

1 (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); see also *Palmer v. Roosevelt Lake Log*
2 *Owners Ass'n*, 651 F.2d 1289, 1294 (9th Cir. 1981).

3 **II. Pleading Requirements**

4 **A. Federal Rule of Civil Procedure 8(a)**

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

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

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

28 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,

1 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of *pro se* inmates and detainees are still
2 construed liberally and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342
3 (9th Cir. 2010). However, "the liberal pleading standard . . . applies only to a plaintiff's factual
4 allegations," *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989), "a liberal interpretation of a civil
5 rights complaint may not supply essential elements of the claim that were not initially pled,"
6 *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of*
7 *Regents*, 673 F.2d 266, 268 (9th Cir. 1982)), and courts are not required to indulge unwarranted
8 inferences, *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation
9 marks and citation omitted). The "sheer possibility that a defendant has acted unlawfully" is not
10 sufficient, and "facts that are 'merely consistent with' a defendant's liability" fall short of
11 satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at
12 969.

13 Further, "repeated and knowing violations of Federal Rule of Civil Procedure 8(a)'s 'short
14 and plain statement' requirement are strikes as 'fail[ures] to state a claim,' 28 U.S.C. § 1915(g),
15 when the opportunity to correct the pleadings has been afforded and there has been no
16 modification within a reasonable time." *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
17 2013). If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
18 concise as possible. He should merely state which of his constitutional rights he feels were
19 violated by each named defendant and its factual basis. Plaintiff need not and should not cite
20 legal authority for his claims in a first amended complaint. His factual allegations are accepted as
21 true and need not be bolstered by legal authority at the pleading stage. If Plaintiff files a first
22 amended complaint, his factual allegations will be screened under the legal standards and
23 authorities stated in this order.

24 **B. Linkage and Causation**

25 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
26 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
27 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
28 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). "Section 1983 is not itself a source of

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 and to put each
11 defendant on notice of their allegedly offending acts. *Iqbal*, 556 U.S. at 678-79; *Moss v. U.S.*
12 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short
13 of meeting this plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

14 **III. Discussion**

15 **A. Plaintiff’s Allegations**

16 Plaintiff alleges that he is civilly detained at Coalinga State Hospital (“CSH”) pursuant to
17 California’s Sexually Violent Predator Act contained within Welfare & Institution Code sections
18 6600 et seq. (“SVPA”). One so detained is a Sexually Violent Predator (“SVP”) which is
19 statutorily defined as an individual with “a diagnosed mental disorder that makes the person a
20 danger to the health and safety of others in that it is likely that he or she will engage in sexually
21 violent criminal behavior.” Welf. & Inst. Code § 6600(a).¹ The SVPA authorizes the involuntary
22 civil commitment of a person who has completed a prison term, but has been given a “full
23 evaluation” and found to be a sexually violent predator. *Reilly v. Superior Court*, 57 Cal.4th 641,
24 646 (2013); *People v. McKee*, 47 Cal.4th 1172, 1185 (2010).

25 Plaintiff complains that the circumstances under which he is detained at CSH are causing

26 ¹ California voter-approved Proposition 83 extended the term of commitment under the SVPA to an indeterminate
27 period, ensuring the SVP remains in custody until successfully proving he or she is “no longer an SVP or the
28 Department of Mental Health determines he [or she] no longer meets the definition of an SVP.” *Bourquez v.*
Superior Court, 156 Cal.App.4th 1275, 1287 (2007); Welf. & Inst. Code §§ 6605, 6608(i).

1 him to have anxiety attacks, for which he seeks injunctive and declaratory relief as well as
2 monetary damages. Specifically, Plaintiff alleges that he suffers from Post-Traumatic Stress
3 Disorder that was brought on when he was sexually abused by cellmates in 1993, 1994, and 2010
4 - before he arrived at CSH in May of 2016. (Doc. 1, p. 7.) As a result of his PTSD, Plaintiff
5 cannot be celled with other males, or supervised while he sleeps by male staff. When he is
6 subjected to these conditions, he experiences anxiety attacks and requires a private room with
7 observation only by female staff. While in a dorm room with three other patients, one of them
8 alleged that he was sexually assaulted and Plaintiff was present during conversations that patient
9 had with staff which triggered him to have emotional stress and flash backs of his own sexual
10 abuse when in double housing. (*Id.*, p. 8.) Plaintiff produced documents to CSH staff under
11 which he received single-cell status before his transfer to CSH but was ridiculed when he
12 requested it and that he not be supervised by male staff. (*Id.*, p. 10.) Despite the fact that he
13 could have been placed in a single room, Plaintiff's treatment team initially "placed 1:1 males on
14 him which triggered his PTSD and causing [sic] chest pain, anxiety attacks and mental and
15 emotional trauma, when plaintiff complained, staff retaliated by falsifying disciplinary reports."
16 (*Id.*) When he asked not to be supervised by males, he was ridiculed, and when he was
17 supervised by females he was falsely accused of "masturbating under the covers." (*Id.*, pp. 10-
18 11.)

19 Plaintiff alleges that "nurse John Doe African American," who is openly homosexual,
20 subjected him to excessive force by responding with "So what?" when Plaintiff expressed his
21 fears of being raped in his sleep if in 1:1 male housing. (*Id.*, p. 12.) When Plaintiff further
22 complained to this nurse, the nurse "reached out and did a sharp finger thrust poke in vital chest
23 area causing pain and kept making threats." (*Id.*) Plaintiff called 911 and filed a complaint. (*Id.*)

24 Plaintiff filed a lawsuit (1:16-cv-1114) in which he filed a request for injunctive relief. As
25 a result, staff agreed to place Plaintiff in a single room and set up a treatment plan for him to stay
26 in unit 5 and to receive treatment of his PTSD from the sexual abuses he was subjected to while
27 in prison. (*Id.*, p. 13.) Plaintiff withdrew that lawsuit as part of the treatment plan, but once he
28 did so, Defendants Weshler, Jones, and Mwangi "have retaliated and refuse to switch teams"

1 which causes Plaintiff to suffer further mental injury and to have anxiety attack which “could kill
2 plaintiff or cause high blood pressure and stroke, etc.” (*Id.*)

3 Subsequently, Plaintiff was placed in a single room -- where he apparently continues to
4 reside. (*Id.*, p. 13.) However, he complains that his room does not have TV or radio reception (as
5 is available in other single rooms). (*Id.*, pp. 13-14.) Further, his room is by the “mop room”
6 where other patients hang and loudly horse-around, which prevents him from being able “to get
7 some rest and clear his head, is causing anxiety to raise mental trauma.” (*Id.*, p. 14.) Plaintiff
8 alleges that the patients in the mop room area engage in “horse play” and “sex play” which causes
9 him to have flash backs. (*Id.*, p. 15.) Plaintiff alleges that, because of this, he is forced to stay out
10 of his room and go to the day room, but that other patients also engage in “horse play” and “sex
11 play” in the dayroom. (*Id.*)

12 Plaintiff alleges that his unit supervisor found another room for Plaintiff to move to that
13 had reception, and that Defendant Faina had no objection to Plaintiff moving, but that Defendants
14 Weshler, Jones, and his treatment team have refused to move him despite knowing the anxiety
15 and mental/emotional trauma that Plaintiff is experiencing that causes him to have ongoing chest
16 pain that could cost him his life. (*Id.*, p. 14.) Plaintiff alleges that Defendants Santiago, Weshler,
17 Mwangi, and Jones have told him that nothing he complains about matters and that nothing will
18 change without a court order -- which has caused him mental trauma and chest pains. (*Id.*)

19 Plaintiff alleges that everything would be fine if staff would place him in a room has TV
20 and radio reception, away from mop room, so that he might listen to the radio or watch TV for
21 “therapy.” (*Id.*, p. 15.) Plaintiff alleges that he has “documents to support single room placement
22 until he can receive treatment [for his PTSD from being sexually assaulted while in prison] prior
23 to dorm/double cell placement.” (*Id.*, p. 13.)

24 Without minimizing the distress to Plaintiff claims, for the reasons discussed below, his
25 allegations do not state a cognizable claim.

26 **B. Legal Standards**

27 To determine whether conditions of confinement of civilly committed individuals have
28 been violated, courts look to the substantive due process clause of the Fourteenth Amendment.

1 *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th
2 Cir. 2004). States are thus required “to provide civilly-committed persons with access to mental
3 health treatment that gives them a realistic opportunity to be cured and released,” *Sharp v.*
4 *Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000) (citing *Ohlinger v. Watson*, 652 F.2d 775, 778 (9th
5 Cir. 1980)), via “more considerate treatment and conditions of confinement than criminals whose
6 conditions of confinement are designed to punish.” *Id.* (quoting *Youngberg v. Romeo*, 457 U.S.
7 307, 322 (1982)).

8 Although civilly detained persons must be afforded more considerate treatment and
9 conditions of confinement than criminals, where specific standards are lacking, courts may look
10 to decisions defining the constitutional rights of prisoners, to establish a floor for the
11 constitutional rights of persons detained under a civil commitment scheme. *Padilla v. Yoo*, 678
12 F.3d 748, 759 (9th Cir. 2012) (citing *Hydrick v. Hunter*, 500 F.3d 978, 989 (9th Cir. 2007),
13 *vacated and remanded on other grounds by* 556 U.S. 1256 (2009)). Eighth Amendment
14 standards may be borrowed to establish the constitutional floor. *Frost v. Agnos*, 152 F.3d 1124,
15 1128 (9th Cir. 1998); *Redman v. County of San Diego*, 942 F.2d 1435, 1441 (9th Cir. 1991),
16 *abrogated on other grounds by* 511 U.S. 825 (1994).

17 **1. Substantive Due Process**

18 “To establish a violation of substantive due process . . . , a plaintiff is ordinarily required
19 to prove that a challenged government action was clearly arbitrary and unreasonable, having no
20 substantial relation to the public health, safety, morals, or general welfare. Where a particular
21 amendment provides an explicit textual source of constitutional protection against a particular
22 sort of government behavior, that Amendment, not the more generalized notion of substantive due
23 process, must be the guide for analyzing a plaintiff’s claims.” *Patel v. Penman*, 103 F.3d 868, 874
24 (9th Cir. 1996) (citations, internal quotations, and brackets omitted), *cert. denied*, 520 U.S. 1240
25 (1997); *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998). However, “[t]he substantive
26 rights of civilly committed persons derive from the Due Process Clause of the Fourteenth
27 Amendment and not the Cruel and Unusual Punishment Clause of the Eighth Amendment.”
28 *Endsley v. Luna*, No. CV 06-06961-DSF (SS), 2009 WL 789902, at *4 (C.D.Cal. Mar.23, 2009),

1 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22, 102 S.Ct. 2452 (1982)); *Bell v. Wolfish*, 441
2 U.S. 520, 535 n. 16 (1979); *see also Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780 (1992)
3 (person not criminally convicted may be detained if mentally ill and dangerous but may not be
4 “punished”).

5 The substantive component of the Due Process Clause protects civil detainees from
6 unconstitutional conditions of confinement and ensures a plaintiff's right to personal safety while
7 in a state detention facility. *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982). The Supreme Court
8 has noted that the right to personal security constitutes a “historic liberty interest” protected
9 substantively by the Due Process Clause. *Id.*, (quoting *Ingraham v. Wright*, 430 U.S. 651, 673,
10 (1977)). And that right is not extinguished by lawful confinement, even for penal purposes. *See*
11 *Hutto v. Finney*, 437 U.S. 678 (1978). “[T]he due process rights of a pretrial detainee are ‘at least
12 as great as the Eighth Amendment protections available to a convicted prisoner.’” *Castro v.*
13 *County of Los Angeles*, --- F.3d ---, 2016 WL 4268955, *3 (9th Cir. Aug. 15, 2016) (quoting *City*
14 *of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)).

15 2. Excessive Force

16 Plaintiff alleges that he was subjected to excessive force when nurse John Doe “reached
17 out and did a sharp finger thrust poke in vital chest area causing pain and kept making threats.”
18 (Doc. 1, pp 11-12.)

19 A detainee need only show that the force a prison official deliberately used against him
20 was objectively unreasonable. *Kingsley v. Hendrickson*, --- U.S. ---, 135 S.Ct. 2466, 2472-73
21 (2015). “[I]t does not matter whether the defendant understood that the force used was excessive,
22 or intended it to be excessive, because the standard is purely objective.” *Castro*, at *5. However,
23 the defendant’s act must have been purposefully and knowingly performed as “liability for
24 negligently inflicted harm is categorically beneath the threshold of constitutional due process.”
25 *Kingsley*, 135 S. Ct. at 2472 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849, 118
26 S.Ct. 1708 (1998) (emphasis added in *Kingsley*)). Some factors that may bear on the
27 reasonableness or unreasonableness of the force used include: the relationship between the need
28 for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort

1 made by the officer to temper or to limit the amount of force; the severity of the security problem
2 at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively
3 resisting. *Kinglsey*, 135 S.Ct. at 2473 (citing *e.g.*, *Graham v. Connor*, 490 U.S. 386, 396, 109
4 S.Ct. 1865 (1989)). “[A] pretrial detainee can prevail by providing only objective evidence that
5 the challenged governmental action is not rationally related to a legitimate governmental
6 objective or that it is excessive in relation to that purpose.” *Id.* at 2473-74.

7 Here, the only force Plaintiff alleges was used against him was a poke to his chest.
8 Though, albeit allegedly sharp and thrusting enough to cause Plaintiff pain, being poked in the
9 chest by another person’s finger equates to nothing more than a *di minimus* use of force, which is
10 not actionable. *See Hudson v. McMillian*, 503 U.S. 1, 9 (1992) (“The Eighth Amendment’s
11 prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition
12 *de minimis* uses of physical force, provided that the use of force is not of a sort ‘repugnant to the
13 conscience of mankind.’” (quotations and citations omitted)). Thus, Plaintiff fails to state a
14 cognizable excessive force claim.

15 3. Retaliation

16 Plaintiff variously alleges that he was subjected to unconstitutional retaliation. (*See Doc.*
17 *1*, pp. 8, 12, 13.) The First Amendment prohibits retaliation for engaging in protected conduct.
18 *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th Cir. 2012); *Brodheim v. Cry*, 584 F.3d 1262,
19 1269 (9th Cir.2009). A retaliation claim has five elements. *Id.* at 1114.

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

1 (internal quotation marks and emphasis omitted). Fifth, the plaintiff must allege “that the prison
2 authorities’ retaliatory action did not advance legitimate goals of the correctional institution. . . .”
3 *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985). Thus, mere allegations that Plaintiff engaged
4 in protected activity, without knowledge resulting in animus by a Defendant, is insufficient to
5 show that Plaintiff’s protected activity was the motivating factor behind a Defendant’s actions.

6 Here, though Plaintiff alleges that he has previously filed lawsuits, they were against state
7 actors on actions during his incarceration, before he arrived at CSH. His allegations fail to show
8 that any of the named Defendants were aware of those lawsuits as an impetus for the actions he
9 complains of. Further, Plaintiff alleges that he was retaliated against because of the facts
10 involved in his underlying criminal conviction -- which does not equate to protected conduct for a
11 retaliation claim. Thus, Plaintiff fails to state a cognizable retaliation claim.

12 **4. Supervisorial Defendants**

13 It appears that Plaintiff may have named a number of the defendants in this action merely
14 because they hold supervisorial positions. When a named defendant holds a supervisory position,
15 the causal link between him and the claimed constitutional violation must be specifically alleged.
16 *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441
17 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief under section 1983
18 based on a theory of supervisory liability, Plaintiff must allege some facts that would support a
19 claim that supervisory defendants either: personally participated in the alleged deprivation of
20 constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or
21 "implemented a policy so deficient that the policy 'itself is a repudiation of constitutional rights'
22 and is 'the moving force of the constitutional violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th
23 Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under
24 section 1983, liability may not be imposed on supervisory personnel for the actions of their
25 employees under a theory of *respondeat superior*. *Iqbal*, 556 U.S. at 677.

26 However, “a plaintiff may state a claim against a supervisor for deliberate indifference
27 based upon the supervisor’s knowledge of and acquiescence in unconstitutional conduct by his or
28 her subordinates.” *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011). A showing that a supervisor

1 acted, or failed to act, in a manner that was deliberately indifferent to a plaintiff's rights is
2 sufficient to demonstrate the involvement and the liability of that supervisor; thus, when a
3 supervisor is found liable based on deliberate indifference, the supervisor is being held liable for
4 his or her own culpable action or inaction, not held vicariously liable for the culpable action or
5 inaction of his or her subordinates. *Id.*

6 As stated above, Plaintiff fails to state a cognizable claim against any of the named
7 defendants for any of their supervisors to have had knowledge of and acquiesced in their
8 unconstitutional conduct.

9 **5. Claims Under California Law**

10 **a. California Tort Claims Act**

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

27 Federal courts likewise must require compliance with the CTCA for pendant state law
28 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d

1 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
2 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
3 may proceed only if the claims were first presented to the state in compliance with the claim
4 presentation requirement. *Karim–Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
5 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

6 Plaintiff fails to state any allegations which show he complied with the CTCA upon which
7 to be allowed to pursue his defamation claim under California law in this action.

8 **b. Defamation of Character**

9 Plaintiff alleges that he has been subjected to defamation of character by Defendant
10 Weshler when she placed a diagnosis of pedophilia in his mental health records and failed to
11 correct it despite having read that his case was for rape by force of a white, 21-year-old woman.
12 (Doc. 1, p. 8.)

13 “Defamation is an invasion of the interest in reputation.” *Gilbert v. Sykes*, 147
14 Cal.App.4th 13, 27, 53 Cal.Rptr.3d 752, 764 (2007) (internal quotations and citation omitted).
15 Under California law, “[t]he tort of defamation in involves (a) a publication that is (b) false, (c)
16 defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or causes special
17 damages.” *Taus v. Loftus*, 40 Cal.4th 683, 720, 151 P.3d 1185, 1209 (2007) (internal quotations
18 and citation omitted). Plaintiff fails to state any allegations to show that Defendant Weshler’s
19 diagnosis was false, or that she publicized it beyond his treatment team.

20 **6. Injunctive and Declaratory Relief**

21 Plaintiff requests injunctive and declaratory relief. As an initial matter, Plaintiff has not
22 stated a cognizable claim upon which relief may be granted. Thus, there is no actual case or
23 controversy before the Court at this time and Court lacks the jurisdiction to issue the orders
24 sought by Plaintiff. *Summers v. Earth Island Institute*, 129 S.Ct. 1142, 1149 (2009); *Stormans,*
25 *Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009); 18 U.S.C. § 3626(a)(1)(A). Further,
26 Plaintiff’s claim for damages will necessarily entail a determination whether his rights were
27 violated and his request for declaratory relief is dismissed since subsumed by those claims.
28 *Rhodes v. Robinson*, 408 F.3d 559, 565–66 n.8 (9th Cir. 2004).

1 **ORDER**

2 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
3 amended complaint **within 30 days**. Any such first amended complaint shall not exceed **twenty-**
4 **five (25) pages** in length.

5 Plaintiff must demonstrate in any first amended complaint how the conditions complained
6 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
7 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
8 defendant is involved. There can be no liability under section 1983 unless there is some
9 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
10 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
11 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

12 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
13 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
14 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v.*
15 *Gibson*, 355 U.S. 41, 47 (1957)). Although accepted as true, the "[f]actual allegations must be
16 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
17 (2007) (citations omitted). Plaintiff is further reminded that an amended complaint supercedes
18 the original, *Lacey v. Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1
19 (9th Cir. Aug. 29, 2012) (en banc), and must be "complete in itself without reference to the prior
20 or superceded pleading," Local Rule 220.

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

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

- 26 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 27 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 28 3. **Within 30 days** from the date of service of this order, Plaintiff must file either a

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first amended complaint curing the deficiencies identified by the Court in this order or a notice of voluntary dismissal; and

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

IT IS SO ORDERED.

Dated: **October 11, 2016**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE