

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
4 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

11 **II. Plaintiff’s Claims**

12 The events at issue in this action occurred at Corcoran State Prison, where Plaintiff is
13 currently housed. Plaintiff is seeking injunctive relief and money damages for the violation of his
14 rights under the United States Constitution. Plaintiff names Warden Adams and Kethy Jett.

15 In late 2007, Plaintiff was housed in the prison hospital for treatment. On January 3, 2008,
16 he was re-housed after leaving the hospital. On January 29, 2008, Plaintiff received his personal
17 television set, and noted that the “the TV network MYTV for his new housing unit was messed up.”

18 To warrant relief under the Civil Rights Act, a plaintiff must allege and show that defendant’s
19 acts or omissions caused the deprivation of his constitutionally protected rights. Leer v. Murphy,
20 844 F.2d 628, 633 (9th Cir. 1993). In order to state a claim under § 1983, a plaintiff must allege
21 that: (1) a person was acting under color of state law at the time the complained of act was
22 committed; and (2) that person’s conduct deprived plaintiff of rights, privileges or immunities
23 secured by the Constitution or laws of the United States. Paratt v. Taylor, 451 U.S. 527, 535 (1981).
24 There is no authority for the proposition that Plaintiff has a right to possess a television in prison.
25 That the network in his housing unit does not work therefore fails to state a claim for relief.
26 986-87. Therefore, Plaintiff’s official capacity damages claims fail as a matter of law.

27 **III. Conclusion and Order**

28 The Court has screened Plaintiff’s complaint and finds that it does not state any claims upon

1 which relief may be granted under section 1983. The Court will provide Plaintiff with the
2 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.
3 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not
4 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,
5 507 F.3d at 607 (no “buckshot” complaints).

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

11 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
12 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
13 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
14 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original
15 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing
16 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
17 1474.

18 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 19 1. Plaintiff’s first amended complaint is dismissed, with leave to amend, for failure to
20 state a claim;
- 21 2. The Clerk’s Office shall send Plaintiff a complaint form;
- 22 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
23 second amended complaint;
- 24 4. Plaintiff may not add any new, unrelated claims to this action via his amended
25 complaint and any attempt to do so will result in an order striking the amended
26 complaint; and
- 27 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
28 action be dismissed, with prejudice, for failure to state a claim.

1 IT IS SO ORDERED.

2 **Dated: January 30, 2009**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

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