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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PETER ANAYA,

 Plaintiff,

 v.

VAN VUGT, et al.,

 Defendants.

No. 1:16-cv-01094-SKO (PC)

**ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND**

(Doc. 12)

THIRTY (30) DAY DEADLINE

INTRODUCTION

A. Background

Plaintiff, Peter Anaya, is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. As discussed below, Plaintiff fails to state a cognizable claim upon which relief may be granted. The First Amended Complaint is **DISMISSED** with leave to file a second amended complaint.

B. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 C. Pleading Requirements

3 1. Federal Rule of Civil Procedure 8(a)

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

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

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

27 While “plaintiffs [now] face a higher burden of pleadings facts,” *Al-Kidd v. Ashcroft*,
28 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of *pro se* prisoners are still construed liberally

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

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

16 Plaintiff’s First Amended Complaint violates Rule 8 as it does not provide a short and
17 plain statement of his claims. Plaintiff instead repeats various mutations of his allegations
18 throughout 10 claims. Plaintiff’s sparse factual allegations are largely obscured by interjected
19 legal phrases and conclusory statements of liability which render his allegations convoluted and
20 nearly indecipherable. If he chooses to file a second amended complaint, Plaintiff should make it
21 as concise as possible by merely stating which of his constitutional rights he believes were
22 violated by each Defendant and its factual basis. Plaintiff **need not and should not cite legal**
23 **authority or conclusions** in a second amended complaint as his factual allegations are accepted
24 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
28 alternate claims, as many claims as the party has against an opposing party. However, Plaintiff

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

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

19 3. Linkage and Causation

20 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
21 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
22 1087, 1092 (9th Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
23 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). "Section 1983 is not itself a source of
24 substantive rights, but merely provides a method for vindicating federal rights elsewhere
25 conferred." *Crowley v. Nevada ex rel. Nevada Sec'y of State*, 678 F.3d 730, 734 (9th Cir. 2012)
26 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation
27 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,
28 or causal connection, between each defendant's actions or omissions and a violation of his federal

1 rights. *Lemire v. California Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);
2 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

3 A number of Plaintiff's claims are asserted against "Defendants - CDCR/Officers" which
4 is insufficient to link any specific officer to Plaintiff's allegations. Plaintiff's allegations must
5 demonstrate that each defendant personally participated in the deprivation of his rights. *Jones v.*
6 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This requires the presentation of factual allegations
7 sufficient to state a plausible claim for relief. *Iqbal*, 556 U.S. at 678-79; *Moss v. U.S. Secret*
8 *Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of
9 meeting this plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Prisoners
10 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
11 to have any doubt resolved in their favor. *Hebbe*, 627 F.3d at 342.

12 DISCUSSION

13 **A. Plaintiff's Allegations**

14 Plaintiff is currently incarcerated at California State Prison in Corcoran, California ("CSP-
15 Cor"), but complains of acts that occurred during a time when he was housed at the Substance
16 Abuse Treatment Facility ("SATF") in Corcoran, California. Plaintiff names Officer C. Wickert
17 as the only defendant in the First Amended Complaint and seeks injunctive relief. Plaintiff
18 appears to allege that Officer Wickert accessed Plaintiff's mental health records, and altered them
19 to reflect that he was sexually abused as a child, and then printed and dispersed Plaintiff's mental
20 health records to all 750 correctional officers and 4,000 inmates at SATF. Plaintiff contends that,
21 by doing this, Officer Wickert violated a number of his federal civil rights as well as a number of
22 California laws.

23 Plaintiff fails to state any cognizable claims. He is, however, provided with the applicable
24 legal standards for his delineated claims and an opportunity to file an amended complaint.

25 **B. Legal Standards**

26 **1. Deliberate Indifference to Plaintiff's Safety**

27 "The treatment a prisoner receives in prison and the conditions under which he is confined
28 are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832

1 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials have a duty “to take
2 reasonable measures to guarantee the safety of inmates, which has been interpreted to include a
3 duty to protect prisoners.” *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th
4 Cir. 2013) (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir.
5 2005)).

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

10 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
11 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions
12 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
13 349 (1981). Second, subjectively, the prison official must “know of and disregard an excessive
14 risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th
15 Cir. 1995). A prison official must “be aware of facts from which the inference could be drawn
16 that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Farmer*, 511
17 U.S. at 837. Liability may follow only if a prison official “knows that inmates face a substantial
18 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
19 *Id.* at 847.

20 As noted by the United States Supreme Court, a remedy for unsafe conditions need not
21 await a tragic event. Rather, where a risk/injury has yet to occur, plaintiff may prove that his
22 future health/safety is unreasonably endangered, “that it is contrary to current standards of
23 decency for anyone to be so exposed against his will, and that prison officials are deliberately
24 indifferent to his plight.” *Helling*, 509 U.S. at 33-35.

25 The question under the Eighth Amendment is whether prison officials, acting with
26 deliberate indifference, exposed a prisoner to a sufficiently substantial “risk of serious damage to
27 his future health” *Farmer*, at 843 (citing *Helling*, 509 U.S. at 35). The Supreme Court has
28 explained that “deliberate indifference entails something more than mere negligence . . . [but]

1 something less than acts or omissions for the very purpose of causing harm or with the knowledge
2 that harm will result.” *Id.*, at 835. The Court defined this “deliberate indifference” standard as
3 equal to “recklessness,” in which “a person disregards a risk of harm of which he is aware.” *Id.*,
4 at 836-37.

5 Though Plaintiff states that Officer Wickert’s actions endangered his safety, he does not
6 state any factual allegations to justify this conclusion. It is known and generally accepted that
7 informing other inmates that another inmate sexually abused a child may endanger that inmate’s
8 safety. However, Plaintiff provides no basis to support a finding that information -- whether true
9 or false -- that Plaintiff was a victim of sexual abuse as a child, would have the same effect and
10 the Court finds none.

11 **2. Harassment/Threats**

12 Verbal harassment or abuse alone is not sufficient to state a claim under section 1983.
13 *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987). Even threats do not rise to the level
14 of a constitutional violation. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987). Plaintiff is unable
15 to state a cognizable claim for any verbal harassment or threats to which he was subjected.

16 **3. Due Process**

17 **a. Procedural**

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). Plaintiff has not alleged any facts to support a claim that he was deprived of a protected
22 interest without procedural due process.

23 **b. Substantive**

24 “To establish a violation of substantive due process . . . , a plaintiff is ordinarily required
25 to prove that a challenged government action was clearly arbitrary and unreasonable, having no
26 substantial relation to the public health, safety, morals, or general welfare. Where a particular
27 amendment provides an explicit textual source of constitutional protection against a particular
28 sort of government behavior, that Amendment, not the more generalized notion of substantive due

1 process, must be the guide for analyzing a plaintiff's claims." *Patel v. Penman*, 103 F.3d 868,
2 874 (9th Cir. 1996) (citations, internal quotations, and brackets omitted), *cert. denied*, 520 U.S.
3 1240 (1997); *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998). Plaintiff has not alleged
4 any facts that would support a claim that his rights under the substantive component of the Due
5 Process Clause were violated.

6 **4. Equal Protection**

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

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

1 Clause, the prisoner must present evidence of discriminatory intent. *See Washington v. Davis*,
2 426 U.S. 229, 239-240 (1976); *Serrano*, 345 F.3d at 1081-82; *Freeman v. Arpio*, 125 F.3d 732,
3 737 (9th Cir. 1997).

4 Plaintiff does not state a cognizable Equal Protection claim. Plaintiff fails to state any
5 allegations to show his membership in a protected class, that he was intentionally treated
6 differently from others similarly situated, or any discriminatory intent by Officer Wickert.

7 **5. Privacy**

8 Plaintiff contends that his rights under HIPAA and “the Privacy Act” were violated when
9 Officer Wickert accessed and disseminated his mental health records. HIPAA provides no
10 private right of action; as such, Plaintiff’s HIPAA claim fails as a matter of law. *Seaton v.*
11 *Mayberg*, 610 F.3d 530, 533 (9th Cir. 2010) (citing *Webb v. Smart Document Solutions, LLC*, 499
12 F.3d 1078, 1081 (9th Cir. 2007)).

13 Although not expressly pled, to the extent Plaintiff’s claim can be construed as a claim for
14 violation of his constitutional rights under 42 U.S.C. § 1983, the complaint is devoid of any
15 support for a claim that Officer Wickert violated Plaintiff’s right to informational privacy under
16 the Due Process Clause of the Fourteenth Amendment. *Seaton*, 610 F.3d at 537-41. Assuming
17 the existence of a right in avoiding unauthorized disclosure of medical information, *Seaton*, 610
18 F.3d at 537-41; *see also NASA Aeronautics and Space Admin. v. Nelson*, ___ U.S. ___, ___, 131
19 S.Ct. 746, 751 (2011) (assuming without deciding that the Constitution protects a right of
20 privacy), Plaintiff’s allegations that Officer Wickert copied and distributed his mental health
21 records to every inmate and staff member at SATF is not facially plausible. *Iqbal*, 556 U.S. at
22 678.

23 **6. California Government Claims Act**

24 Under the Government Claims Act (“GCA”),¹ set forth in California Government Code
25 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
26

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 employee or entity unless the plaintiff first presented the claim to the California Victim
2 Compensation and Government Claims Board (“VCGCB” or “Board”), and the Board acted on
3 the claim, or the time for doing so expired. “The Tort Claims Act requires that any civil
4 complaint for money or damages first be presented to and rejected by the pertinent public entity.”
5 *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The purpose of this
6 requirement is “to provide the public entity sufficient information to enable it to adequately
7 investigate claims and to settle them, if appropriate, without the expense of litigation.” *City of*
8 *San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701 (1974)
9 (citations omitted). Compliance with this “claim presentation requirement” constitutes an
10 element of a cause of action for damages against a public entity or official. *State v. Superior*
11 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). Thus, in the state
12 courts, “failure to allege facts demonstrating or excusing compliance with the claim presentation
13 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
14 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn.omitted).

15 Federal courts likewise must require compliance with the GCA for pendant state law
16 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
17 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
18 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
19 may proceed only if the claims were first presented to the state in compliance with the claim
20 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
21 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

22 Plaintiff fails to state any allegations to establish that he complied with the GCA so as to
23 be permitted to pursue claims of defamation, slander, and libel under California law in this action.

24 **7. Federal Tort Claims Act**

25 The Federal Tort Claims Act (“FTCA”) provides federal tort liability based on actions of
26 officers or employees of any federal agency. 28 U.S.C. § 2671, *et seq.* Like the CGCA,
27 administrative exhaustion is a required element of a claim under the FTCA. *See Gillespie v.*
28 *Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (“The timely filing of an administrative claim is a

1 jurisdictional prerequisite to the bringing of a suit under the FTCA, and, as such, should be
2 affirmatively alleged in the complaint.” (internal citation omitted)). This is a jurisdictional
3 prerequisite to pursuing a tort claim against federal employees in a district court. *See Brady v.*
4 *United States*, 211 F.3d 499, 502 (9th Cir. 2000), cert. denied, 531 U.S. 1037, 121 S.Ct. 627
5 (2000) (stating that a claimant under the Federal Tort Claims Act must comply with 28 U.S.C. §
6 2675(a) before a district court can exert jurisdiction over the claim). “Because the requirement is
7 jurisdictional, it ‘must be strictly adhered to. This is particularly so since the FTCA waives
8 sovereign immunity. Any such waiver must be strictly construed in favor of the United States.’”
9 *Brady*, 211 F.3d at 502, quoting *Jerves v. United States*, 966 F.2d 517, 521 (9th Cir.1992).

10 Plaintiff has not named any federal government employees as defendants in this action to
11 proceed on any claims under the FTCA. Further, even if Plaintiff had named federal defendants,
12 he fails to state any allegations showing compliance with the FTCA to proceed on federal tort
13 claims in this action.

14 **ORDER**

15 For the reasons set forth above, Plaintiff’s First Amended Complaint is dismissed with
16 leave to file a second amended complaint within **thirty (30) days**. If Plaintiff needs an extension
17 of time to comply with this order, Plaintiff shall file a motion seeking an extension of time no
18 later than **thirty (30) days** from the date of service of this order.

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

26 Plaintiff’s second amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short
27 and plain statement must “give the defendant fair notice of what the . . . claim is and the grounds
28 upon 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 cautioned 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 second amended
11 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

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

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

20
21 IT IS SO ORDERED.

22 Dated: May 19, 2017

23 /s/ Sheila K. Oberto
24 UNITED STATES MAGISTRATE JUDGE