

1 On October 18, 2018, Plaintiff filed the Third Amended Complaint (“TAC”) which is
2 before the Court for screening. For the reasons discussed below, the Court finds Plaintiff’s claim
3 under the RA, which is the only claim raised in the TAC, cognizable.

4 **DISCUSSION**

5 **A. Screening Requirement**

6 The Court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
8 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
9 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary
10 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.
11 § 1915(e)(2)(B)(i)-(iii).

12 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
13 immunities secured by the Constitution and laws of the United States.” *Wilder v. Virginia Hosp.*
14 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
15 substantive rights, but merely provides a method for vindicating federal rights conferred
16 elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

17 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
18 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
19 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
20 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

21 **B. Summary of the TAC**

22 At all times relevant, Plaintiff was identified as an inmate in the Developmental Disability
23 Program (DDP) at the level of DDP, which means he can function successfully in a General
24 Population (GP) setting in a designated DDP institution. Plaintiff requested to work in the
25 caregiver program on May 8, 2012, when he appeared before the Unit Classification Committee
26 (“UCC”) for his annual review. On May 9, 2012, the UCC denied this request, concluding that
27 Plaintiff would not be able to complete the job requirements of a caregiver.

28 On March 30, 2014, Plaintiff filed a CDCR 1824 Reasonable Accommodation Request

1 form alleging discrimination by the UCC for denying him the caregiver job. On May 9, 2014,
2 Plaintiff's request was denied at the First Level because Plaintiff's GPL is 8.2, and the caregiver
3 position requires a minimum GPL of 9.0. Plaintiff appealed to the Second Level; Defendant
4 Warden Sherman granted Plaintiff's request because Plaintiff had a verified high school diploma
5 or GED. Defendant indicated a modification order would issue for Plaintiff to return to the UCC
6 for review and placement on the caregiver wait list.

7 **C. Pleading Requirements**

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

9 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
10 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
11 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain
12 statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. Pro. 8(a).
13 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and
14 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

15 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs
16 when a pleading says too little -- the baseline threshold of factual and legal allegations required
17 was the central issue in the *Iqbal* line of cases. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678
18 (2009). The Rule is also violated, though, when a pleading says *too much*. *Cafasso, U.S. ex rel.*
19 *v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) ("[W]e have never held --
20 and we know of no authority supporting the proposition -- that a pleading may be of unlimited
21 length and opacity. Our cases instruct otherwise.") (citing cases); *see also McHenry v. Renne*, 84
22 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8, and recognizing that
23 "[p]rolonged, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens
24 on litigants and judges").

25 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
26 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556
27 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
28 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is

1 plausible on its face.” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
2 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
3 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

4 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
5 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
6 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
7 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” *Neitze*
8 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights complaint may
9 not supply essential elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit*
10 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,
11 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*
12 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
13 omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and
14 “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
15 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

16 Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short
17 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),
18 when the opportunity to correct the pleadings has been afforded and there has been no
19 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
20 2013).

21 **D. Plaintiff's RA Claim**

22 Section 504 of the RA prohibit discrimination based on disability. *Lovell v. Chandler*,
23 303 F.3d 1039, 1052 (9th Cir. 2002). “To establish a violation of § 504 of the RA, a plaintiff
24 must show that [he or she] (1) is handicapped within the meaning of the RA; (2) is otherwise
25 qualified for the benefit or services sought; (3) was denied the benefit or services solely by reason
26 of [his] handicap; and (4) the program providing the benefit or services receives federal financial
27 assistance.” *Lovell*, 303 F.3d at 1052. Leniently construed, Plaintiff’s allegation that he was
28 excluded from a job position for which he was otherwise qualified, solely because of his

