

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYMOND WRIGHT, 1:05-cv-01326-OWW-WMW (PC)

Plaintiff,

v.

ORDER DISMISSING SECOND AMENDED
COMPLAINT WITH LEAVE TO AMEND

GONZALES et. al., (Doc.32)

Defendants.

I. SCREENING ORDER

Raymond Wright (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis. Plaintiff filed his Complaint on October 21, 2005. (Doc. 1.) The Court screened and dismissed the Complaint with leave to amend – finding that, as phrased, it appeared to raise issues more properly brought via a habeas corpus petition. (Doc. 21.) Plaintiff subsequently filed a First Amended Complaint naming one defendant – Gonzales. (Doc. 23.) The Court screened the First Amended Complaint and issued Findings and Recommendations that the action be dismissed for failure to state a cognizable claim, noting again that Plaintiff’s factual allegations in the First Amended Complaint entailed habeas corpus issues – a factual defense to a charge of attempted escape. (Doc. 26.) Plaintiff filed objections to the Findings and Recommendations indicating that he had claims other than on the habeas issues in the First Amended Complaint. (Doc. 27.) The Court vacated the Findings and Recommendations granting Plaintiff leave to file a second

1 amended complaint. (Doc. 28.) Subsequently, Plaintiff received an extension of time and filed
2 the Second Amended Complaint. (Doc. 32.)

3 **A. Screening Requirement**

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
9 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
10 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
11 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
12 1915(e)(2)(B)(ii).

13 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
14 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
15 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
16 short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R.
17 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
18 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
19 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
20 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
21 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
22 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
23 (9th Cir. 1982)).

24 **B. Summary of Plaintiff’s Second Amended Complaint**

25 At the time of the issues complained of in his complaint, Plaintiff was a state prisoner at
26 Pleasant Valley State Prison (“PVSP”) in Coalinga, California. Despite being advised, in the
27 Court’s Order Vacating the Findings and Recommendations (Doc. 28.), that his pleadings
28 violated Fed. R. Civ. P. 8(a)(2) by failing to contain a short and plain statement of his claims,

1 Plaintiff's pleadings have drastically ballooned from the First Amended Complaint to the Second
2 Amended Complaint. In the First Amended Complaint, Plaintiff named one defendant. In his
3 Second Amended Complaint, he now names forty-four defendants. His First Amended
4 Complaint entailed three handwritten pages, whereas his Second Amended Complaint entails
5 fifteen handwritten pages. Screening is obstructed by the fact that Plaintiff submitted a light
6 copy of the Second Amended Complaint, rather than the original document. Thus, numerous
7 letters, and entire words are completely undecipherable.

8 Plaintiff is incarcerated and is representing himself in this action. Under these
9 circumstances, the Court is generally lenient in overlooking technical and other errors. However,
10 Plaintiff's use of submitting a copy, rather than the original document, writing in uniform sized
11 capital letters, while failing to use adequate spacing between words, punctuation, indentation,
12 and double spacing between lines renders the Second Amended Complaint virtually illegible.
13 Plaintiff is required to submit filings that are "clearly legible." Local Rule 7-130(b). In
14 submitting a third amended complaint in compliance with this order, Plaintiff should: (1)
15 differentiate the size of his writing for proper names and at the beginning of sentences; (2) use
16 punctuation and indentation; (3) leave a space between each word; and (4) double space his
17 sentences. Local Rule 7-130(c). The failure to submit a legible third amended complaint will
18 result in an order striking it from the record.

19 Due to the presentation of the Second Amended Complaint, the Court is unable to discern
20 whether Plaintiff has stated a cognizable claim, and/or may be able to amend to correct
21 deficiencies in his pleading so as to state any cognizable claims. The Court is not willing to
22 expend it's limited resources to undertake the herculean task of attempting to analyze the factual
23 allegations that Plaintiff has chosen to present in such an illegible fashion. Plaintiff is warned
24 that this is his final opportunity to perfect his claims. The Court is providing Plaintiff with what
25 appear to possibly be the applicable standards based on screening of his prior pleadings and hints
26 of claims the Court has attempted to extract from the Second Amended Complaint.

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1 C. Pleading Requirements

2 1. **Federal Rule of Civil Procedure 8(a)**

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
7 Civ. Pro. 8(a). “Such a statement must simply give the defendant fair notice of what the
8 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. A court
9 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts
10 that could be proved consistent with the allegations. Id. at 514. “The issue is not whether a
11 plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support
12 the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and
13 unlikely but that is not the test.” Jackson v. Carey, 353 F.3d 750, 755 (9th Cir. 2003) (quoting
14 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)); see also Austin v. Terhune, 367 F.3d 1167, 1171
15 (9th Cir. 2004) (“Pleadings need suffice only to put the opposing party on notice of the claim . . .
16 .”) (quoting Fontana v. Haskin, 262 F.3d 871, 977 (9th Cir. 2001))). However, “the liberal
17 pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490
18 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply
19 essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin.,
20 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.
21 1982)).

22 Plaintiff’s Second Amended Complaint does not comply with Rule 8(a) as it fails to give
23 each Defendant a short and plain statement as to Plaintiff’s claims and factual basis against each
24 of them. Fed. R. Civ. P. 8(a)(2). Neither the Court, nor any Defendant(s), should have to bear
25 the burden of attempting to decipher, and then ferreting through, Plaintiff’s factual allegations to
26 attempt to ascertain which claims for relief he is raising and their factual basis.

27 2. **Unrelated Claims**

28 “The controlling principle appears in Fed.R.Civ.P. 18(a) ‘A party asserting a claim to

1 relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as
2 independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has
3 against an opposing party.' Thus multiple claims against a single party are fine, but Claim A
4 against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated
5 claims against different defendants belong in different suits, not only to prevent the sort of
6 morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners
7 pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number of
8 frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28
9 U.S.C. § 1915(g)." George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

10 Plaintiff may join multiple claims either if they against different defendants, but based on
11 the same set of factual allegations, or if they are all against a single defendant. Fed. R. Civ. P.
12 18(a). If Plaintiff has more than one claim based upon separate transactions or occurrences, the
13 claims must be set forth in separate numbered paragraphs, which should be limited, as far as
14 practicable, to a single set of circumstances. Fed. R. Civ. P. 10(b).

15 It is difficult at best to tell what claims Plaintiff is making and any relationship between
16 them. Plaintiff is advised that if he chooses to file a third amended complaint, and fails to
17 comply with Rule 18(a), the Court will count all frivolous/noncognizable unrelated claims that
18 are dismissed therein as strikes such that he may be barred from filing in forma pauperis in the
19 future.

20 **3. Linkage Requirement**

21 The Civil Rights Act under which this action was filed provides:

22 Every person who, under color of [state law] . . . subjects, or causes
23 to be subjected, any citizen of the United States . . . to the
24 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.

25 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
26 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
27 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
28 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a

1 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
2 in another's affirmative acts or omits to perform an act which he is legally required to do that
3 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
4 Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each named
5 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff’s
6 federal rights. Further, Plaintiff should clarify which Defendant(s) he feels are responsible for
7 any violation(s) of his constitutional rights, as his complaint must put each defendant on notice of
8 Plaintiff’s claims against him or her, and their factual basis. See Austin v. Terhune, 367 F.3d
9 1167, 1171 (9th Cir. 2004). From what can be read, Plaintiff’s Second Amended Complaint
10 appears at best to be a rambling, semi-chronological narrative of actions/inactions by PVSP
11 personnel – which does not suffice to link any Defendant(s) to any specific claims for relief that
12 Plaintiff might intend to be stating.

13 **D. Claims for Relief**

14 **1. Wrongful Conviction**

15 When a prisoner challenges the legality or duration of his custody, or raises a
16 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a
17 writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d
18 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an
19 allegedly unconstitutional conviction or imprisonment, “a § 1983 plaintiff must prove that the
20 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
21 invalid by a state tribunal authorized to make such determination, or called into question by a
22 federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512
23 U.S. 477, 487-88 (1994). “A claim for damages bearing that relationship to a conviction or
24 sentence that has not been so invalidated is not cognizable under § 1983.” Id. at 488.

25 **2. Retaliation**

26 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to
27 petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532
28 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v.

1 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First
2 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some
3 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that
4 such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did
5 not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-
6 68 (9th Cir. 2005). An allegation of retaliation against a prisoner’s First Amendment right to file
7 a prison grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d
8 1283, 1288 (9th Cir. 2003). Adverse action is action that “would chill a person of ordinary
9 firmness” from engaging in that activity. Pinard v. Clatskanie School Dist., 467 F.3d 755, 770
10 (9th Cir. 2006); White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000); see also Lewis v. Jacks, 486
11 F.3d 1025 (8th Cir. 2007); see also Thomas v. Eby, 481 F.3d 434, 440 (6th Cir. 2007); Bennett v.
12 Hendrix, 423 F.3d 1247, 1250-51 (11th Cir. 2005); Constantine v. Rectors & Visitors of George
13 Mason Univ., 411 F.3d 474, 500 (4th Cir. 2005); Gill v. Pidlypchak, 389 F.3d 379, 381 (2d Cir.
14 2004); Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001).

15 Both litigation in court and filing inmate grievances are protected activities and it is
16 impermissible for prison officials to retaliate against inmates for engaging in these activities.
17 However, not every allegedly adverse action will be sufficient to support a claim under section
18 1983 for retaliation. In the prison context, cases in this Circuit addressing First Amendment
19 retaliation claims involve situations where the action taken by the defendant was clearly adverse
20 to the plaintiff. Rhodes, 408 F.3d at 568 (arbitrary confiscation and destruction of property,
21 initiation of a prison transfer, and assault in retaliation for filing grievances); Austin, 367 F.3d at
22 1171 (retaliatory placement in administrative segregation for filing grievances); Bruce, 351 F.3d
23 at 1288 (retaliatory validation as a gang member for filing grievances); Hines v. Gomez, 108
24 F.3d 265, 267 (9th Cir. 1997) (retaliatory issuance of false rules violation and subsequent finding
25 of guilt); Pratt, 65 F.3d at 806 (retaliatory prison transfer and double-cell status); Valandingham,
26 866 F.2d at 1138 (inmate labeled a snitch and approached by other inmates and threatened with
27 harm as a result); Rizzo, 778 F.2d at 530-32 (retaliatory reassignment out of vocational class and
28 transfer to a different prison).

3. Failure to Protect

“The treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (citing Helling v. McKinney, 509 U.S. 25, 31 (1993)). Prison officials have a duty to take reasonable steps to protect inmates from physical abuse. Farmer, 511 U.S. at 833; Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir. 1982). To establish a violation of this duty, the prisoner must establish that prison officials were “deliberately indifferent to a serious threat to the inmates’s safety.” Farmer, at 834. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial ‘risk of serious damage to his future health’” Farmer, 511 U.S. at 843 (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)). The Supreme Court has explained that “deliberate indifference entails something more than mere negligence . . . [but] something less than acts or omissions for the very purpose of causing harm or with the knowledge that harm will result.” Farmer, 511 U.S. at 835. The Court defined this “deliberate indifference” standard as equal to “recklessness,” in which “a person disregards a risk of harm of which he is aware.” Id. at 836-37.

The deliberate indifference standard involves both an objective and a subjective prong. First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Id. at 834. Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate health or safety.” Id. at 837; Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995). To prove knowledge of the risk, however, the prisoner may rely on circumstantial evidence; in fact, the very obviousness of the risk may be sufficient to establish knowledge. Farmer, 511 U.S. at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995).

The Supreme Court has stated that a remedy for unsafe conditions need not await a tragic event. Where a risk/injury has yet to occur, the plaintiff's burden would be to prove that his future health/safety is unreasonably endangered, "that it is contrary to current standards of decency for anyone to be so exposed against his will, and that prison officials are deliberately indifferent to his plight." Helling, 509 U.S. at 33-35.

1 Further, Eighth Amendment claims have been correctly rejected where a prisoner had not
2 been retaliated against and had not alleged any basis to infer that the defendant was aware his
3 actions had exposed plaintiff to a substantial risk of serious harm. Morgan v. MacDonald, 41
4 F.3d 1291, 1293-94 (9th Cir. 1994) (emphasis added) (prisoner alleged that the director stated
5 that if prisoner's Fair Labor Standards Act claim was successful, inmate co-workers would have
6 to be fired, but he failed to address both the objective prong (that he had been retaliated against
7 by other inmate co-workers, or that there was a substantial risk of serious harm to his future
8 health/safety as a result of the statement), and the subjective prong (any basis to infer that the
9 director was aware that his statement exposed Morgan to a substantial risk of serious harm).)

10 Thus, in order to state a cognizable claim against prison officials for failure to provide for
11 a prisoner's safety/protection, a prisoner must allege (and eventually prove): (1) a sufficiently
12 serious risk of harm (either current or future); (2) that was caused by the defendant(s); and (3)
13 that the defendant(s) knew that his/her action(s) exposed the prisoner to that serious risk of harm.

14 **4. Inmate Appeals**

15 The Due Process Clause protects prisoners from being deprived of liberty without due
16 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of
17 action for deprivation of due process, a plaintiff must first establish the existence of a liberty
18 interest for which the protection is sought. "States may under certain circumstances create liberty
19 interests which are protected by the Due Process Clause." Sandin v. Conner, 515 U.S. 472, 483-
20 84 (1995). Liberty interests created by state law are generally limited to freedom from restraint
21 which "imposes atypical and significant hardship on the inmate in relation to the ordinary
22 incidents of prison life." Sandin, 515 U.S. at 484.

23 "[A prison] grievance procedure is a procedural right only, it does not confer any
24 substantive right upon the inmates." Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993)
25 (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza,
26 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
27 entitlement to a specific grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir.
28 2001) (existence of grievance procedure confers no liberty interest on prisoner); Mann v. Adams,

1 855 F.2d 639, 640 (9th Cir. 1988). "Hence, it does not give rise to a protected liberty interest
2 requiring the procedural protections envisioned by the Fourteenth Amendment." Azeez v.
3 DeRobertis, 568 F. Supp. at 10; Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

4 Actions in reviewing prisoner's administrative appeal cannot serve as the basis for
5 liability under a § 1983 action. Buckley, 997 F.2d at 495. The argument that anyone who knows
6 about a violation of the Constitution, and fails to cure it, has violated the Constitution himself is
7 not correct. "Only persons who cause or participate in the violations are responsible. Ruling
8 against a prisoner on an administrative complaint does not cause or contribute to the violation. A
9 guard who stands and watches while another guard beats a prisoner violates the Constitution; a
10 guard who rejects an administrative complaint about a completed act of misconduct does not."
11 George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) citing Greeno v. Daley, 414 F.3d 645,
12 656-57 (7th Cir.2005); Reed v. McBride, 178 F.3d 849, 851-52 (7th Cir.1999); Vance v. Peters,
13 97 F.3d 987, 992-93 (7th Cir.1996).

14 Thus, since he has neither a liberty interest, nor a substantive right in inmate appeals,
15 Plaintiff cannot state a cognizable claim for the processing and/or reviewing of his 602 inmate
16 appeals.

17 **II. CONCLUSION**

18 For the reasons set forth above, Plaintiff's Second Amended Complaint is dismissed, with
19 leave to file a third amended complaint within thirty days. If Plaintiff needs an extension of time
20 to comply with this order, Plaintiff shall file a motion seeking an extension of time no later than
21 thirty days from the date of service of this order.

22 Plaintiff must demonstrate in his complaint how the conditions complained of have
23 resulted in a deprivation of Plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227
24 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
25 involved. There can be no liability under section 1983 unless there is some affirmative link or
26 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423
27 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
28 F.2d 740, 743 (9th Cir. 1978).

1 Plaintiff's third amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state
2 what each named defendant did that led to the deprivation of Plaintiff's constitutional or other
3 federal rights. Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). Although accepted as
4 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative
5 level” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

6 Plaintiff is further advised that an amended complaint supercedes the original complaint,
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
8 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
9 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
10 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
11 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
12 Forsyth, 114 F.3d at 1474.

13 The Court provides Plaintiff with one final opportunity to amend to cure the deficiencies
14 identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
15 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
16 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Plaintiff's Second Amended Complaint is dismissed, with leave to amend;
- 19 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 20 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must file a
21 third amended complaint curing the deficiencies identified by the Court in this
22 order; and
- 23 4. If Plaintiff fails to comply with this order, this action will be dismissed for failure
24 to state a claim.

25 IT IS SO ORDERED.

26 Dated: April 30, 2009

27 /s/ William M. Wunderlich
28 UNITED STATES MAGISTRATE JUDGE