

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, though, when a pleading says *too much*.
16 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e
17 have never held -- and we know of no authority supporting the proposition -- that a pleading may
18 be of unlimited length and opacity. Our cases instruct otherwise.”) (citing cases); *see also*
19 *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8,
20 and recognizing that “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case
21 impose unfair burdens on litigants and judges”).

22 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
23 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678,
24 quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff must set forth
25 “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*,
26 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual allegations are accepted as true, but
27 legal conclusions are not. *Iqbal*, 556 U.S. at 678; *see also Moss v. U.S. Secret Service*, 572 F.3d
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1 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

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

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

19 If he chooses to file a first amended complaint, Plaintiff should make it as concise as
20 possible by stating which of his constitutional rights he believes were violated by each Defendant
21 and factual basis for each claim. Plaintiff need not and should not cite legal authority for his
22 claims in a first amended complaint as his factual allegations are accepted as true.

23 **2. Linkage and Causation**

24 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or
25 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
26 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
27 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of
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1 substantive rights, but merely provides a method for vindicating federal rights elsewhere
2 conferred.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012)
3 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation
4 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,
5 or causal connection, between each defendant’s actions or omissions and a violation of his federal
6 rights. *Lemire v. California Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);
7 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

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

15 **DISCUSSION**

16 **A. Plaintiff’s Allegations**

17 Plaintiff is currently incarcerated at California Men’s Colony (“CMC”) in San Luis
18 Obispo, California, but his allegations are based on circumstances that allegedly occurred at the
19 Corcoran State Prison (“CSP”), in Corcoran, California. Plaintiff names the following prison
20 staff as Defendants: Senior Psychologist, Supervisor B. Adam, PhD; CEO Charles E. Young;
21 Primary Clinician L. Clausell; and Deputy Director J. Lewis.

22 Plaintiff alleges that he is “CCMS level of care” because he suffers auditory hallucinations
23 (commanding thoughts) that make him act out bizarre behaviors. (Doc. 1, p. 3.) He requested to
24 receive group therapy and was denied by CEO Young and Dr. Adams. (*Id.*) On September 7,
25 2015, Plaintiff admitted himself to a crisis bed because he was suffering from hearing
26 commanding voices and suicidal thoughts and tendencies. (*Id.*) Plaintiff alleges that Dr.
27 Clausell “discriminated against my mental illness which amounted to disciplinary punishment
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1 (sic) process.” (*Id.*) Plaintiff alleges that Dep. Dir. Lewis’ denial of Plaintiff’s Third Level
2 grievance “amounted to [his] mental health needs being discriminated against. . . .” (*Id.*)

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

6 **B. Legal Standards**

7 **1. Deliberate Indifference to Serious Medical Needs**

8 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a
9 prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need
10 is serious if failure to treat it will result in ‘ ‘significant injury or the unnecessary and wanton
11 infliction of pain.’ ’ ” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
12 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
13 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
14 Cir.1997) (en banc))

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

21 As to the first prong, indications of a serious medical need “include the existence of an
22 injury that a reasonable doctor or patient would find important and worthy of comment or
23 treatment; the presence of a medical condition that significantly affects an individual’s daily
24 activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060,
25 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); accord *Wilhelm*, 680 F.3d at
26 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). For screening purposes, Plaintiff’s
27 hallucinations and “commanding voices” are accepted as a serious medical need.

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

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

19 Plaintiff’s allegations are not cognizable as he fails to show that he medically required
20 group therapy as a treatment for his auditory hallucinations of which any of the named
21 Defendants were aware and intentionally denied. Plaintiff also fails to show that he was harmed
22 by any of the Defendants’ actions. Further, it is apparent from the exhibits attached to the
23 Plaintiff’s Complaint that although he was in fact receiving therapy, he nonetheless wanted to be
24 allowed to participate in group therapy outside of the presence of correctional personnel. (*See*
25 *Doc. 1-1*, at pp. 2, 3, 5, 6.) Plaintiff presents no allegations from which to infer that his medical
26 care is ineffective because it was given in the presence of correctional staff. Any such inference
27 need not be accepted since it is not facially plausible. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at
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1 969. Further, and particularly important given that Plaintiff was housed in the Secured Housing
2 Unit at the time (*see* Doc. 1-1, pp. 5, 6), deference is to be given “ ‘to correctional officials in the
3 context of maintaining security and discipline in the jail.’” *Harrington v. Scribner*, 785 F.3d 1299,
4 1307-08 (9th Cir. 2015), quoting *Florence v. Bd. of Chosen Freeholders*, --- U.S. ---, 132 S.Ct.
5 1510, 1515-16 (2012) (citing *Turner*, 482 U.S. at 89, 107 S.Ct. 2254). Plaintiff fails to state a
6 cognizable claim for deliberate indifference to his serious medical needs.

7 **2. Equal Protection -- Discrimination**

8 Plaintiff alleges that Defendants’ actions amounted to discrimination, or that they
9 discriminated against him. The Equal Protection Clause requires that persons who are similarly
10 situated be treated alike. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432,
11 439(1985); *Hartmann v. California Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir.
12 2013); *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013); *Shakur v. Schriro*, 514 F.3d
13 878, 891 (9th Cir. 2008). To state a claim, Plaintiff must show that Defendants intentionally
14 discriminated against him based on his membership in a protected class. *Hartmann*, 707 F.3d at
15 1123; *Furnace*, 705 F.3d at 1030; *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003);
16 *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005); *Lee v. City of Los*
17 *Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).

18 If the action in question does not involve a suspect classification, a plaintiff may establish
19 an equal protection claim by showing that similarly situated individuals were intentionally treated
20 differently without a rational relationship to a legitimate state purpose. *Engquist v. Oregon*
21 *Department of Agriculture*, 553 U.S. 591, 601-02 (2008); *Village of Willowbrook v. Olech*, 528
22 U.S. 562, 564 (2000); *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1972); *Lazy Y Ranch*
23 *Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008); *North Pacifica LLC v. City of Pacifica*, 526
24 F.3d 478, 486 (9th Cir. 2008), *see also Squaw Valley Development Co. v. Goldberg*, 375 F.3d
25 936, 944 (9th Cir.2004); *Sea River Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 679 (9th
26 Cir. 2002). To state an equal protection claim under this theory, a plaintiff must allege that: (1)
27 the plaintiff is a member of an identifiable class; (2) the plaintiff was intentionally treated
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1 differently from others similarly situated; and (3) there is no rational basis for the difference in
2 treatment. *Village of Willowbrook*, 528 U.S. at 564. To establish a violation of the Equal
3 Protection Clause, the prisoner must also present evidence of discriminatory intent. *See*
4 *Washington v. Davis*, 426 U.S. 229, 239-240 (1976); *Serrano*, 345 F.3d at 1081-82; *Freeman v.*
5 *Arpio*, 125 F.3d 732, 737 (9th Cir. 1997).

6 Plaintiff's Equal Protection claim is not cognizable. Plaintiff fails to state any allegations
7 to show his membership in a protected class or that he was intentionally treated differently from
8 others similarly situated. Nor does Plaintiff demonstrate any discriminatory intent on the part of
9 the named Defendants.

10 3. Inmate Appeals

11 It appears that Plaintiff intends to grieve the actions of Dr. Adams, CEO Young, and Dep.
12 Dir. Lewis for their involvement in the processing and reviewing of his inmate appeals in which
13 he attempted to obtain group therapy sessions within his housing unit outside the presence of
14 correctional staff.

15 The Due Process Clause protects prisoners from being deprived of liberty without due
16 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). To state a cause of action for
17 deprivation of due process, a plaintiff must first establish the existence of a liberty interest for
18 which the protection is sought. "States may under certain circumstances create liberty interests
19 which are protected by the Due Process Clause." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995).
20 Liberty interests created by state law are generally limited to freedom from restraint which
21 "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of
22 prison life." *Sandin*, 515 U.S. at 484.

23 "[A prison] grievance procedure is a procedural right only, it does not confer any
24 substantive right upon the inmates." *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (citing
25 *Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); *see also Ramirez v. Galaza*, 334 F.3d
26 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no entitlement to a
27 specific grievance procedure); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (existence of
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1 grievance procedure confers no liberty interest on prisoner); *Mann v. Adams*, 855 F.2d 639, 640
2 (9th Cir. 1988). “Hence, it does not give rise to a protected liberty interest requiring the
3 procedural protections envisioned by the Fourteenth Amendment.” *Azeez v. DeRobertis*, 568 F.
4 Supp. at 10; *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

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

15 Further, at least one Appellate Circuit has held that “[o]nce a [non-medical] prison
16 grievance examiner becomes aware of potential mistreatment, the Eight Amendment does not
17 require him or her to do more than ‘review [the prisoner’s] complaints and verif[y] with the
18 medical officials that [the prisoner] was receiving treatment.’” *Greeno*, 414 F.3d at 656 citing
19 *Spruill v. Gillis*, 372 F.3d 218, 236 (3rd Cir. 2004) (non-physician defendants cannot “be
20 considered deliberately indifferent simply because they failed to respond directly to the medical
21 complaints of a prisoner who was already being treated by the prison doctor” and if “a prisoner is
22 under the care of medical experts . . . a non-medical prison official will generally be justified in
23 believing that the prisoner is in capable hands.”) This Court concurs with the analysis in *Greeno*
24 and *Spruill*. Non-medical prison personnel and lower medical staff, such as nurses and/or
25 medical technicians, cannot be held liable for their involvement in processing and/or ruling on
26 inmate appeals for medical issues where the inmate is under the care of a physician for the issues
27 raised. Thus, since he has neither a liberty interest, nor a substantive right in inmate appeals,
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1 Plaintiff is unable to prove the elements of a constitutional violation against Dep. Dir. Lewis and
2 CEO Young for the processing and/or reviewing of his inmate appeals.

3 However, Plaintiff may be able to prove the elements for a claim under the Eight
4 Amendment for deliberate indifference to his serious medical needs against Dr. Adams since he
5 apparently had both medical training and the authority to intercede on Plaintiff's behalf. If
6 Plaintiff meets his burden of proof as to the elements of a claim against medical personnel for
7 deliberate indifference to his serious medical needs, he will likely also be able to meet his burden
8 of proof as to the elements of a claim against defendants with medical training if they reviewed
9 and ruled against Plaintiff in his medical appeals on that same issue. However, as discussed
10 above, Plaintiff has not stated a cognizable claim for deliberate indifference to his serious medical
11 needs. Thus, he fails to state a claim against Dr. Adams for failing to take corrective action via
12 the inmate appeals process.

13 **4. Supervisory Liability**

14 It appears that Plaintiff named CEO Young and Dep. Dir. Lewis based on their
15 supervisory positions. Generally, supervisory personnel are not liable under section 1983 for the
16 actions of their employees under a theory of *respondeat superior* -- when a named defendant
17 holds a supervisory position, the causal link between him and the claimed constitutional violation
18 must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v.*
19 *Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979).

20 To state a claim for relief under this theory, Plaintiff must allege some facts that would
21 support a claim that supervisory defendants either: personally participated in the alleged
22 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or
23 promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of
24 constitutional rights' and is 'the moving force of the constitutional violation.'" *Hansen v. Black*,
25 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045
26 (9th Cir. 1989). To show this, "a plaintiff must show the supervisor breached a duty to plaintiff
27 which was the proximate cause of the injury. The law clearly allows actions against supervisors
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1 under section 1983 as long as a sufficient causal connection is present and the plaintiff was
2 deprived under color of law of a federally secured right.” *Redman v. County of San Diego*, 942
3 F.2d 1435, 1447 (9th Cir. 1991)(internal quotation marks omitted)(abrogated on other grounds by
4 *Farmer v. Brennan*, 511 U.S. 825 (1994).

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

14 It is true that "inmates lack a separate constitutional entitlement to a specific prison
15 grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest
16 in processing of appeals because no entitlement to a specific grievance procedure), citing *Mann v.*
17 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988). “[A prison] grievance procedure is a procedural right
18 only, it does not confer any substantive right upon the inmates.” *Azeez v. DeRobertis*, 568 F.
19 Supp. 8, 10 (N.D. Ill. 1982) accord *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); see
20 also *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure
21 confers no liberty interest on prisoner).

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

27 Plaintiff's claim against Dep. Dir. Lewis rests exclusively on his involvement in the
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1 handling and processing of Plaintiff's inmate appeal, which as noted above is not actionable.
2 *Ramirez*, 334 F.3d at 860. Likewise, Plaintiff's allegations against CEO Young are not actionable
3 as Plaintiff fails to show that CEO Young had knowledge that Plaintiff needed group therapy
4 prior to Plaintiff's inmate appeal. Further, to be liable in a supervisory capacity, Plaintiff must
5 first state cognizable claims against subordinates of CEO Young and Dep. Dir. Lewis, which as
6 discussed above, Plaintiff has not done.

7 **ORDER**

8 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
9 amended complaint within **twenty-one (21) days**. If Plaintiff needs an extension of time to
10 comply with this order, Plaintiff shall file a motion seeking an extension of time no later than
11 **twenty-one (21) days** from the date of service of this order.

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

19 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
20 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
21 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
22 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
23 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
24 (2007) (citations omitted).

25 Plaintiff is further reminded that an amended complaint supercedes the original, *Lacey v.*
26 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
27 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
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1 pleading," Local Rule 220.

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

6 Based on the foregoing, it is **HEREBY ORDERED** that:

- 7 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 8 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 9 3. Within **twenty-one (21) days** from the date of service of this order, Plaintiff must
10 file a first amended complaint curing the deficiencies identified by the Court in
11 this order or a notice of voluntary dismissal; and
- 12 5. If Plaintiff fails to comply with this order, this action will be dismissed for failure
13 to obey a court order and for failure to state a cognizable claim.

14 IT IS SO ORDERED.

15 Dated: March 3, 2017

16 /s/ Sheila K. Olerto
17 UNITED STATES MAGISTRATE JUDGE