuant to [28 U.S.C. § 1291](#). We reverse and remand.

The district court dismissed Fitzwater's [42 U.S.C. § 1983](#) claim on the ground that “[s]heriffs in California are state actors” and therefore immune from liability under the Eleventh Amendment. See [McMillian v. Monroe County, 520 U.S. 781, 793, 117 S.Ct. 1734, 138 L.Ed.2d 1 \(1997\)](#) (“Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their counties.”); [Han v. United States Dep’t of Justice, 45 F.3d 333, 338 \(9th Cir.1995\)](#) (per curiam) (Eleventh Amendment bars [§ 1983](#) damages claims against state actors sued in their official capacity). We recently decided, however, that when a sheriff in California performs the function of “oversight and

9 Fed.Appx. 695
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management of the local jail,” the sheriff acts for the county, not the state. See [Streit v. County of Los Angeles](#), 236 F.3d 552, 561 (9th Cir.2001). As a result, the City and County of San Francisco are not entitled to Eleventh Amendment immunity on Fitzwater's [§ 1983](#) claim.

REVERSED and REMANDED.

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