

1 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

2 **B. Summary of Plaintiff's Complaint**

3 Plaintiff complains of incidents that occurred at California Correctional Institute ("CCI")
4 in Tehachapi, California. CCI is the only defendant Plaintiff identified. Plaintiff alleges that, on
5 January 21, 2015, he was using the phone at his assigned time when he was attacked by a "drunk
6 level 4 inmate." Plaintiff ended up being shot twice by the tower officer and sprayed with 3 cans
7 of pepper-spray during the incident. Plaintiff alleges that the level 4 inmate is a trouble-maker
8 and has been in two more fights since. Plaintiff is a level 2 inmate who complies with the
9 requirements of his program, and has never had any write-ups during his entire term of
10 incarceration. Plaintiff seeks monetary damages and requests the "115 write up" and everything
11 about this incident be removed from his C-File.

12 Plaintiff has not stated any cognizable claims but may be able to correct the deficiencies in
13 his pleading so as to state a cognizable claim. Thus, he is being given the pleading requirements,
14 the legal standards for claims he may be attempting to state (though none are identified), and
15 leave to file a first amended complaint.

16 **C. Pleading Requirements**

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

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

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
28 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual

1 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
2 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

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

15 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
16 concise as possible and under twenty-five pages. He should merely state which of his
17 constitutional rights he feels were violated by each Defendant and its factual basis.

18 **2. Linkage Requirement**

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

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

24 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
25 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See*
26 *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
27 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
28 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates

1 in another's affirmative acts or omits to perform an act which he is legally required to do that
2 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
3 Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each named
4 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff's
5 federal rights.

6 Plaintiff fails to link any individual persons to any of his allegations. Plaintiff must
7 clearly state which individuals he feels are responsible for each violation of his constitutional
8 rights and their factual basis as his complaint must put them on notice of Plaintiff's claims against
9 him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

10 **D. Legal Standards**

11 **1. Eighth Amendment -- Failure to Protect**

12 "The treatment a prisoner receives in prison and the conditions under which he is confined
13 are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832,
14 114 S.Ct. 1970 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials
15 have a duty "to take reasonable measures to guarantee the safety of inmates, which has been
16 interpreted to include a duty to protect prisoners." *Labatad v. Corrections Corp. of America*, 714
17 F.3d 1155, 1160 (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040
18 (9th Cir. 2005)).

19 To establish a violation of this duty, the prisoner must "show that the officials acted with
20 deliberate indifference to threat of serious harm or injury to an inmate." *Labatad*, at 1160 (citing
21 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)). This involves both objective
22 and subjective components.

23 First, objectively, the alleged deprivation must be "sufficiently serious" and where a
24 failure to prevent harm is alleged, "the inmate must show that he is incarcerated under conditions
25 posing a substantial risk of serious harm." *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
26 349, 101 S.Ct. 2392 (1981). Second, subjectively, the prison official must "know of and
27 disregard an excessive risk to inmate health or safety." *Id.* at 837; *Anderson v. County of Kern*,
28 45 F.3d 1310, 1313 (9th Cir. 1995). A prison official must "be aware of facts from which the

1 inference could be drawn that a substantial risk of serious harm exists, and . . . must also draw the
2 inference." *Farmer*, 511 U.S. at 837, 114 S.Ct. 1970. Liability may follow only if a prison
3 official "knows that inmates face a substantial risk of serious harm and disregards that risk by
4 failing to take reasonable measures to abate it." *Id.* at 847, 114 S.Ct. 1970.

5 2. Supervisory Liability

6 Plaintiff is informed that supervisory personnel are generally not liable under section 1983
7 for the actions of their employees under a theory of *respondeat superior* and, therefore, when a
8 named defendant holds a supervisory position, the causal link between him and the claimed
9 constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th
10 Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941
11 (1979). To state a claim for relief under section 1983 based on a theory of supervisory liability,
12 Plaintiff must allege some facts that would support a claim that supervisory defendants either:
13 personally participated in the alleged deprivation of constitutional rights; knew of the violations
14 and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the
15 policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional
16 violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted);
17 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983, liability may not be
18 imposed on supervisory personnel for the actions of their employees under a theory of *respondeat*
19 *superior*. *Iqbal*, 556 U.S. at 677. "In a § 1983 suit or a *Bivens* action - where masters do not
20 answer for the torts of their servants - the term 'supervisory liability' is a misnomer." *Id.*
21 Knowledge and acquiescence of a subordinate's misconduct is insufficient to establish liability;
22 each government official is only liable for his or her own misconduct. *Id.*

23 "[B]are assertions . . . amount[ing] to nothing more than a "formulaic recitation of the
24 elements" of a constitutional discrimination claim,' for the purposes of ruling on a motion to
25 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth." *Moss*,
26 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). "Such
27 allegations are not to be discounted because they are 'unrealistic or nonsensical,' but rather
28 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the

1 form of a factual allegation.” *Id.* Thus, any allegations that supervisory personnel such as a
2 Warden is somehow liable because of the acts of those under his or her supervision does not state
3 a cognizable claim.

4 **3. Eleventh Amendment Immunity**

5 Plaintiff names CCI as the only defendant in this action. Plaintiff may not sustain an
6 action against a state prison. The Eleventh Amendment prohibits federal courts from hearing
7 suits brought against an un-consenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951
8 F.2d 1050, 1053 (9th Cir. 1991); *see also Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122
9 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993);
10 *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars
11 suits against state agencies as well as those where the state itself is named as a defendant. *See*
12 *Natural Resources Defense Council v. California Dep’t of Transp.*, 96 F.3d 420, 421 (9th Cir.
13 1996); *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *Taylor v.*
14 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
15 state agency entitled to Eleventh Amendment immunity); *Mitchell v. Los Angeles Community*
16 *College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). “Though its language might suggest otherwise,
17 the Eleventh Amendment has long been construed to extend to suits brought against a state by its
18 own citizens, as well as by citizens of other states.” *Brooks*, 951 F.2d at 1053 (citations omitted).
19 “The Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and
20 departments as defendants, and applies whether the relief is legal or equitable in nature.” *Id.*
21 (citation omitted). Because CCI is a part of the California Department of Corrections, which is a
22 state agency, it is entitled to dismissal based on Eleventh Amendment.

23 **4. Heck/Edwards Bar**

24 The United States Supreme Court has determined that an inmate may not bring an action
25 under § 1983 if its success would release the claimant from confinement or shorten its duration,
26 *Preiser v. Ridguez*, 411 U.S. 475, 500, 93 S.Ct. 1827 (1973), or would necessarily imply the
27 invalidity of the conviction or sentence, *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Where the
28 plaintiff’s success on a § 1983 action would necessarily imply the invalidity of his underlying

1 conviction or sentence, he must first "prove that the conviction or sentence has been reversed on
2 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
3 make such determination, or called into question by a federal court's issuance of a writ of habeas
4 corpus, 28 U.S.C. § 2254." *Heck* at 487-88. "A claim for damages bearing that relationship to a
5 conviction or sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at
6 488. This "favorable termination" requirement has been extended to actions under § 1983 that, if
7 successful, would imply the invalidity of prison administrative decisions which result in a
8 forfeiture of good-time credits. *Edwards v. Balisok*, 520 U.S. 641, 643–647 (1997).

9 Thus, if removal of the "115 write-up" from Plaintiff's file would result in resurrection of
10 any good-time credits, Plaintiff must show that the guilty finding they were based on has been
11 invalidated before he may pursue claims under § 1983. Plaintiff has not shown that any finding
12 against him under the 115 has been favorably terminated and thus cannot pursue any claims under
13 § 1983 on the underlying events at this time.

14 **E. CONCLUSION**

15 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
16 amended complaint within thirty days. If Plaintiff needs an extension of time to comply with this
17 order, Plaintiff shall file a motion seeking an extension of time no later than thirty days from the
18 date of service of this order.

19 Plaintiff must demonstrate in any first amended complaint how the conditions complained
20 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
21 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
22 defendant is involved. There can be no liability under section 1983 unless there is some
23 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
24 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
25 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

26 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
27 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
28 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*

1 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
2 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
3 (2007) (citations omitted).

4 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
5 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
6 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
7 pleading," Local Rule 220.

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

12 Based on the foregoing, the Court **ORDERS**:

- 13 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 14 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 15 3. Within 30 days from the date of service of this order, Plaintiff shall file a first
16 amended complaint curing the deficiencies identified by the Court in this order, or
17 a notice of voluntary dismissal; and
- 18 4. If Plaintiff fails to comply with this order, this action will be dismissed for failure
19 to obey a court order and for failure to state a claim.

20
21 IT IS SO ORDERED.

22 Dated: September 22, 2016

/s/ Jennifer L. Thurston
23 UNITED STATES MAGISTRATE JUDGE