

1 § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been
2 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
3 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

4 **C. Pleading Requirements**

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

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

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

24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
25 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
26 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
27 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
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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 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
22 concise as possible in **no more than twenty-five (25) pages**. He should simply state which of his
23 constitutional rights he feels were violated by each Defendant and its factual basis. Plaintiff need
24 not and should not cite legal authority for his claims in a first amended complaint. His factual
25 allegations are accepted as true and need not be bolstered by legal authority at the pleading stage.
26 If Plaintiff files a first amended complaint, his factual allegations will be screened under the legal
27 standards and authorities stated in this order.

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

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

The Court must be able to discern a relationship between Plaintiff’s claims or there must be a similarity of parties. The fact that all of Plaintiff’s allegations are based on the same type of constitutional violation (i.e. deliberate indifference to different medical issues) does not necessarily make claims related for purposes of Rule 18(a); nor are Plaintiff’s claims related because he feels the Warden, or other supervising personnel, failed to properly train or supervise all of the culpable actors.

All claims that do not comply with Rules 18(a) and 20(a)(2) are subject to dismissal. Plaintiff is cautioned that if his amended complaint sets forth improperly joined claims, the Court will determine which claims may proceed and which claims will be dismissed. *Visendi v. Bank of America, N.A.*, 733 F3d 863, 870-71 (9th Cir. 2013). Whether any claims will be subject to severance by future order will depend on the viability of the claims raised in the first amended complaint.

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3. Linkage and Causation

Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012) (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link, or causal connection, between each defendant’s actions or omissions and a violation of his federal rights. *Lemire v. California Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013); *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

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

DISCUSSION

A. Plaintiff’s Allegations

Plaintiff has been released, but complains of acts that occurred at WSP during the ninety (90) days he was incarcerated there. The Complaint is forty-six (46) pages in length and details numerous events that occurred during Plaintiff’s tenure at WSP. The Court declines to expend its limited resources to review and summarize Plaintiff’s allegations since the Complaint clearly violates Rules 8 and 18 as previously discussed. In light of Plaintiff’s *pro se* status, he is given

1 the legal standards for the claims it appears he is attempting to state and is granted leave to file a
2 first amended complaint that is no more than twenty-five (25) pages long.

3 **B. Legal Standards**

4 **1. Deliberate Indifference to 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 v. Penner*, 439 F.3d 1091,
17 1096 (9th Cir. 2006) (quotation marks omitted)).

18 “Indications that a plaintiff has a serious medical need include the existence of an injury
19 that a reasonable doctor or patient would find important and worthy of comment or treatment; the
20 presence of a medical condition that significantly affects an individual’s daily activities; or the
21 existence of chronic or substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.
22 2014) (citation and internal quotation marks omitted); accord *Wilhelm v. Rotman*, 680 F.3d 1113,
23 1122 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000).

24 Deliberate indifference is “a state of mind more blameworthy than negligence” and
25 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’ ” *Farmer v.*
26 *Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319). Deliberate indifference is
27 shown where a prison official “knows that inmates face a substantial risk of serious harm and
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1 disregards that risk by failing to take reasonable measures to abate it.” *Id.*, at 847. Deliberate
2 indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004).
3 “Under this standard, the prison official must not only ‘be aware of the facts from which the
4 inference could be drawn that a substantial risk of serious harm exists,’ but that person ‘must also
5 draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a prison official should
6 have been aware of the risk, but was not, then the official has not violated the Eighth
7 Amendment, no matter how severe the risk.” *Id.* (quoting *Gibson v. County of Washoe, Nevada*,
8 290 F.3d 1175, 1188 (9th Cir. 2002)).

9 In medical cases, this requires showing: (a) a purposeful act or failure to respond to a
10 prisoner’s pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680
11 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). More generally, deliberate indifference “may
12 appear when prison officials deny, delay or intentionally interfere with medical treatment, or it
13 may be shown by the way in which prison physicians provide medical care.” *Id.* (internal
14 quotation marks omitted). Under *Jett*, “[a] prisoner need not show his harm was substantial.” *Id.*;
15 see also *McGuckin*, 974 F.2d at 1060 (“[A] finding that the defendant’s activities resulted in
16 ‘substantial’ harm to the prisoner is not necessary.”).

17 2. Due Process

18 The Fourteenth Amendment’s Due Process Clause protects persons against deprivations
19 of life, liberty, or property; and those who seek to invoke its procedural protection must establish
20 that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384
21 (2005). Prisoners have a protected interest in their personal property, *Hansen v. May*, 502 F.2d
22 728, 730 (9th Cir. 1974), but the procedural component of the Due Process Clause is not violated
23 by a random, unauthorized deprivation of property if the state provides an adequate post-
24 deprivation remedy, *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct. 3194, 3204 (1984); *Barnett*
25 *v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Rather, the Due Process Clause is violated only
26 when the agency “prescribes and enforces forfeitures of property without underlying statutory
27 authority and competent procedural protections.” *Nevada Dept. of Corrections v. Greene*, 648
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1 F.3d 1014, 1019 (9th Cir. 2011) (citing *Vance v. Barrett*, 345 F.3d 1083, 1090 (9th Cir. 2003))
2 (internal quotations omitted).

3 A state prisoner has no cause of action under 42 U.S.C. § 1983 for an unauthorized
4 deprivation of property, either intentional or negligent, by a state employee if a meaningful state
5 post-deprivation remedy for the loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).
6 California law provides an adequate post-deprivation remedy for any property deprivations.
7 *Barnett v. Centoni*, 31 F.3d 813, 816-817 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).

8 3. Access to Courts

9 Inmates have a fundamental constitutional right of access to the courts. *Lewis v. Casey*,
10 518 U.S. 343, 346 (1996). Claims for denial of access to the courts may arise from the frustration
11 or hindrance of “a litigating opportunity yet to be gained” (forward-looking access claim) or from
12 the loss of a meritorious suit that cannot now be tried (backward-looking claim). *Christopher v.*
13 *Harbury*, 536 U.S. 403, 412-15 (2002).

14 In either instance, “the injury requirement is not satisfied by just any type of frustrated
15 legal claim.” *Lewis*, 518 U.S. at 354. Inmates do not enjoy a constitutionally protected right “to
16 transform themselves into litigating engines capable of filing everything from shareholder
17 derivative actions to slip-and-fall claims.” *Id.* at 355. Rather, the type of legal claim protected is
18 limited to direct criminal appeals, habeas petitions, and civil rights actions such as those brought
19 under section 1983 to vindicate basic constitutional rights. *Id.* at 354 (quotations and citations
20 omitted). “Impairment of any *other* litigating capacity is simply one of the incidental (and
21 perfectly constitutional) consequences of conviction and incarceration.” *Id.* at 355 (emphasis in
22 original).

23 To assert a forward-looking access claim, the non-frivolous “underlying cause of action
24 and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice
25 to a defendant.” *Christopher v. Harbury*, 536 U.S. 403, 416 (2002). To state such a claim, the
26 plaintiff must describe this “predicate claim . . . well enough to apply the ‘non-frivolous’ test and
27 to show that the ‘arguable’ nature of the underlying claim is more than hope.” *Id.* It is not
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1 enough for Plaintiff merely to conclude that the claim was non-frivolous. The complaint should
2 instead “state the underlying claim in accordance with Federal Rule of Civil Procedure 8(a) just
3 as if it were being independently pursued, and a like plain statement should describe any remedy
4 available under the access claim and presently unique to it.” *Id.* at 417-418.

5 Moreover, when a prisoner asserts that he was denied access to the courts and seeks a
6 remedy for a lost opportunity to present a legal claim, he must show: (1) the loss of a non-
7 frivolous or arguable underlying claim; (2) the official acts that frustrated the litigation; and (3) a
8 remedy that may be awarded as recompense but that is not otherwise available in a future suit.
9 *Phillips v. Hust*, 477 F.3d 1070, 1076 (9th Cir.2007) (citing *Christopher*, 536 U.S. at 413-4140)
10 (overruled on other grounds, *Hust v. Phillips*, 555 U.S. 1150, 129 S.Ct. 1036 (2009) (reversed and
11 remanded *Phillips v. Hust*, on qualified immunity grounds without change or discussion of
12 elements for an access to court claim)).

13 Finally, “[a]lthough prison officials may not obstruct a prisoner's access to the courts by
14 unreasonably blocking his access to a law library, prison officials may place reasonable
15 limitations on library access in the interest of the secure and orderly operation of the institution.”
16 *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 545-48 (1979)). “[P]rison law libraries and legal
17 assistance programs are not ends in themselves, but only the means for ensuring a reasonably
18 adequate opportunity to present claimed violations of fundamental constitutional rights to the
19 courts.” *Id.*, at 351 (internal quotes and citations omitted).

20 **4. Supervisory Liability**

21 Under section 1983, liability may not be imposed on supervisory personnel for the actions
22 of their employees under a theory of *respondeat superior*. *Ashcroft v. Iqbal*, 556 U.S. 662, 677
23 (2009). Liability by a supervisor for “knowledge and acquiescence” in subordinates’ wrongful
24 discriminatory acts is likewise not cognizable. *Id.* “In a § 1983 suit or a *Bivens* action - where
25 masters do not answer for the torts of their servants - the term 'supervisory liability' is a
26 misnomer.” *Id.* Therefore, when a named defendant holds a supervisory position, the causal link
27 between him and the claimed constitutional violation must be specifically alleged. *See Fayle v.*
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1 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.
2 1978), cert. denied, 442 U.S. 941 (1979).

3 To state such a claim, a plaintiff must allege facts that show supervisory defendants either:
4 personally participated in the alleged deprivation of constitutional rights; knew of the violations
5 and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the
6 policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional
7 violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted);
8 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). An unconstitutional policy cannot be proved
9 by a single incident "unless proof of the incident includes proof that it was caused by an existing,
10 unconstitutional policy." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 105 S.Ct. 2427
11 (1985). In this instance, a single incident establishes a "policy" only when the decision-maker has
12 "final authority" to establish the policy in question. *Collins v. City of San Diego*, 841 F.2d 337,
13 341 (9th Cir. 1988), citing *Pembauer v. City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292 (1986).

14 Further, "discrete wrongs – for instance, beatings – by lower level Government actors . . .
15 if true and if condoned by [supervisors] could be the basis for some inference of wrongful intent
16 on [the supervisor's] part." *Iqbal*, 556 U.S. at 683. To this end, the Ninth Circuit has held that,
17 where the applicable constitutional standard is deliberate indifference, a plaintiff may state a
18 claim for supervisory liability based on the supervisor's knowledge of and acquiescence in
19 unconstitutional conduct by others. *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011). A fundamental
20 premise of this form of liability requires that the actions or inaction by subordinate staff amount
21 to a cognizable claim for violation of a plaintiff's constitutional rights and that the supervisory
22 defendant had knowledge of all such conduct.

23 **5. Inmate Appeals**

24 The Due Process Clause protects prisoners from being deprived of liberty without due
25 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). However, "inmates lack a
26 separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*,
27 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
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1 entitlement to a specific grievance procedure), citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.
2 1988). “[A prison] grievance procedure is a procedural right only, it does not confer any
3 substantive right upon the inmates.” *Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982)
4 accord *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); see also *Massey v. Helman*, 259
5 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on
6 prisoner). “Hence, it does not give rise to a protected liberty interest requiring the procedural
7 protections envisioned by the Fourteenth Amendment.” *Azeez v. DeRobertis*, 568 F. Supp. at 10;
8 *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

9 Actions in reviewing prisoner’s administrative appeal generally cannot serve as the basis
10 for liability under a § 1983 action. *Buckley*, 997 F.2d at 495. The argument that anyone who
11 knows about a violation of the Constitution, and fails to cure it, has violated the Constitution
12 himself is not correct. “Only persons who cause or participate in the violations are responsible.
13 Ruling against a prisoner on an administrative complaint does not cause or contribute to the
14 violation.” *Greeno v. Daley*, 414 F.3d 645, 656-57 (7th Cir.2005) accord *George v. Smith*, 507
15 F.3d 605, 609-10 (7th Cir. 2007); *Reed v. McBride*, 178 F.3d 849, 851-52 (7th Cir.1999); *Vance*
16 *v. Peters*, 97 F.3d 987, 992-93 (7th Cir.1996).

17 However, “a plaintiff may state a claim against a supervisor for deliberate indifference
18 based upon the supervisor’s knowledge of and acquiescence in unconstitutional conduct by his or
19 her subordinates.” *Starr v. Baca*, 652 F.3d 1202, 1207 (2011). Such knowledge and
20 acquiescence may be shown via the inmate appeals process where the supervisor was involved in
21 reviewing Plaintiff’s applicable inmate appeal and had the ability, but failed to take corrective
22 action so as to allow the violation to continue. However, such involvement in processing or
23 reviewing an inmate appeal based on one incident is necessarily insufficient. A defendant may be
24 held liable as a supervisor under § 1983 “if there exists either (1) his or her personal involvement
25 in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor’s
26 wrongful conduct and the constitutional violation.” *Hansen v. Black*, 885 F.2d 642, 646 (9th
27 Cir.1989). “[A] plaintiff must show the supervisor breached a duty to plaintiff which was the
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1 proximate cause of the injury. The law clearly allows actions against supervisors under section
2 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under
3 color of law of a federally secured right.” *Redman v. County of San Diego*, 942 F.2d 1435, 1447
4 (9th Cir. 1991) (internal quotation marks omitted)(abrogated on other grounds by *Farmer v.*
5 *Brennan*, 511 U.S. 825 (1994).

6 “The requisite causal connection can be established . . . by setting in motion a series of
7 acts by others,” *id.* (alteration in original; internal quotation marks omitted), or by “knowingly
8 refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably
9 should have known would cause others to inflict a constitutional injury,” *Dubner v. City & Cnty.*
10 *of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). “A supervisor can be liable in his individual
11 capacity for his own culpable action or inaction in the training, supervision, or control of his
12 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
13 reckless or callous indifference to the rights of others.” *Watkins v. City of Oakland*, 145 F.3d
14 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted).

15 Thus, if a plaintiff complains of actions by prison personnel in an inmate appeal that state
16 a cognizable claim against the prison personnel involved, which is processed or ruled on by their
17 supervisor and on which the supervisor fails to take actions to rectify or cease from continuing to
18 occur, a cognizable claim may be stated by showing that the supervisor knowingly refused to
19 terminate those acts by his subordinates.

20 **6. Eleventh Amendment Immunity**

21 Plaintiff may not sustain an action against the California Department of Corrections and
22 Rehabilitation (“CDCR”), or WSP. The Eleventh Amendment prohibits federal courts from
23 hearing suits brought against an un-consenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*,
24 951 F.2d 1050, 1053 (9th Cir. 1991); *see also Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114,
25 1122 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144
26 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh
27 Amendment bars suits against state agencies as well as those where the state itself is named as a
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1 defendant. *See Natural Resources Defense Council v. California Dep't of Transp.*, 96 F.3d 420,
2 421 (9th Cir. 1996); *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir.
3 1991); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department
4 of Prisons was a state agency entitled to Eleventh Amendment immunity); *Mitchell v. Los*
5 *Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). "Though its language
6 might suggest otherwise, the Eleventh Amendment has long been construed to extend to suits
7 brought against a state by its own citizens, as well as by citizens of other states." *Brooks*, 951
8 F.2d at 1053 (citations omitted). "The Eleventh Amendment's jurisdictional bar covers suits
9 naming state agencies and departments as defendants, and applies whether the relief is legal or
10 equitable in nature." *Id.* (citation omitted). Because the CDCR is a state agency and WSP is a
11 part of CDCR, they are immune from suit under the Eleventh Amendment and DISMISSED with
12 prejudice.

13 **7. State Law Claims**

14 Under the California Tort Claims Act ("CTCA"), set forth in California Government Code
15 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
16 employee or entity unless the plaintiff first presented the claim to the California Victim
17 Compensation and Government Claims Board ("VCGCB" or "Board"), and the Board acted on
18 the claim, or the time for doing so expired. "The Tort Claims Act requires that any civil
19 complaint for money or damages first be presented to and rejected by the pertinent public entity."
20 *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The purpose of this
21 requirement is "to provide the public entity sufficient information to enable it to adequately
22 investigate claims and to settle them, if appropriate, without the expense of litigation." *City of*
23 *San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701 (1974)
24 (citations omitted). Compliance with this "claim presentation requirement" constitutes an
25 element of a cause of action for damages against a public entity or official. *State v. Superior*
26 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). Thus, in the state
27 courts, "failure to allege facts demonstrating or excusing compliance with the claim presentation
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1 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
2 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn. omitted).

3 Federal courts likewise must require compliance with the CTCA for pendant state law
4 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
5 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
6 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
7 may proceed only if the claims were first presented to the state in compliance with the claim
8 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
9 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

10 Plaintiff fails to state any allegations which show he complied with the CTCA upon which
11 to be allowed to pursue claims for violations of California law in this action.

12 **8. Injunctive Relief**

13 Plaintiff seeks injunctive relief by way of referral to the District Attorney for violations of
14 the California Penal Code by WSP employees.

15 Federal courts are courts of limited jurisdiction and in considering a request for
16 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
17 have before it an actual case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103
18 S.Ct. 1660, 1665 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church*
19 *and State, Inc.*, 454 U.S. 464, 471 (1982). If the Court does not have an actual case or
20 controversy before it, it has no power to hear the matter in question. *Id.* Requests for prospective
21 relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act, which
22 requires that the Court find the “relief [sought] is narrowly drawn, extends no further than
23 necessary to correct the violation of the Federal right, and is the least intrusive means necessary to
24 correct the violation of the Federal right.”

25 Further, the pendency of this action does not give the Court jurisdiction over prison
26 officials in general or over the conditions of Plaintiff’s confinement. *Summers v. Earth Island*
27 *Institute*, 555 U.S. 488, 492-93 (2009); *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir.
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1 2010). The Court's jurisdiction is limited to the parties in this action and to the cognizable legal
2 claims upon which this action is proceeding. *Summers*, 555 U.S. at 492-93; *Mayfield*, 599 F.3d at
3 969.

4 Plaintiff does not seek the temporary restraining order and/or preliminary injunction
5 against any of the Defendants in this action. "A federal court may issue an injunction [only] if it
6 has personal jurisdiction over the parties and subject matter jurisdiction over the claim; *it may not*
7 *attempt to determine the rights of persons not before the court.*" *Zepeda v. United States*
8 *Immigration Service*, 753 F.2d 719, 727 (9th Cir. 1985) (emphasis added). Thus, Plaintiff's
9 motion must be denied for lack of jurisdiction over "the District Attorney" to whom Plaintiff
10 seeks referral of his claims.

11 Further, Plaintiff must establish that he has standing to seek preliminary injunctive relief
12 and "that he is under threat of suffering an 'injury in fact' that is concrete and particularized; the
13 threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to
14 challenged conduct of the defendant; and it must be likely that a favorable judicial decision will
15 prevent or redress the injury." *Summers*, 555 U.S. at 493 (citation and quotation marks omitted);
16 *Mayfield*, 599 F.3d at 969. The claims which Plaintiff alleges in this action arise from events
17 which occurred at WSP. Plaintiff is no longer in custody. Plaintiff thus lacks standing to seek
18 relief directed at remedying his conditions of confinement at WSP and any such requests were
19 rendered moot when he was released from custody. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th
20 Cir. 1995); *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991).

21 ORDER

22 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
23 amended complaint within **twenty-one (21) days**. Any first amended complaint shall not exceed
24 **twenty-five (25) pages** in length, exclusive of exhibits. If Plaintiff needs an extension of time to
25 comply with this order, Plaintiff shall file a motion seeking an extension of time no later than
26 thirty (30) days from the date of service of this order.

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

7 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
8 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
9 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
10 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
11 [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. 127, 555
12 (2007) (citations omitted).

13 Plaintiff is further reminded that an amended complaint supercedes the original, *Lacey v.*
14 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
15 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
16 pleading," Local Rule 220.

17 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
18 in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change
19 the nature of this suit by adding new, unrelated claims in his first amended complaint. *George v.*
20 *Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

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

- 22 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 23 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 24 3. Within **twenty-one (21) days** from the date of service of this order, Plaintiff must
25 file a first amended complaint curing the deficiencies identified by the Court in
26 this order or a notice of voluntary dismissal; and

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4. **If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order and to prosecute this action.**

IT IS SO ORDERED.

Dated: **January 27, 2017**

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE