

1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 **C. Pleading Requirements**

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

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

11 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs
12 when a pleading says too little -- the baseline threshold of factual and legal allegations required
13 was the central issue in the *Iqbal* line of cases. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678,
14 129 S.Ct. 1937 (2009). The Rule is also violated, though, when a pleading says *too much*.
15 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e
16 have never held -- and we know of no authority supporting the proposition -- that a pleading may
17 be of unlimited length and opacity. Our cases instruct otherwise.”) (citing cases); *see also*
18 *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8,
19 and recognizing that “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case
20 impose unfair burdens on litigants and judges”).

21 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
22 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
23 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
24 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
25 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
26 allegations are accepted as true, but legal conclusions are not. *Iqbal*, 556 U.S. at 678; *see also*
27 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

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

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

18 As discussed below, Plaintiff’s allegations are exceedingly conclusory and fail to show
19 factual basis to meet the plausibility standard of *Iqbal*. Plaintiff must state factual allegations for
20 the element of each claim he desires to pursue in this action. If he chooses to file a first amended
21 complaint, Plaintiff should make it as concise as possible by merely stating which of his
22 constitutional rights he believes were violated by each Defendant and its factual basis. Plaintiff
23 need not and should not cite legal authority for his claims in a first amended complaint as his
24 factual allegations are accepted as true.

25 **2. Federal Rule of Civil Procedure 18(a) & 20(a)(2)**

26 Federal Rule of Civil Procedure 18(a) allows a party asserting a claim to relief as an
27 original claim, counterclaim, cross-claim, or third-party claim to join, either as independent or as
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1 alternate claims, as many claims as the party has against an opposing party. However, Plaintiff
2 may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a),
3 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605,
4 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the
5 claim(s) arise out of the same transaction or occurrence, or series of transactions and occurrences,
6 and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*,
7 130 F.3d 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co. of North America*,
8 623 F.3d 1371, 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a)
9 will the Court review the additional claims to determine if they may be joined under Rule 18(a),
10 which permits the joinder of multiple claims against the same party.

11 The Court must be able to discern a relationship between Plaintiff's claims or there must
12 be a similarity of parties. The fact that all of Plaintiff's allegations are based on the same type of
13 constitutional violation (i.e. retaliation by different actors on different dates, under different
14 factual events) does not necessarily make claims related for purposes of Rule 18(a). All claims
15 that do not comply with Rules 18(a) and 20(a)(2) are subject to dismissal. Plaintiff is cautioned
16 that if he fails to elect which category of claims to pursue and his amended complaint sets forth
17 improperly joined claims, the Court will determine which claims should proceed and which
18 claims will be dismissed. *Visendi v. Bank of America, N.A.*, 733 F.3d 863, 870-71 (9th Cir. 2013).
19 Whether any claims will be subject to severance by future order will depend on the viability of
20 claims pled in the amended complaint.

21 3. Linkage and Causation

22 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
23 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
24 1087, 1092 (9th Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
25 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). "Section 1983 is not itself a source of
26 substantive rights, but merely provides a method for vindicating federal rights elsewhere
27 conferred." *Crowley v. Nevada ex rel. Nevada Sec'y of State*, 678 F.3d 730, 734 (9th Cir. 2012)

1 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation
2 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,
3 or causal connection, between each defendant’s actions or omissions and a violation of his federal
4 rights. *Lemire v. California Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);
5 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

6 Plaintiff’s allegations must demonstrate that each defendant personally participated in the
7 deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This requires the
8 presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*, 556 U.S.
9 at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility
10 of misconduct falls short of meeting this plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572
11 F.3d at 969. However, prisoners proceeding *pro se* in civil rights actions are entitled to have their
12 pleadings liberally construed and to have any doubt resolved in their favor. *Hebbe*, 627 F.3d at
13 342.

14 **DISCUSSION**

15 **A. Plaintiff’s Allegations**

16 Plaintiff is currently incarcerated at Salinas Valley State Prison (“SVSP”), in Soledad,
17 California, but his allegations are based on circumstances that allegedly occurred at the California
18 Correctional Institution (“CCI”), in Tehachapi, California. Plaintiff names the following prison
19 staff as Defendants: CCI Warden, Kim Holland; Warden Holland’s “responding agent,” Erik
20 Sodergra; Supervising Plumbers, Brandon Moser and Beau Steadman; and Dr. O.S. Owolabi.

21 Plaintiff alleges that on December 26, 2014, he was working his assigned job as an inmate
22 plumber and was instructed by Defendants Moser and Steadman to remove materials which
23 contained asbestos without safety equipment such as gloves and a mask. Plaintiff developed
24 symptoms related to asbestos exposure (coughing, throat and eye irritation, and frequent nose-
25 bleeds), for which he was subsequently seen by Dr. Owolabi. Dr. Owolabi “refused” to
26 acknowledge Plaintiff’s exposure to asbestos and ordered allergy medication which only made
27 Plaintiff’s symptoms worse. Plaintiff stopped using the allergy medication and filed an inmate
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1 appeal.

2 As discussed in detail below, Plaintiff fails to state any cognizable claims. However, he
3 will be provided the applicable legal standards for his stated claims and an opportunity to file an
4 amended complaint.

5 **B. Legal Standards**

6 **1. Deliberate Indifference**

7 **a. Conditions of Confinement**

8 The Eighth Amendment protects prisoners from inhumane methods of punishment and
9 from inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Morgan v.*
10 *Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Thus, no matter where they are housed, prison
11 officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing,
12 sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.
13 2000) (quotation marks and citations omitted). To establish a violation of the Eighth
14 Amendment, the prisoner must “show that the officials acted with deliberate indifference. . . .”
15 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v.*
16 *County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002).

17 The deliberate indifference standard involves both an objective and a subjective prong.
18 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” *Farmer* at 834.
19 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate
20 health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995).

21 For screening purposes, inhalation of asbestos is sufficiently serious to meet the objective
22 prong. However, Plaintiff’s allegations fail to meet the subjective prong. Specifically, Plaintiff
23 fails to show that Defendant Sodergra knew that inmates were being exposed to asbestos aside
24 from his involvement in responding to Plaintiff’s inmate appeal which, as discussed in detail
25 below, is not cognizable. Plaintiff alleges that Defendants Moser and Steadman denied his
26 requests for safety equipment because as long as the material was wet, it posed no threat to
27 Plaintiff or his co-workers. This does not show that Defendants Moser and Steadman

1 intentionally exposed Plaintiff to a condition that they knew posed a serious risk of harm.
2 Plaintiff's allegations against Warden Holland (based on supervisory liability) and Dr. Owolabi
3 (based on his serious medical needs) are discussed in the corresponding sections below.

4 **b. Serious Medical Needs**

5 Prison officials violate the Eighth Amendment if they are "deliberate[ly] indifferen[t] to [a
6 prisoner's] serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "A medical need
7 is serious if failure to treat it will result in 'significant injury or the unnecessary and wanton
8 infliction of pain.' " *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
9 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
10 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
11 Cir.1997) (en banc))

12 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must
13 first "show a serious medical need by demonstrating that failure to treat a prisoner's condition
14 could result in further significant injury or the unnecessary and wanton infliction of pain. Second,
15 the plaintiff must show the defendants' response to the need was deliberately indifferent."
16 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096
17 (quotation marks omitted)).

18 As to the first prong, indications of a serious medical need "include the existence of an
19 injury that a reasonable doctor or patient would find important and worthy of comment or
20 treatment; the presence of a medical condition that significantly affects an individual's daily
21 activities; or the existence of chronic and substantial pain." *Colwell v. Bannister*, 763 F.3d 1060,
22 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); accord *Wilhelm*, 680 F.3d at
23 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). For screening purposes, Plaintiff's
24 exposure to asbestos, which resulted in coughing, throat and eye irritation and frequent nose-
25 bleeds, is accepted as a serious medical need.

26 As to the second prong, deliberate indifference is "a state of mind more blameworthy than
27 negligence" and "requires 'more than ordinary lack of due care for the prisoner's interests or
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1 safety.’ ” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319).
2 Deliberate indifference is shown where a prison official “knows that inmates face a substantial
3 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
4 *Id.*, at 847. In medical cases, this requires showing: (a) a purposeful act or failure to respond to a
5 prisoner’s pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680
6 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). “A prisoner need not show his harm was
7 substantial; however, such would provide additional support for the inmate’s claim that the
8 defendant was deliberately indifferent to his needs.” *Jett*, 439 F.3d at 1096, citing *McGuckin*, 974
9 F.2d at 1060.

10 Deliberate indifference is a high legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060
11 (9th Cir.2004). “Under this standard, the prison official must not only ‘be aware of the facts from
12 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
13 ‘must also draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a prison
14 official should have been aware of the risk, but was not, then the official has not violated the
15 Eighth Amendment, no matter how severe the risk.” *Id.* (quoting *Gibson v. County of Washoe,*
16 *Nevada*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

17 Plaintiff’s allegations that Dr. Owolabi refused to acknowledge that Plaintiff had been
18 exposed to asbestos and prescribed allergy medication that he knew would not work are not
19 cognizable since they are conclusory and lack the requisite factual detail to be facially plausible.
20 *Iqbal*, 556 U.S. at 678. Further, Plaintiff fails to state any allegations to show that Dr. Owolabi’s
21 allergy diagnosis and treatment was anything other than professional error or a difference of
22 opinion -- which is not cognizable. *See Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th
23 Cir.1980) (indifference, negligence, or medical malpractice insufficient); *Estelle v. Gamble*, 429
24 U.S. 97, 107 (1976) (difference of opinion between a plaintiff and prison medical staff regarding
25 his diagnosis, treatment and medical records is insufficient to state a cognizable Eighth
26 Amendment violation).

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2. Conspiracy

A claim brought for violation of section 1985(3) requires “four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of this conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.” *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A racial, or perhaps otherwise class-based, invidiously discriminatory animus is an indispensable element of a section 1985(3) claim. *Spewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (quotations and citation omitted). Plaintiff fails to state any allegations to meet any of the required elements for a conspiracy claim.

3. Supervisory Liability

It appears that Plaintiff named Warden Holland as a Defendant based on her supervisory position. Generally, supervisory personnel are not liable under section 1983 for the actions of their employees under a theory of *respondeat superior* -- when a named defendant holds a supervisory position, the causal link between him and the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief under this theory, Plaintiff must allege some facts that would support a claim that supervisory defendants either: personally participated in the alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

To show this, “a plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. The law clearly allows actions against supervisors under section 1983 as long as a sufficient causal connection is present and the plaintiff was deprived

1 under color of law of a federally secured right.” *Redman v. County of San Diego*, 942 F.2d 1435,
2 1447 (9th Cir. 1991)(internal quotation marks omitted)(abrogated on other grounds by *Farmer v.*
3 *Brennan*, 511 U.S. 825 (1994).

4 “The requisite causal connection can be established . . . by setting in motion a series of
5 acts by others,” *id.* (alteration in original; internal quotation marks omitted), or by “knowingly
6 refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably
7 should have known would cause others to inflict a constitutional injury,” *Dubner v. City & Cnty.*
8 *of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). “A supervisor can be liable in his individual
9 capacity for his own culpable action or inaction in the training, supervision, or control of his
10 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
11 reckless or callous indifference to the rights of others.” *Watkins v. City of Oakland*, 145 F.3d
12 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted).

13 Plaintiff's allegations can be construed to allege that by reviewing Plaintiff's IAs on this
14 issue, Warden Holland and Sodergra knew that Plaintiff was being exposed to asbestos without
15 safety equipment and failed to take preventative/reparative action. However, "inmates lack a
16 separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*,
17 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
18 entitlement to a specific grievance procedure), citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.
19 1988). “[A prison] grievance procedure is a procedural right only, it does not confer any
20 substantive right upon the inmates.” *Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982)
21 *accord Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); *see also Massey v. Helman*, 259
22 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on
23 prisoner).

24 However, a plaintiff may "state a claim against a supervisor for deliberate indifference
25 based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by his or
26 her subordinates," *Starr v. Baca*, 652 F.3d 1202, 1207 (2011), which may be shown via the
27 inmate appeals process where the supervisor reviewed Plaintiff's applicable inmate appeal and
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1 failed to take corrective action, allowing the violation to continue.

2 Plaintiff's claims against Defendant Sodergra rest exclusively on his involvement in the
3 handling and processing of Plaintiff's inmate appeal as the "responding agent of Warden
4 Holland," (Doc. 1, p. 2), which is not actionable. *Ramirez*, 334 F.3d at 860. Likewise, Plaintiff's
5 allegations against Warden Holland are not actionable as he fails to show that Warden Holland
6 knew inmates were being exposed to asbestos without safety equipment prior to Plaintiff's inmate
7 appeal. Plaintiff's allegations that Warden Holland knew the facility contained asbestos and
8 continued to allow her subordinates to expose inmate workers to asbestos without protective
9 equipment are merely consistent with Warden's liability and "fall short of satisfying the
10 plausibility standard." *Iqbal*, 556 U.S. at 678. Further, to be liable in a supervisory capacity,
11 Plaintiff must first state cognizable claims against Warden Holland's subordinates, which as
12 discussed above, Plaintiff has not done.

13 **4. State Law Claims**

14 **a. Government Claims Act**

15 Under the Government Claims Act ("GCA"),¹ set forth in California Government Code
16 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
17 employee or entity unless the plaintiff first presented the claim to the California Victim
18 Compensation and Government Claims Board ("VCGCB" or "Board"), and the Board acted on
19 the claim, or the time for doing so expired. "The Tort Claims Act requires that any civil
20 complaint for money or damages first be presented to and rejected by the pertinent public entity."
21 *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The purpose of this
22 requirement is "to provide the public entity sufficient information to enable it to adequately
23 investigate claims and to settle them, if appropriate, without the expense of litigation." *City of*
24 *San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701 (1974)
25 (citations omitted). Compliance with this "claim presentation requirement" constitutes an

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27 ¹ The Government Claims Act was formerly known as the California Tort Claims Act. *City of Stockton v. Superior*
28 *Court*, 42 Cal.4th 730, 741-42 (Cal. 2007) (adopting the practice of using Government Claims Act rather than
California Tort Claims Act).

1 element of a cause of action for damages against a public entity or official. *State v. Superior*
2 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). Thus, in the state
3 courts, “failure to allege facts demonstrating or excusing compliance with the claim presentation
4 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
5 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn. omitted).

6 Federal courts likewise must require compliance with the GCA for pendant state law
7 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
8 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
9 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
10 may proceed only if the claims were first presented to the state in compliance with the claim
11 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
12 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

13 Plaintiff fails to state any allegations which show he complied with the GCA so as to be
14 able to pursue claims for violation of California law in this action. Further, though Plaintiff
15 alleges that Defendants Holland and Sodergra violated California Penal Code sections 132 and
16 134, a private right of action under a criminal statute has rarely been implied. *Chrysler Corp. v.*
17 *Brown*, 441 U.S. 281, 316 (1979). Where a private right of action has been implied, “there was
18 at least a statutory basis for inferring that a civil cause of action of some sort lay in favor of
19 someone.” *Chrysler Corp.*, 441 U.S. at 316 (quoting *Cort v. Ash*, 422 U.S. 66, 79 (1975)). The
20 Court has reviewed sections 132 and 134, and finds no indication that civil enforcement of any
21 kind is available to Plaintiff. *Cort*, 422 U.S. at 79-80; *Keaukaha-Panaewa Cmty. Ass’n v.*
22 *Hawaiian Homes Comm’n*, 739 F.2d 1467, 1469-70 (9th Cir. 1984). Accordingly, Plaintiff fails
23 to state a claim upon which relief may be granted under state law based on alleged violations of
24 California Penal Code sections 132 and 134.

25 **5. Injunctive Relief**

26 Plaintiff seeks injunctive relief via medical treatment for asbestos exposure; prohibiting
27 harassment and retaliation for filing this action; and facilitating his communication with persons
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1 necessary to his pursuit of this action. (Doc. 1, p. 6.)

2 Federal courts are courts of limited jurisdiction and in considering a request for
3 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
4 have before it an actual case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103
5 S.Ct. 1660, 1665 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church*
6 *and State, Inc.*, 454 U.S. 464, 471 (1982). If the Court does not have an actual case or
7 controversy before it, it has no power to hear the matter in question. *Id.*

8 As a threshold matter, Plaintiff must establish that he has standing to seek preliminary
9 injunctive relief. *Summers v. Earth Island Institute*, 555 U.S. 488, 493-94, 129 S.Ct. 1142, 1149
10 (2009); *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Plaintiff “must show that he
11 is under threat of suffering an ‘injury in fact’ that is concrete and particularized; the threat must be
12 actual and imminent, not conjectural or hypothetical; it must be fairly traceable to challenged
13 conduct of the defendant; and it must be likely that a favorable judicial decision will prevent or
14 redress the injury.” *Summers*, 555 U.S. at 493 (citation and quotation marks omitted); *Mayfield*,
15 599 F.3d at 969. Requests for prospective relief are limited by 18 U.S.C. § 3626(a)(1)(A) of the
16 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly
17 drawn, extends no further than necessary to correct the violation of the Federal right, and is the
18 least intrusive means necessary to correct the violation of the Federal right.”

19 The pendency of this action does not give the Court jurisdiction over prison officials in
20 general or over Plaintiff’s medical issues. *Summers*, 555 U.S. at 492-93; *Mayfield*, 599 F.3d at
21 969. Jurisdiction is limited to the parties in this action and to the cognizable legal claims upon
22 which this action is proceeding. *Id.*

23 The claims which Plaintiff alleges in this action arise from events which occurred at CCI
24 while Plaintiff is currently housed at SVSP. Accordingly, Plaintiff lacks standing in this action to
25 seek relief directed at his current conditions of confinement at SVSP. Further his requests for
26 injunctive relief to remedy his conditions of confinement at CCI were rendered moot upon his
27 transfer to SVSP. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995); *Johnson v. Moore*,

1 948 F.2d 517, 519 (9th Cir. 1991). Thus, the Court cannot grant Plaintiff's request for injunctive
2 relief.

3 **ORDER**

4 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
5 amended complaint within **thirty (30) days**. If Plaintiff needs an extension of time to comply
6 with this order, Plaintiff shall file a motion seeking an extension of time no later than **thirty (30)**
7 **days** from the date of service of this order.

8 Plaintiff must demonstrate in any first amended complaint how the conditions of which he
9 complains resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625
10 F.2d 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each
11 named defendant is involved. There can be no liability under section 1983 unless there is some
12 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
13 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
14 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

15 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
16 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
17 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
18 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
19 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
20 (2007) (citations omitted).

21 Plaintiff is further reminded that an amended complaint supercedes the original, *Lacey v.*
22 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
23 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
24 pleading," Local Rule 220.

25 The Court is providing Plaintiff with opportunity to amend to cure the deficiencies
26 identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
27 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his first
28

1 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
2 complaints).

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

- 4 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 5 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 6 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must file a
7 first amended complaint curing the deficiencies identified by the Court in this
8 order or a notice of voluntary dismissal; and
- 9 5. If Plaintiff fails to comply with this order, this action will be dismissed for failure
10 to obey a court order and for failure to state a cognizable claim.

11 IT IS SO ORDERED.

12 Dated: February 21, 2017

13 */s/ Sheila K. Olerto*
14 UNITED STATES MAGISTRATE JUDGE