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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

JASPER F. WILSON,  
  
Plaintiff,  
  
v.  
  
JEFFREY A. BEARD, et al.,  
  
Defendants.

Case No. 1:15-cv-01424-BAM  
  
SCREENING ORDER GRANTING  
PLAINTIFF LEAVE TO FILE AMENDED  
COMPLAINT OR NOTIFY COURT OF  
WILLINGNESS TO PROCEED ON  
COGNIZABLE CLAIMS  
  
(ECF No. 1)  
  
**THIRTY-DAY DEADLINE**

Plaintiff Jasper F. Wilson is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on September 21, 2015, is currently before the Court for screening. (ECF No. 1.)

**I. Screening Requirement and Standard**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,  
5 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
6 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
7 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)  
8 (internal quotation marks and citation omitted).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings  
10 liberally construed and to have any doubt resolved in their favor. *Hebbe v. Pliler*, 627 F.3d 338,  
11 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially  
12 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each  
13 named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949  
14 (quotation marks omitted); *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).  
15 The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency  
16 with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct.  
17 at 1949 (quotation marks omitted); *Moss*, 572 F.3d at 969.

## 18 **II. Allegations in Complaint**

19 Plaintiff is housed at Kern Valley State Prison in Delano, California. The events giving  
20 rise to this action allegedly occurred while Plaintiff was housed at the California Correctional  
21 Institution (“CCI”) in Tehachapi, California. Plaintiff names the following defendants in their  
22 individual and official capacities: (1) Jeffrey A. Beard, Secretary of the California Department  
23 of Corrections and Rehabilitation (“CDCR”); (2) M.D. Stainer, CDCR Director of Adult  
24 Institutions; (3) Kim Holland, CCI Warden; (4) M. Dailo, CC-II, CCI Appeals Coordinator; (5)  
25 K. Westergren, Correctional Lieutenant; (6) M. Recio, Correctional Officer; (7) J. Medina,  
26 Correctional Officer; (8) D. Cuaron, Correctional Officer; (9) A. Coria, Correctional Officer;  
27 (10) M. Negrete, Correctional Officer; (11) W. Walsh, Ph.D., CCI Chief of Mental Health; and  
28 (12) E. Nagandi, Registered Nurse.

1 Plaintiff alleges as follows: On June 16, 2014, Defendants Beard, Stainer, and Holland  
2 implemented a suicide prevention policy. Pursuant to this policy, a Guard One metal tracking  
3 button is secured to each hollow metal cell door within the building and the guards record their  
4 safety checks of all occupied cells by touching the recording pipe (a six-inch thick metal pipe) to  
5 the metal tracking button. The pipe emits a very loud beeping noise. These Guard One security  
6 checks were implemented by CDCR, based on an agreement in a class action lawsuit, *Coleman*  
7 *v. Brown*, 2:90-cv-0520-LKK-DAD, as a measure to enhance inmate safety and prevent inmate  
8 suicides.

9 On July 10, 2015, the federal receiver heightened the Guard One rounds by ordering  
10 mental health psych-techs to conduct wellness checks in the housing units once a day. Plaintiff  
11 alleges that this resulted in his cell door being hammered with the pipe 49 times in one day, 337  
12 times a week and 1,345 times a month, causing him mental, emotional, psychological and  
13 physical harm. Plaintiff further alleges that he suffered sleep/sensory deprivation caused by loud  
14 hammering of the pipe on the cell door, loud beeping from the pipe, and the section doors  
15 slamming open and shut every 30 minutes during wellness checks.

16 On June 16, 2014, Plaintiff submitted a request for interview to Correctional Officer B.  
17 Koonce, complaining about the adverse housing conditions that were beginning to have an effect  
18 on his sleep. Plaintiff requested that the cell-door checks with the pipe be discontinued. Officer  
19 Koonce responded by explaining that it was the new suicide prevention policy at CCI. Plaintiff  
20 asserts that his appeal was partially granted on August 6, 2014, but his primary concern was  
21 ignored. On August 21, 2014, Plaintiff reiterated his dissatisfaction with the second level appeal  
22 response, noting that he was not a member of the *Coleman* class action, he was consolidated with  
23 the class without his consent or knowledge and he had not entered into any agreements with class  
24 counsel. Plaintiff asserts that this appeal was fully exhausted.

25 On July 15, 2014, Plaintiff submitted an inmate health care appeal, CDCR 602, which  
26 challenged the newly implemented suicide prevention policy implemented by Defendants  
27 Holland, Walsh and Beard. In the appeal, Plaintiff asserted that all non-mental health prisoners,  
28 including Plaintiff, that are housed within the segregation units were being identified as suicide

1 risks. Plaintiff protested his involuntary inclusion in the Mental Health Services Delivery  
2 System and reportedly refused the suicide prevention policy that was implemented pursuant to an  
3 agreement with the *Coleman* class plaintiffs, which has consolidated and identified Plaintiff with  
4 those prisoners having serious mental illness. Plaintiff alleges that this is in violation of his  
5 constitutional rights.

6 On August 17, 2014, Plaintiff objected to the first level response, which was treated as a  
7 suicide risk and sent to P. Shakir to prepare a mental health assessment of Plaintiff for pointing  
8 out that the pipe causes suicidal ideations and thoughts of suicide. Plaintiff requested that the  
9 Guard One/pipe be affixed only to the *Coleman* class members' cell doors.

10 Plaintiff alleges that the *Coleman* court lacked jurisdiction and that action must be  
11 dismissed. Plaintiff also alleges that he has standing to contest any court rulings in the *Coleman*  
12 class action regarding the staggered welfare check of prisoners in segregation units not  
13 associated with the class. Plaintiff believes that the security check should be applied only to  
14 *Coleman* class members with serious mental illness and discontinued for all non-mental health  
15 prisoners in segregation units.

16 On September 15, 2014, during first watch, Correctional Officer M. Recio was picking  
17 up mail and performing his assigned security/suicide prevention welfare check utilizing the  
18 second and third watch pipe that beeps very loudly during the day. Plaintiff presented three  
19 pieces of mail to Officer Recio, one of which was a CDCR 602 appeal against L. Nguyen.  
20 Officer Recio began reading the confidential legal mail, became angry and destroyed all three  
21 pieces of mail by ripping them in half. Plaintiff contends that Officer Recio appeared to be under  
22 the influence of narcotics while on duty. Although Plaintiff requested that Officer Recio contact  
23 his superior, Officer Recio refused. Plaintiff boarded up his cell window in an effort to force  
24 Officer Recio to contact the first watch sergeant or watch commander, which is mandated by  
25 policy. The policy was quoted loudly to Officer Recio, and Officer Recio also was asked to  
26 utilize the first watch pipe and to stop his aggressive hammering of the cell doors. Plaintiff  
27 alleges that Officer Recio then terrorized and stalked Plaintiff for 7½ hours by hammering the  
28 pipe approximately 105 times until his shift ended.

1 On September 16, 2014, Plaintiff submitted a CDCR 602 staff misconduct complaint  
2 against Officer Recio. The appeal was denied and it was determined that Officer Recio did not  
3 violate the policy. Plaintiff alleges that the policy played a role in Officer Recio's actions, which  
4 violated Plaintiff's rights.

5 On October 3, 2014, Plaintiff asked Correctional Officer J. Medina to refrain from  
6 forcefully hammering the cell door with the pipe device and stated that hammering the cell door  
7 was an abuse, constituting harassment, terrorism and torture. Plaintiff also notified Officer  
8 Medina that he was being medically treated and had to consume acetaminophen three times a  
9 day for migraine headache pain due to the hammering of the cell door. Plaintiff explained to  
10 Officer Medina that he was causing Plaintiff deep throbbing migraines and asked him to stop  
11 hammering the cell door. Officer Medina stated, "602 me." Plaintiff and Officer Medina  
12 engaged in a heated argument. Plaintiff asserts that Officer Medina tortured him for 7 ½ hours  
13 as he hammered Plaintiff's cell door until his shift ended. Plaintiff contends that the suicide  
14 prevention policy is the moving force behind Officer Medina's actions and there is no training on  
15 how to utilize the pipe.

16 On October 5, 2014, Plaintiff submitted a CDCR 602 staff misconduct complaint against  
17 Officer Medina. The appeal was denied and it was determined that Officer Medina did not  
18 violate policy. Plaintiff alleges that the policy played a role in Officer Medina's actions, which  
19 violated Plaintiff's rights.

20 On October 7, 2014, Plaintiff asked Correctional Officer D. Cuaron to refrain from  
21 forcefully hammering the cell door to Plaintiff's assigned housing. Plaintiff alleges that Officer  
22 Cuaron was abusing the guard one/pipe device during his wellness rounds. Plaintiff informed  
23 Officer Cuaron that his actions were causing Plaintiff severe migraine headaches, stress and the  
24 inability to rest, think clearly, or sleep. Plaintiff showed Officer Cuaron the doctor's orders and  
25 his prescription medication. Officer Cuaron stated, "That's how I do it. There's no cushion, it's  
26 metal on metal." Plaintiff alleges that Officer Cuaron continued hammering the device on  
27 Plaintiff's cell door and yelled for everyone to get used to it because it was policy.

28 On October 7, 2014, Plaintiff submitted an inmate request for interview regarding Officer

1 Cuaron's use of the guard one/pipe. Plaintiff asserts that Officer Cuaron signed and dated the  
2 request on a day that he called in and took off. Plaintiff also asserts that Officer Cuaron refused  
3 to respond to the request, destroyed some copies and proceeded to hammer Plaintiff's cell door  
4 with heightened aggression.

5 On October 16, 2014, Officer Cuaron allegedly retaliated against Plaintiff by fabricating  
6 a mental health referral falsely alleging that Plaintiff was hostile, assaultive, with poor self-  
7 control and exhibiting bizarre behavior. Officer Cuaron submitted the referral in an attempt to  
8 remove Plaintiff from the housing unit and confine him to an observation housing unit for  
9 suicidal/mental health evaluations. Plaintiff contends that Officer Cuaron made certain that his  
10 friend, E. Nagandi, R.N., received the mental health referral. Plaintiff alleges that Nurse  
11 Nagandi, at Officer Cuaron's behest, executed a suicide risk evaluation requesting that Plaintiff  
12 be admitted to the observation housing unit even though she did not recognize any signs or  
13 symptoms associated with a suicide risk. Plaintiff alleges that Correctional Sergeant R.  
14 Abernathy quashed the move because she recognized what Officer Cuaron and Nurse Nagandi  
15 were up to with reprisals.

16 On October 16, 2014, Nurse Nagandi responded to the mental health referral authored by  
17 Officer Cuaron. Nurse Nagandi approached Plaintiff's cell and asked questions that were never  
18 answered by Plaintiff. When Nurse Nagandi could not get Plaintiff to answer her questions,  
19 Officer Cuaron pulled her into the rotunda.

20 Later, Correctional Sergeant R. Abernathy, Correctional Sergeant Witson and an  
21 unidentified Correctional Sergeant approached Plaintiff's cell and ordered him to cuff up.  
22 Plaintiff was informed that he was wanted at B-medical and he was being admitted to the  
23 observation housing unit for acing up. Plaintiff refused, stating that the only he was leaving the  
24 cell was by force. Plaintiff explained to Sergeant Abernathy what Officer Cuaron was  
25 attempting to do to Plaintiff for threatening to file a staff complaint. Plaintiff presented the  
26 signed CDCR 22 backdated by Officer Cuaron. After reviewing the CDCR 22, Sergeant  
27 Abernathy left the building and returned 15 to 20 minutes later. Sergeant Abernathy indicated  
28 that Plaintiff's move had been squashed, he was staying in his assigned housing and the psych

1 would see him in the morning. Sergeant Abernathy left after ordering Officer Cuaron to stay  
2 away from Plaintiff's cell for the rest of the night.

3 On October 17, 2014, Sally Dhahbi, PhD, cleared Plaintiff of any mental health issues.  
4 Plaintiff submitted a handwritten letter to Dr. Dhahbi invoking his right to refuse treatment or  
5 diagnoses.

6 On October 20, 2014, Plaintiff submitted a CDCR 602 against Officer Cuaron. The  
7 appeal was denied and it was determined that Officer Cuaron did not violate policy. Plaintiff  
8 alleges that the policy played a role in Officer Cuaron's actions, which violated Plaintiff's rights.

9 On November 5, 2014, Plaintiff submitted a CDCR 602 against Nurse Nagandi, but did  
10 not receive a response. Plaintiff submitted a CDCR 22 to L. Ledford on December 8, 2014 to  
11 inquire into the status of the appeal.

12 On December 7, 2014, Plaintiff submitted a CDCR 602 staff misconduct complaint  
13 against Officer A. Coria and M. Negrete for acting in concert on November 21, 2014 to harass  
14 and attack his cell door and his sanity with the Guard One/pipe.

15 On December 15, 2014, Plaintiff submitted a second CDCR 22 explaining that Ledford  
16 refused to respond to his written request or expound as to the status of Plaintiff's appeal against  
17 Nurse Nagandi. Plaintiff believes that the Health Care Appeals Office destroyed his appeal.

18 On December 22, 2014, Plaintiff submitted a CDCR 602 staff misconduct complaint  
19 against Officer Cuaron and Officer A. Coria for acting in concert on December 12, 2014 to  
20 harass and attack Plaintiff's cell door and his sanity with the Guard One/pipe.

21 On December 24, 2014, Plaintiff alleges that he was retaliated against by Appeals  
22 Coordinator M. Dailo by cancelling Plaintiff's appeal in an effort to silence the complaint.  
23 Plaintiff alleges that the appeal was cancelled because Correctional Sergeant Spears was  
24 documented as a witness to Officer Cuaron's actions and directed Plaintiff to write Officer  
25 Cuaron up and call her as a witness.

26 On December 29, 2014, Plaintiff challenged the appeal cancellation.

27 On January 8, 2015, Plaintiff was being interviewed by Correctional Lieutenant K.  
28 Westergren regarding his staff complaints against Officer Coria and Negrete for their hammering

1 of his cell door. During the interview, Plaintiff indicated that he had nothing to add to the  
2 appeal, but insisted that Sergeant Spears be interviewed regarding the subject matter under  
3 appeal. Lieutenant Westergren stated his belief that the complaint was “bullshit,” and the  
4 officers in question were good friends of his and threatened to make the complaint go away by  
5 any means necessary.

6 On January 19, 2015, Plaintiff filed CDCR 602 staff misconduct complaint against  
7 Lieutenant Westergren for retaliating against Plaintiff’s First Amendment rights.

8 On January 21, 2015, Plaintiff received a CDC Form alleging that Plaintiff refused to be  
9 interviewed or cooperate with the interviewer on January 8, 2015. Plaintiff alleges that the  
10 chrono was not provided to Plaintiff and was fabricated by Officer Westergren. Plaintiff also  
11 alleges that the appeal was cancelled to protect Officer Westergren’s friends, Officers Coria and  
12 Negrete. On February 3, 2015, Plaintiff was forced to challenge the cancellation of his appeal.

### 13 **III. Discussion**

#### 14 **A. Official Capacity**

15 Plaintiff is advised that “[t]he Eleventh Amendment bars suits for money damages in  
16 federal court against a state, its agencies, and state officials acting in their official capacities.”  
17 *Aholelei v. Dep’t. of Public Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). However, “[a] state  
18 official in his or her official capacity, when sued for injunctive relief, [is] a person under § 1983  
19 because “official-capacity actions for prospective relief are not treated as actions against the  
20 State.’ ” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 n.10 (1989). Also, the Eleventh  
21 Amendment does not bar suits seeking damages against state officials in their personal  
22 capacities. *Hafer v. Melo*, 502 U.S. 21, 30 (1991); *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir.  
23 2003). Accordingly, Plaintiff may not bring suit against defendants in their official capacities for  
24 monetary damages. However, Plaintiff is not precluded from pursuing his claims for injunctive  
25 relief against state officials in their official capacities.

#### 26 **B. Conditions of Confinement**

27 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
28 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.

1 2006.) Although prison conditions may be restrictive and harsh, prison officials must provide  
2 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. *Farmer v.*  
3 *Brennan*, 511 U.S. 825, 832-33 (1994). A prisoner’s claim does not rise to the level of an Eighth  
4 Amendment violation unless (1) “the prison official deprived the prisoner of the ‘minimal  
5 civilized measure of life’s necessities,’ ” and (2) “the prison official ‘acted with deliberate  
6 indifference in doing so.’ ” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting  
7 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)).

8 Conditions which result in chronic, long-term sleep deprivation may support a claim  
9 under the Eighth Amendment. *See Chappell v. Mandeville*, 706 F.3d 1052, 1057–61 (9th Cir.  
10 2013); *Keenan v. Hall*, 83 F.3d 1083, 1090–91 (9th Cir. 1996); *LeMaire v. Maass*, 12 F.3d 1444,  
11 1460 (9th Cir. 1993). At the pleading stage, Plaintiff’s allegations and exhibits are sufficient to  
12 state a cognizable Eighth Amendment claim based on unsafe and unhealthy conditions of  
13 confinement caused by the Guard One security checks against Defendants Holland, Recio,  
14 Medina, Cuaron, Coria and Negrete. *See, e.g., Matthews v. Holland*, 2017 WL 1093847, at \*5, 8  
15 (E.D. Cal. Mar. 23, 2017) (prisoner stated claim against warden for violation of right under  
16 Eighth Amendment not be confined under circumstances resulting in chronic, long-term sleep  
17 deprivation resulting from implementation of Guard One policy); *Rico v. Beard*, 2016 WL  
18 5724997, at \*2 (E.D. Cal. Sept. 30, 2016) (prisoner stated cognizable Eighth Amendment claim  
19 based on extreme sleep deprivation allegedly caused by Guard One safety checks);

20 Further, Plaintiff’s allegations are sufficient to state a claim against supervisory  
21 Defendants Beard, Stainer and Walsh arising from the Guard One security checks and mental  
22 health wellness checks. Although liability may not be imposed on supervisory personnel for the  
23 actions or omissions of their subordinates under the theory of *respondeat superior*, *Iqbal*, 556  
24 U.S. at 676–77, supervisory liability may exist without any personal participation “if supervisory  
25 officials implement a policy so deficient that the policy itself is a repudiation of constitutional  
26 rights and is the moving force of a constitutional violation.” *Crowley*, 734 F.3d at 977 (citing  
27 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks omitted).  
28 Plaintiff’s allegations show that the manner in which correctional officers were implementing the

1 Guard One Policy, as designed by Beard, Stainer and Walsh, was violating Plaintiff's  
2 constitutional rights and failed to take preventative measures.

3 **C. First Amendment – Retaliation**

4 Allegations of retaliation against a prisoner's First Amendment rights to speech or to  
5 petition the government may support a section 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532  
6 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v.*  
7 *Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First  
8 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some  
9 adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that  
10 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did  
11 not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567–  
12 68 (9th Cir. 2005); *accord Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009).

13 The prisoner must show that the type of activity he was engaged in was constitutionally  
14 protected, that the protected conduct was a substantial or motivating factor for the alleged  
15 retaliatory action, and that the retaliatory action advanced no legitimate penological interest.  
16 *Hines v. Gomez*, 108 F.3d 265, 267-68 (9th Cir. 1997). Mere speculation that defendants acted  
17 out of retaliation is not sufficient. *Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014) (citing  
18 cases) (affirming grant of summary judgment where no evidence that defendants knew about  
19 plaintiff's prior lawsuit, or that defendants' disparaging remarks were made in reference to prior  
20 lawsuit).

21 Plaintiff alleges that Officer Cuaron filed a false mental health chrono to have Plaintiff  
22 evaluated by mental health staff in retaliation for Plaintiff's staff complaint against him. This  
23 allegation is not sufficient to state a cognizable claim for relief. Plaintiff's own allegations  
24 suggest that Officer Cuaron's actions advanced a legitimate correctional goal in securing  
25 Plaintiff's safety. As Plaintiff admits, he allegedly was suffering from mental and emotional  
26 issues related to the Guard One security checks.

27 Plaintiff's related allegations that Nurse Nagandi retaliated against him by attempting to  
28 remove him from the housing unit also are not sufficient to state a claim. According to

1 Plaintiff's complaint, he was not removed from the housing unit and there is no indication that  
2 Nurse Nagandi undertook any adverse action against Plaintiff *because of* any protected conduct.

3         Insofar as Plaintiff complains that Officer Cuaron, Nurse Nagandi and Lieutenant  
4 Westergren cancelled or interfered with Plaintiff's appeals, this also is insufficient to state a  
5 cognizable retaliation claim. There is no indication that Plaintiff suffered any adverse action by  
6 way of the appeals process.

#### 7                   **D. Appeal Due Process**

8         Plaintiff also appears to raise issues regarding the processing and handling of his CDCR-  
9 602 inmate appeals, including the cancellation of those appeals, against Defendants Cuaron,  
10 Nagandi, Dailo and Westergren. However, the existence of an inmate appeals process does not  
11 create a protected liberty interest upon which Plaintiff may base a claim that he was denied a  
12 particular result or that the appeals process was deficient. *Ramirez v. Galaza*, 334 F.3d 850, 860  
13 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). To state a claim under  
14 section 1983, Plaintiff must demonstrate personal involvement in the underlying violation of his  
15 rights, *Iqbal*, 556 U.S. at 677; *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002), and liability  
16 may not be based merely on Plaintiff's dissatisfaction with the administrative process or a  
17 decision on an appeal, *Ramirez*, 334 F.3d at 860; *Mann*, 855 F.2d at 640.

#### 18                   **III. Conclusion and Order**

19         The Court finds that Plaintiff has stated a cognizable claim against Defendants Holland,  
20 Recio, Medina, Cuaron, Coria, Negrete, Beard, Stainer and Walsh for violation of the Eighth  
21 Amendment based on unsafe and unhealthy conditions of confinement. However, Plaintiff has  
22 failed to state any other cognizable claims. As noted above, the Court will grant Plaintiff leave  
23 to amend his complaint to cure the identified deficiencies to the extent he is able to do so in good  
24 faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

25         If Plaintiff does not wish to file an amended complaint and he is agreeable to proceeding  
26 only on the cognizable claim identified by the Court, he may file a notice informing the Court  
27 that he does not intend to amend and he is willing to proceed only on his cognizable claim. The  
28 Court will then recommend that the remaining defendants and claims be dismissed, and the

1 Court will provide Plaintiff with the requisite forms to complete and return so that service of  
2 process may be initiated.

3 If Plaintiff wishes to file an amended complaint, any such amended complaint should be  
4 brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to the  
5 deprivation of Plaintiff's constitutional rights, *Iqbal*, 556 U.S. at 678-79, 129 S.Ct. at 1948-49.  
6 Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief  
7 above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (citations omitted).

8 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated  
9 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no  
10 "buckshot" complaints).

11 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
12 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended  
13 complaint must be "complete in itself without reference to the prior or superseded pleading."  
14 Local Rule 220.

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

- 16 1. The Clerk's Office shall send Plaintiff a complaint form;
- 17 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
  - 18 a. File a first amended complaint curing the deficiencies identified by the Court in  
19 this order; or
  - 20 b. Notify the Court in writing that he does not wish to file a first amended complaint  
21 and he is willing to proceed only on the cognizable claim against Defendants  
22 Holland, Recio, Medina, Cuaron, Coria, Negrete, Beard, Stainer and Walsh for  
23 violation of the Eighth Amendment based on unsafe and unhealthy conditions of  
24 confinement; and

25 ///

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1 3. If Plaintiff fails to comply with this order, the Court will recommend dismissal of this  
2 action, without prejudice, for failure to obey a court order and for failure to prosecute.

3  
4 IT IS SO ORDERED.

5 Dated: November 29, 2017

/s/ Barbara A. McAuliffe  
6 UNITED STATES MAGISTRATE JUDGE

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