



1 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary  
2 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.  
3 § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three basis, a strike is imposed  
4 per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed  
5 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has  
6 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*  
7 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

### 8 **B. Summary of Plaintiff's First Amended Complaint**

9 Plaintiff, who is currently housed at the California Correctional Institution ("CCI") in  
10 Tehachapi, California, complains of acts that occurred at California State Prison ("CSP-Cor") in  
11 Corcoran, California. Plaintiff names the following as Defendants: A. Podsakoff, L. Lawrence,  
12 B. Stringer, Lassey, J. Medina, J. Juarez, E. Garza, R. Mendoza, D. Hernandez, and Nurse  
13 Gonzales. Plaintiff seeks monetary damages and injunctive relief.

14 Plaintiff alleges that the above-named Defendants retaliated against him for filing inmate  
15 appeals and lawsuits by serving Plaintiff meals tainted with antipsychotic medications. Plaintiff  
16 also alleges that some of the named Defendants denied him meals so he would get hungry and eat  
17 everything in a subsequent meal, which left him no choice but to ingest more antipsychotic  
18 medications.

19 Plaintiff's allegations state a cognizable claim for being involuntarily medicated against  
20 Defendants A. Podsakoff, L. Lawrence, B. Stringer, J. Medina, J. Juarez, R. Mendoza, and Nurse  
21 Gonzales. However, as discussed in greater detail below, he fails to link Defendants Lassey, E.  
22 Garza, and D. Hernandez to his claims and none of his other claims are cognizable.

## 23 **II. Discussion**

### 24 **A. Pleading Requirements**

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

26 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited  
27 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534  
28 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain

1 statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. Pro. 8(a).  
2 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and  
3 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

4 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a  
5 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556  
6 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

7 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is  
8 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual  
9 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*  
10 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

11 While "plaintiffs [now] face a higher burden of pleadings facts . . . ," *Al-Kidd v. Ashcroft*,  
12 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally  
13 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).  
14 However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations," *Neitze*  
15 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), "a liberal interpretation of a civil rights complaint may  
16 not supply essential elements of the claim that were not initially pled," *Bruns v. Nat'l Credit*  
17 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,  
18 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*  
19 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
20 omitted). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and  
21 "facts that are 'merely consistent with' a defendant's liability" fall short of satisfying the  
22 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

## 23 2. Linkage Requirement

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

25 Every person who, under color of [state law] . . . subjects, or causes to  
26 be subjected, any citizen of the United States . . . to the deprivation of  
27 any rights, privileges, or immunities secured by the Constitution . . .  
28 shall be liable to the party injured in an action at law, suit in equity, or  
other proper proceeding for redress.

1  
2 42 U.S.C. § 1983.

3 The statute plainly requires that there be an actual connection or link between the actions  
4 of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v.*  
5 *Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The  
6 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional  
7 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s  
8 affirmative acts or omits to perform an act which he is legally required to do that causes the  
9 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).  
10 To state a claim for relief under section 1983, Plaintiff must link each named defendant with  
11 some affirmative act or omission that demonstrates a violation of Plaintiff’s federal rights.

12 Despite being previously directed that he must clearly identify which Defendant(s) he  
13 believes are responsible for each violation of his constitutional rights and the factual basis for  
14 each claim, Plaintiff has failed to link Defendants Lassey and E. Garza to any of his factual  
15 allegations. Thus, Defendants Lassey and E. Garza are DISMISSED with prejudice.

16 **B. Claims for Relief**

17 **1. Retaliation**

18 All of Plaintiff’s claims are premised on allegations that he was subjected to retaliation  
19 because he filed inmate appeals and lawsuits.

20 Prisoners have a First Amendment right to file grievances against prison officials and to  
21 be free from retaliation for doing so. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th Cir.  
22 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009). A retaliation claim has five  
23 elements. *Id.* at 1114.

24 First, the plaintiff must show that the retaliated-against conduct is protected. *Id.* The  
25 filing of an inmate grievance is protected conduct, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th  
26 Cir. 2005), as are the rights to speech or to petition the government, *Rizzo v. Dawson*, 778 F.2d  
27 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989);  
28 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Second, the plaintiff must show the

1 defendant took adverse action against the plaintiff. *Rhodes*, at 567. Third, the plaintiff must  
2 show a causal connection between the adverse action and the protected conduct. *Waitson*, 668  
3 F.3d at 1114. Fourth, the plaintiff must show that the “official’s acts would chill or silence a  
4 person of ordinary firmness from future First Amendment activities.” *Rhodes*, 408 F.3d at 568  
5 (internal quotation marks and emphasis omitted). Fifth, the plaintiff must show “that the prison  
6 authorities’ retaliatory action did not advance legitimate goals of the correctional institution. . . .”  
7 *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

8 It bears repeating that while Plaintiff need only show facts sufficient to support a plausible  
9 claim for relief, the mere possibility of misconduct is not sufficient, *Iqbal*, 556 U.S. at 678-79,  
10 and the Court is “not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*,  
11 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The conduct  
12 identified by Plaintiff as retaliatory must have been motivated *by* his engaging in a protected  
13 activity, and the retaliatory conduct must *not* have reasonably advanced a legitimate penological  
14 goal. *Brodheim*, 584 F.3d at 1271-72 (citations omitted). Thus, merely showing that Plaintiff  
15 engaged in protected activity, without knowledge resulting in animus by a Defendant, is  
16 insufficient to show that Plaintiff’s protected activity was the motivating factor behind a  
17 Defendant’s actions.

18 The first screening order stated that Plaintiff’s allegations of retaliation for protected  
19 conduct in the Original Complaint were too conclusory to be cognizable. (Doc. 20, p. 3.) The  
20 Court specifically found that Plaintiff failed to state facts to show the link between Plaintiff’s  
21 inmate appeals and each Defendant’s knowledge of such appeal to establish the requisite  
22 animosity behind such Defendant’s acts. This same defect persists in the First Amended  
23 Complaint. Plaintiff is therefore unable to state a cognizable retaliation claim.

## 24 **2. Involuntary Antipsychotic Medication**

25 Plaintiff alleges that Defendants medicated his foods without his consent even though  
26 Plaintiff was not a danger to anyone and was never given a hearing about being involuntarily  
27 medicated.

28 Prisoners have a substantial liberty interest, grounded in the Due Process Clause, in

1 avoiding the involuntary administration of antipsychotic medication. *Washington v. Harper*, 494  
2 U.S. 210, 229, 110 S.Ct. 1028 (1990). Although prisoners may be involuntarily medicated if they  
3 are a danger to themselves or others and the treatment is in their best medical interest, they must  
4 be provided with procedural protections to ensure that the decision to medicate them involuntarily  
5 is not arbitrary or erroneous. *Harper*, 494 U.S. at 227-28. In *Keyhea v. Rushen*, 178 Cal.App.3d  
6 526, 542 (Cal. Ct. App. 1986), the court set forth the substantive and procedural safeguards which  
7 must be adhered to when the state seeks to involuntarily medicate state prisoners with long-term  
8 psychotropic medications. Such courts orders are commonly known as *Keyhea* orders.

9 Plaintiff alleges that he was previously subject to a *Keyhea* order and received  
10 antipsychotic medications which were discontinued because he experienced a number of negative  
11 side effects. He alleges that between August 13, 2015 and April 4, 2016, Defendant Nurse  
12 Gonzales provided antipsychotic medication that Defendants A. Podsakoff, L. Lawrence, B.  
13 Stringer, J. Medina, J. Juarez, and R. Mendoza used to surreptitiously taint his food. Plaintiff  
14 provides specific dates that these Defendants tainted his food and describes the adverse effects he  
15 experienced. Plaintiff also alleges that J. Medina, J. Juarez, and R. Mendoza denied him meals on  
16 various dates so that he would be hungry and eat the next meal he received which was heavily  
17 medicated. This states a cognizable claim against Defendants A. Podsakoff, L. Lawrence, B.  
18 Stringer, J. Medina, J. Juarez, R. Mendoza, and Nurse Gonzales for involuntarily medicating  
19 Plaintiff without a *Keyeha* order in violation of his due process rights.

### 20 3. Conditions of Confinement

21 Adequate food is a basic human need protected by the Eighth Amendment. *Hoptowit v.*  
22 *Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982), (abrogated on other grounds by *Sandin v. O'Connor*,  
23 515 U.S. 472, 115 S.Ct. 2293 (1995)). While prison food need not be “tasty or aesthetically  
24 pleasing,” it must be “adequate to maintain health.” *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th  
25 Cir. 1993). However, extreme deprivations are required to make out a conditions of confinement  
26 claim, and only those deprivations denying the minimal civilized measure of life’s necessities are  
27 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,

1 503 U.S. 1, 9, 112 S.Ct. 995 (1992) (citations and quotations omitted). To state a claim for  
2 violation of the Eighth Amendment, plaintiff must allege facts sufficient to support a claim that  
3 prison officials knew of and disregarded a substantial risk of serious harm to the plaintiff.

4 *Farmer v. Brennan*, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994); *Foster*, 554 F.3d at 812.

5 Plaintiff's allegations that he was given food tainted with antipsychotic medications  
6 against his will and without a *Keyhea* order state a cognizable claim against Defendants A.  
7 Podsakoff, L. Lawrence, B. Stringer, J. Medina, J. Juarez, R. Mendoza, and Nurse Gonzales  
8 under the Eighth Amendment.

#### 9 4. Supervisory Liability

10 Plaintiff's only allegations against Defendant Sgt. D. Hernandez are that he "did  
11 knowingly supervise the misconduct on all the above dates and laughed and ignored my  
12 numerous complaints about the above facts." (Doc. 26, p. 9.)

13 The prior screening order stated that supervisory personnel are generally not liable under  
14 section 1983 for the actions of their employees under a theory of *respondeat superior* and,  
15 therefore, when a named defendant holds a supervisory position, the causal link between him and  
16 the claimed constitutional violation must be specifically alleged. See *Fayle v. Stapley*, 607 F.2d  
17 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442  
18 U.S. 941 (1979).

19 To state a claim for relief under section 1983 based on a theory of supervisory liability,  
20 Plaintiff must allege some facts that would support a claim that supervisory defendants either:  
21 personally participated in the alleged deprivation of constitutional rights; knew of the violations  
22 and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the  
23 policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional  
24 violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted);  
25 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983, liability may not be  
26 imposed on supervisory personnel for the actions of their employees under a theory of *respondeat*  
27 *superior*. *Iqbal*, 556 U.S. at 677. "In a § 1983 suit or a *Bivens* action - where masters do not  
28 answer for the torts of their servants - the term 'supervisory liability' is a misnomer." *Id.*

1            “[B]are assertions . . . amount[ing] to nothing more than a “formulaic recitation of the  
2 elements” of a constitutional discrimination claim,’ for the purposes of ruling on a motion to  
3 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth.” *Moss*,  
4 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). “Such  
5 allegations are not to be discounted because they are ‘unrealistic or nonsensical,’ but rather  
6 because they do nothing more than state a legal conclusion -- even if that conclusion is cast in the  
7 form of a factual allegation.” *Id.* Plaintiff’s allegations against Defendant Sgt. D. Hernandez are  
8 nothing more than bare formulaic recitation of the elements of a claim and are not cognizable.

### 9            **5. Injunctive Relief**

10            Plaintiff seeks monetary damages and injunctive relief. However, Plaintiff is no longer  
11 incarcerated at the facility where the actions he complains of occurred (CSP-Cor), so his claim for  
12 injunctive relief is moot. *Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995); *Johnson v. Moore*,  
13 948 F.2d 517, 519 (9th Cir. 1991).

14            Thus, Plaintiff’s request for injunctive prohibition of his food being medicated without his  
15 consent is DENIED.

### 16            **III. ORDER**

17            It is HEREBY ORDERED that:

18            (1) Plaintiff may proceed on claims under the Due Process Clause and Eighth  
19 Amendment against Defendants A. Podsakoff, L. Lawrence, B. Stringer, J. Medina, J. Juarez, R.  
20 Mendoza, and Nurse Gonzales;

21            (2) Defendants Sgt. D. Hernandez, Lassey, and E. Garza are DISMISSED with  
22 prejudice; and

23            (3) Plaintiff’s second amended complaint which was lodged on July 13, 2016, Doc.  
24 27, is STRICKEN from the record as duplicative.

25            It is FURTHER ORDERED that:

26            1. Service is appropriate for the following defendants:

27                            **A. PODSAKOFF**

28                            **L. LAWRENCE**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**B. STRINGER**  
**J. MEDINA**  
**J. JUAREZ**  
**R. MENDOZA**  
**NURSE GONZALES**

2. The Clerk of the Court shall send Plaintiff seven (7) USM-285 form, seven (7) summons, a Notice of Submission of Documents form, an instruction sheet and a copy of the First Amended Complaint, filed on June 27, 2016 (Doc. 26).

3. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the attached Notice of Submission of Documents and submit it to the Court with the following documents:

- a. Completed summons for each of the defendants listed above;
- b. One completed USM-285 form for each of the defendants listed above; and
- c. Eight (8) copies of the endorsed First Amended Complaint, filed on June 27, 2016 (Doc. 26).

4. Plaintiff need not attempt service on any defendants and need not request waiver of service. Upon receipt of the above-described documents, the Court will direct the United States Marshal to serve the above-named Defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

5. **The failure to comply with this order will result in dismissal of this action.**

IT IS SO ORDERED.

Dated: **February 10, 2017**

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE