

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ARNOLDO TRUJILLO,

Plaintiff,

v.

SHERMAN, et al.,

Defendants.

Case No. 1:16-cv-01277-DAD-JLT (PC)**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND****(Doc. 1)****RESPONSE DUE WITHIN THIRTY DAYS****I. Background**

Plaintiff complains of events surrounding his placement on a 24-hour suicide watch at the Substance Abuse and Treatment Facility. Plaintiff fails to state a cognizable claim and the Complaint is dismissed with leave to amend.

A. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or 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, malicious, 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); 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three bases, a strike is imposed per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed

1 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
2 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
3 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

4 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
5 immunities secured by the Constitution and laws of the United States.” *Wilder v. Virginia Hosp.*
6 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
7 substantive rights, but merely provides a method for vindicating federal rights conferred
8 elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

9 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
10 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
11 violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487
12 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

13 **B. Factual allegations**

14 Plaintiff names Warden Stuart Sherman, Lieutenant D. Plunket, Sergeant J. Borges, and
15 the CDCR as Defendants and seeks monetary damages. Plaintiff outlines three Causes of
16 Action/Claims: (1) cruel and unusual punishment; (2) deliberate indifference; and (3) negligence.
17 These claims are premised on Plaintiff being placed on suicide watch.

18 Plaintiff does not state any cognizable claims, but may be able to amend to correct the
19 deficiencies in his pleading and is being given the applicable standards based on his stated claims
20 and leave to file a first amended complaint.

21 **C. Pleading Requirements**

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

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

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

8 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
9 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
10 and are afforded the benefit of any doubt. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir.
11 2013); *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, “the liberal pleading
12 standard . . . applies only to a plaintiff’s factual allegations,” *Neitze v. Williams*, 490 U.S. 319, 330
13 n.9 (1989), “a liberal interpretation of a civil rights complaint may not supply essential elements
14 of the claim that were not initially pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
15 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982), and courts
16 are not required to indulge unwarranted inferences, *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,
17 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The “sheer possibility that a
18 defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a
19 defendant’s liability” fall short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129
20 S. Ct. at 1949; *Moss*, 572 F.3d at 969. Plaintiff must identify specific facts supporting the
21 existence of substantively plausible claims for relief. *Johnson v. City of Shelby*, __ U.S. __, __,
22 135 S.Ct. 346, 347 (2014) (per curiam) (citation omitted).

23 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
24 concise as possible. He should merely state which of his constitutional rights he feels were
25 violated by each Defendant and its factual basis. Plaintiff should also state the date that the
26 incidents he complains of took place.

27 **2. Linkage Requirement**

28 To state a claim under 42 U.S.C. § 1983 there must be an actual connection or link

1 between the actions of the defendants and the deprivation alleged to have been suffered by
2 Plaintiff. See *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423
3 U.S. 362 (1976).

4 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
5 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
6 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
7 *Jones*, 297 F.3d at 934. "Section 1983 is not itself a source of substantive rights, but merely
8 provides a method for vindicating federal rights elsewhere conferred." *Crowley v. Nevada ex rel.*
9 *Nevada Sec'y of State*, 678 F.3d 730, 734 (9th Cir. 2012) (citing *Graham v. Connor*, 490 U.S.
10 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation marks omitted). To state a claim,
11 Plaintiff must allege facts demonstrating the existence of a link, or causal connection, between
12 each defendant's actions or omissions and a violation of his federal rights. *Lemire v. California*
13 *Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013); *Starr v. Baca*, 652 F.3d
14 1202, 1205-08 (9th Cir. 2011).

15 The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a
16 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
17 in another's affirmative acts or omits to perform an act which he is legally required to do that
18 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
19 Cir. 1978). Under section 1983, Plaintiff must demonstrate that each defendant personally
20 participated in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

21 Plaintiff must clarify which defendant he feels are responsible for each violation of his
22 constitutional rights and the factual basis for each violation to put each Defendant on notice of
23 Plaintiff's claims against him or her. See *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

24 3. CDCR

25 Plaintiff may not sustain an action against a state prison. The Eleventh Amendment
26 prohibits federal courts from hearing suits brought against a state sovereign. *Brooks v. Sulphur*
27 *Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); see also *Seminole Tribe of Fla. v.*
28 *Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*,

1 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The
2 Eleventh Amendment bars suits against state agencies as well as those where the state itself is
3 named as a defendant. *See Natural Resources Defense Council v. California Dep't of Transp.*, 96
4 F.3d 420, 421 (9th Cir. 1996); *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053
5 (9th Cir. 1991); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada
6 Department of Prisons was a state agency entitled to Eleventh Amendment immunity); *Mitchell v.*
7 *Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). "Though its language
8 might suggest otherwise, the Eleventh Amendment has long been construed to extend to suits
9 brought against a state by its own citizens, as well as by citizens of other states." *Brooks*, 951
10 F.2d at 1053 (citations omitted). "The Eleventh Amendment's jurisdictional bar covers suits
11 naming state agencies and departments as defendants, and applies whether the relief is legal or
12 equitable in nature." *Id.* (citation omitted). Plaintiff may not maintain an action against the
13 CDCR, which is a state agency, as it is entitled to dismissal based on the Eleventh Amendment.

14 **D. Claims for Relief**

15 **1. Claim 1 (Doc. 1, p. 3.)**

16 In this claim, Plaintiff alleges that he was forced to stand in a holding cage even when he
17 informed Sgt. Borges that he was diabetic and did not say that he wanted to hurt himself.
18 Plaintiff alleges that the procedure at SATF is that Lt. Plunket is informed of a situation which
19 Sgt. Borges investigates and determines whether allegations are true. Plaintiff was "stripped
20 down naked, put into a cold room with no blankets and placed on suicide watch for 24-hours" to
21 make sure Plaintiff did not want to hurt himself. Plaintiff told Sgt. Borges that he never wanted
22 to hurt himself, nor did he ever tell anyone he wanted to do so. After 24-hours, it came to light
23 that Plaintiff was being investigated for harassment via the prison phones. He was eventually
24 cleared of all charges and returned to F-yard. Plaintiff says the allegations should have been
25 investigated before he was put on suicide watch. Plaintiff alleges that he is innocent until proven
26 guilty and that Warden Sherman should have protocols in place to prevent this kind of a situation
27 from happening. Plaintiff alleges that these circumstances violated his rights under the Eighth
28

1 Amendment to freedom from cruel and unusual punishment, under the Fourteenth Amendment to
2 due process, and amounted to retaliation.

3 **a. Cruel & Unusual Punishment**

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

13 The deliberate indifference standard involves both an objective and a subjective prong.
14 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” *Farmer* at 834.
15 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate
16 health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995).
17 Objectively, extreme deprivations are required to make out a conditions of confinement claim and
18 only those deprivations denying the minimal civilized measure of life’s necessities are
19 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
20 503 U.S. 1, 9 (1992).

21 The Constitution “ ‘does not mandate comfortable prisons,’ ” *Wilson v. Seiter*, 501 U.S.
22 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 349), and temporarily unconstitutional conditions
23 of confinement do not necessarily rise to the level of constitutional violations, *see Anderson*, 45
24 F.3d 1310, *ref. Hoptowit*, 682 F.2d at 1258 (*abrogated on other grounds by Sandin*, 515 U.S. 472
25 (in evaluating challenges to conditions of confinement, length of time the prisoner must go
26 without basic human needs may be considered)). While being placed in a cold cell room without
27 clothing or blankets may amount to deprivation of adequate clothing/warmth, Plaintiff twice
28 states that he was on suicide watch under these conditions for only 24-hours. Being subjected to

1 deplorable conditions for a single day does not amount to an objectively extreme deprivation to
2 state a cognizable claim under the Eighth Amendment.

3 Subjectively, if Plaintiff had shown an objective deprivation, he would be required to
4 show that prison officials acted with a sufficiently culpable state of mind, that of “deliberate
5 indifference.” *Wilson*, 501 U.S. at 303; *Labatad*, 714 F.3d at 1160; *Johnson*, 217 F.3d at 733.
6 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th
7 Cir.2004). “Under this standard, the prison official must not only ‘be aware of the facts from
8 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
9 ‘must also draw the inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). Being without
10 clothing and a blanket for 24-hours does not provide basis for a prison official to suspect a
11 substantial risk of serious harm exists. On the contrary, however, where there is basis to suspect
12 that an inmate is suicidal, failure to take measures for that person’s safety -- including removing
13 clothing and blankets with which he might cause himself harm -- would amount to deliberate
14 indifference. Thus, Plaintiff’s allegations of being placed on suicide watch without clothes or
15 blankets for 24-hours does not state a cognizable claim under the Eighth Amendment.

16 **b. Retaliation**

17 Prisoners have a First Amendment right to file grievances against prison officials and to
18 be free from retaliation for doing so. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th Cir.
19 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009). A retaliation claim has five
20 elements. *Id.* at 1114.

21 First, the plaintiff must show that the retaliated-against conduct is protected. *Id.* The
22 filing of an inmate grievance is protected conduct, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th
23 Cir. 2005), as are the rights to speech or to petition the government, *Rizzo v. Dawson*, 778 F.2d
24 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989);
25 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Second, the plaintiff must show the
26 defendant took adverse action against the plaintiff. *Rhodes*, at 567. Third, the plaintiff must
27 show a causal connection between the adverse action and the protected conduct. *Waitson*, 668
28 F.3d at 1114. Fourth, the plaintiff must show that the “official’s acts would chill or silence a

1 person of ordinary firmness from future First Amendment activities.” *Rhodes*, 408 F.3d at 568
2 (internal quotation marks and emphasis omitted). Fifth, the plaintiff must show “that the prison
3 authorities’ retaliatory action did not advance legitimate goals of the correctional institution. . . .”
4 *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

5 It bears repeating that while Plaintiff must show facts sufficient to support a plausible
6 claim for relief; the mere possibility of misconduct is not sufficient, *Iqbal*, 556 U.S. at 678-79,
7 and the Court is “not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*,
8 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The conduct
9 identified by Plaintiff as retaliatory must have been motivated *by* his engaging in a protected
10 activity, and the retaliatory conduct must *not* have reasonably advanced a legitimate penological
11 goal. *Brodheim*, 584 F.3d at 1271-72 (citations omitted). Thus, merely showing that Plaintiff
12 engaged in protected activity, without knowledge resulting in animus by a Defendant, is
13 insufficient to show that Plaintiff’s protected activity was the motivating factor behind a
14 Defendant’s actions. Here, Plaintiff merely checked the retaliation box at the top of the page on
15 Claim 1, but did not state allegations to meet *any* of the elements for a cognizable retaliation
16 claim.

17 c. Due Process

18 The Due Process Clause protects Plaintiff against the deprivation of liberty without the
19 procedural protections to which he is entitled under the law. *Wilkinson v. Austin*, 545 U.S. 209,
20 221, 125 S.Ct. 2384 (2005). “[L]awfully incarcerated persons retain only a narrow range of
21 protected liberty interests.” *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). “As long as the
22 conditions or degree of confinement to which the prisoner is subjected is within the sentence
23 imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does
24 not in itself subject an inmate’s treatment by prison authorities to judicial oversight.” *Montanye*
25 *v. Haymes*, 427 U.S. 236, 242 (1976). Transfer to less amenable quarters for non-punitive
26 reasons has been held to be “ordinarily contemplated by a prison sentence.” *Hewitt*, 459 U.S. at
27 468; *see also Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (explaining that “[t]he Constitution
28 itself does not give rise to a liberty interest in avoiding transfer to more adverse conditions of

1 confinement”). Indeed, the Due Process Clause does not protect against all changes in conditions
2 of confinement even where they “hav[e] a substantial adverse impact on the prisoner involved.”
3 *Meachum v. Fano*, 427 U.S. 215, 224 (1976).

4 To state a claim, Plaintiff must first identify the interest at stake. *Wilkinson*, 545 U.S. at
5 221. Liberty interests may arise from the Due Process Clause itself or from state law. *Id.* The
6 Due Process Clause does not confer on inmates a liberty interest in avoiding more adverse
7 conditions of confinement, and under state law, the existence of a liberty interest created by
8 prison regulations is determined by focusing on the nature of the condition of confinement at
9 issue. *Id.* at 221-23 (citing *Sandin v. Conner*, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995))
10 (quotation marks omitted). Liberty interests created by prison regulations are generally limited to
11 freedom from restraint which imposes atypical and significant hardship on the inmate in relation
12 to the ordinary incidents of prison life. *Wilkinson*, 545 U.S. at 221 (citing *Sandin*, 515 U.S. at
13 484) (quotation marks omitted); *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007).

14 “It is plain, that the transfer of an inmate to less amenable and more restrictive quarters for
15 non-punitive reasons is well within the terms of confinement ordinarily contemplated by a prison
16 sentence.” *Toussaint v. McCarthy*, 801 F.2d 1080, 1091-92 (9th Cir.1986). “Only the most
17 extreme changes in the conditions of confinement have been found to directly invoke the
18 protections of the Due Process Clause, such as involuntary commitment to a mental institution, or
19 the forced administration of psychotropic drugs. *Chappell v. Mandeville*, 706 F.3d 1052, 1062-
20 1063 (9th Cir. 2013) (citing *Vitek v. Jones*, 445 U.S. 480, 493-94 (1980); *Washington v. Harper*,
21 494 U.S. 210, 221-22 (1990)). “[A]dministrative segregation is the sort of confinement that
22 inmates should reasonably anticipate receiving at some point in their incarceration.” *Toussaint v.*
23 *McCarthy*, 801 F.2d 1080, 1091-92 (9th Cir.1986). “An investigative contraband watch is [also]
24 the type of condition of confinement that is ordinarily contemplated by the sentence imposed.”
25 *Chappell v. Mandeville*, 706 F.3d 1052, 1062-1063 (9th Cir. 2013).

26 Plaintiff’s allegation that he was placed on a 24-hour suicide watch without blankets or
27 clothes does not meet the extreme requirements necessary to state a conditions of confinement
28 claim under the Due Process Clause.

1 **d. Supervisory Liability**

2 Plaintiff seeks to hold Warden Sherman liable for his placement on 24-hour suicide watch.
3 Under section 1983, liability may not be imposed on supervisory personnel for the actions of their
4 employees under a theory of *respondeat superior*. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).
5 “In a § 1983 suit or a *Bivens* action - where masters do not answer for the torts of their servants -
6 the term ‘supervisory liability’ is a misnomer.” *Id.* Therefore, when a named defendant holds a
7 supervisory position, the causal link between him and the claimed constitutional violation must be
8 specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*,
9 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979).

10 To state such a claim, a plaintiff must allege facts that show supervisory defendants either:
11 personally participated in the alleged deprivation of constitutional rights; knew of the violations
12 and failed to act to prevent them; or promulgated or “implemented a policy so deficient that the
13 policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of the
14 constitutional violation.’” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations
15 omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). An unconstitutional policy cannot
16 be proved by a single incident “unless proof of the incident includes proof that it was caused by
17 an existing, unconstitutional policy.” *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 105
18 S.Ct. 2427 (1985). In this instance, a single incident establishes a “policy” only when the
19 decision-maker has “final authority” to establish the policy in question. *Collins v. City of San*
20 *Diego*, 841 F.2d 337, 341 (9th Cir. 1988), citing *Pembauer v. City of Cincinnati*, 475 U.S. 469
21 (1986).

22 Plaintiff fails to state any allegations to show that Warden Sherman personally
23 participated in his placement on 24-hour suicide watch, that he knew Plaintiff was placed on 24-
24 hour suicide watch and that Plaintiff was not suicidal and failed to act to prevent it; or that this
25 occurred more than once for Warden Sherman to have promulgated or implemented a deficient
26 policy.

27 **2. Claim 2 (Doc. 1, p. 4.)**

28 In this claim, Plaintiff alleges that he has diabetes, that staff at SATF knew of his

1 condition and that he told staff he is diabetic when he was placed on 24-hour suicide watch.
2 Despite this, Plaintiff alleges that he was not provided his required medication. Plaintiff alleges
3 this put him at risk of serious injury, even death. Plaintiff alleges that Sgt. Borges and Lt. Plunket
4 did not follow proper procedure and should have investigated the allegations and a captain should
5 have been informed before he was placed on suicide watch. Plaintiff alleges that this “chain of
6 command” failed in his situation and that Warden Sherman is responsible for making sure that
7 staff know of a serious medical need or condition and address it. As a result of being placed in
8 the holding cage, Plaintiff states that his hip and back were bruised and his knee hurt from the
9 hours of standing. Plaintiff states that the pain continued 4 to 5 days, but that the humiliation he
10 suffered still exists.

11 **a. Deliberate Indifference to Serious Medical Needs**

12 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a
13 prisoner's] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need
14 is serious if failure to treat it will result in ‘ “significant injury or the unnecessary and wanton
15 infliction of pain.” ’ ” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
16 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
17 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
18 Cir.1997) (en banc))

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

25 As to the first prong, indications of a serious medical need “include the existence of an
26 injury that a reasonable doctor or patient would find important and worthy of comment or
27 treatment; the presence of a medical condition that significantly affects an individual’s daily
28 activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060,

1 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); *accord Wilhelm*, 680 F.3d at
2 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). For screening purposes, Plaintiff's
3 diabetes, which apparently required medication to regulate, is accepted as a serious medical need.

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

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

22 Plaintiff fails to state allegations to show that his inability to access the medication for his
23 diabetes for 24-hours subjected him to a substantial risk of serious harm or that he suffered any
24 physical injury as a result. Further, though Plaintiff states that "staff" at SATF knew he is
25 diabetic and that he informed "staff" that he needed his medication, a general title such as "staff"
26 is insufficient to link any of the named defendants to Plaintiff's allegations under section 1983.
27 *Monell*, 436 U.S. 658; *Rizzo*, 423 U.S. 362.

28 Under this claim Plaintiff also fails to state any allegations to show that Warden Sherman

1 personally participated in denying him medication for his diabetes while Plaintiff was on 24-hour
2 suicide watch, that he knew Plaintiff was placed on 24-hour suicide watch and didn't have access
3 to his diabetes medication; or that this occurred more than once for Warden Sherman to have
4 promulgated or implemented a deficient policy which caused or allowed the situation to occur.

5 **3. Claim 3 (Doc. 1, p. 5.)**

6 In this claim, Plaintiff alleges that when he was placed on 24-hour suicide watch his
7 property was removed from his regular cell and some of his items (coffee, food, hygiene supplies)
8 were lost and his TV was broken. Plaintiff again states that he was placed on suicide watch for
9 officers to investigate allegations that he was harassing someone via telephone. Plaintiff alleges
10 that Sgt. Borges, Lt. Plunket, and Warden Sherman "should have never allowed this kind of
11 negligence under their authority by staff or anyone else."

12 **a. State Law Claim -- Negligence**

13 Plaintiff states that this claim is for negligence over the loss/destruction of his property
14 which is a tort action under California law. Under the California Government Claims Act
15 ("CGCA"),¹ set forth in California Government Code sections 810 et seq., a plaintiff may not
16 bring a suit for monetary damages against a public employee or entity unless the plaintiff first
17 presented the claim to the California Victim Compensation and Government Claims Board, and
18 the Board acted on the claim, or the time for doing so expired. "The Tort Claims Act requires
19 that any civil complaint for money or damages first be presented to and rejected by the pertinent
20 public entity." *Munoz v. California*, 33 Cal.App.4th 1767, 1776 (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 San*
23 *Jose v. Superior Court*, 12 Cal.3d 447, 455 (1974) (citations omitted), and "to confine potential
24 governmental liability to rigidly delineated circumstances: immunity is waived only if the various
25 requirements of the Act are satisfied," *Nuveen Mun. High Income Opportunity Fund v. City of*

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 *Alameda, Cal.*, 730 F.3d 1111, 1125 (9th Cir. 2013). Compliance with this “claim presentation
2 requirement” constitutes an element of a cause of action for damages against a public entity or
3 official. *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116
4 (2004). Thus, in the state courts, “failure to allege facts demonstrating or excusing compliance
5 with the claim presentation requirement subjects a claim against a public entity to a demurrer for
6 failure to state a cause of action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn.omitted).

7 Federal courts likewise must require compliance with the CGCA for pendant state law
8 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
9 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
10 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
11 may proceed only if the claims were first presented to the state in compliance with the claim
12 presentation requirement. *Karim–Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
13 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

14 Plaintiff fails to state any allegations which show he complied with the CGCA upon
15 which to be allowed to pursue claims for violation of California law in this action.

16 Further, “[a]n action in negligence requires a showing that the defendant owed the
17 plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or
18 legal cause of injuries suffered by the plaintiff. [Citations.]” *Regents of the Univ. of California v.*
19 *Superior Court of Los Angeles Cty.*, 240 Cal. App. 4th 1296, 1310 (2015), *reh'g denied* (Oct. 26,
20 2015) quoting *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673 (*Ann M.*)
21 [disapproved on another ground in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5].)
22 Plaintiff fails to state any allegations to address the elements of a negligence cause of action.

23 As Claim 3 is entirely based on his property that was either negligently or intentionally
24 lost or broken, Plaintiff must pursue any such claim under California law. A state prisoner has no
25 cause of action under 42 U.S.C. § 1983 for an unauthorized deprivation of property, either
26 intentional or negligent, by a state employee if a meaningful state post-deprivation remedy for the
27 loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). California law provides an
28 adequate post-deprivation remedy for any property deprivations. *Barnett v. Centoni*, 31 F.3d 813,

1 816-817 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).

2 **II. CONCLUSION**

3 For the reasons set forth above, Plaintiff's Complaint is dismissed, with leave to file a first
4 amended complaint **within 30 days**. If Plaintiff chooses not to pursue this issue in an action
5 under § 1983, he may file a notice of voluntary dismissal of this action in that same time. If
6 Plaintiff fails to file either a first amended complaint or a notice of voluntary dismissal, the action
7 will be dismissed for his failure to state a claim which may count as a strike under 28 U.S.C. §
8 1915. If Plaintiff needs an extension of time to comply with this order, Plaintiff shall file a
9 motion seeking an extension of time no later than thirty days from the date of service of this
10 order.

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

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

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

28 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified

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

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

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

13 IT IS SO ORDERED.

14 Dated: **April 28, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE