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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS A. ALARCON,
Plaintiff,
v.
D. DAVEY, et al.,
Defendants.

Case No. 1:16-cv-01461-JLT (PC)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

(Doc. 1)

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF
WITHOUT PREJUDICE**

(Doc. 7)

30 DAY DEADLINE

Plaintiff, who is currently housed at Salinas Valley State Prison, complains numerous events that occurred while he was housed at CSP-Cor. As discussed below, the Complaint violates Rule 8 of the Federal Rules of Civil Procedure. However, Plaintiff may be able to state some cognizable claims, so the Complaint is dismissed with leave to file a first amended complaint.

A. Screening Requirement

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

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
2 § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been
3 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
4 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 **C. Pleading Requirements**

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

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

13 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs
14 when a pleading says too little -- the baseline threshold of factual and legal allegations required
15 was the central issue in the *Iqbal* line of cases. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678
16 (2009). The Rule is also violated, though, when a pleading says *too much*. *Cafasso, U.S. ex rel.*
17 *v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e have never held --
18 and we know of no authority supporting the proposition -- that a pleading may be of unlimited
19 length and opacity. Our cases instruct otherwise.”) (citing cases); *see also McHenry v. Renne*, 84
20 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8, and recognizing that
21 “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens
22 on litigants and judges”). Plaintiff’s 48-pages of allegations, most of which are barely more than
23 single-spaced, violate Rule 8 for the latter.

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

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

16 Further, Plaintiff is required to submit filings that are “clearly legible.” Local Rule 130(b).
17 In submitting a first amended complaint, Plaintiff is required to write his letters in larger, darker
18 print and to double space his sentences. Local Rule 130(c).

19 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
20 concise as possible in **no more than 25 double-spaced pages**. He should merely state which of
21 his constitutional rights he feels were violated by each Defendant or group of Defendants and the
22 factual basis. Plaintiff should not repeat factual scenarios separately where a group of Defendants
23 allegedly engaged in an action together -- i.e. if Plaintiff alleges that a group of Defendants
24 attacked him in one event, he should only state the allegations of the attack once, identify each
25 Defendant involved, and delineate the specific actions of each Defendant towards him during the
26 attack. Plaintiff need not and should not cite legal authority for his claims in a first amended
27 complaint. His factual allegations are accepted as true and need not be bolstered by legal
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1 authority at the pleading stage. If Plaintiff files a first amended complaint, his factual allegations
2 will be screened under the legal standards and authorities stated in this order.

3 **2. Federal Rule of Civil Procedure 18(a) & 20(a)(2)**

4 Federal Rule of Civil Procedure 18(a) allows a party asserting a claim to relief as an
5 original claim, counterclaim, cross-claim, or third-party claim to join, either as independent or as
6 alternate claims, as many claims as the party has against an opposing party. However, Plaintiff
7 may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a),
8 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605,
9 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the
10 claim(s) arise out of the same transaction or occurrence, or series of transactions and occurrences,
11 and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*,
12 130 F.3d 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co. of North America*,
13 623 F.3d 1371, 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a)
14 will the Court review the extraneous claims to determine if they may be joined under Rule 18(a),
15 which permits the joinder of multiple claims against the same party.

16 The Court must be able to discern a relationship between Plaintiff's claims or there must
17 be a similarity of parties. The fact that all of Plaintiff's allegations are based on the same type of
18 constitutional violation (i.e. deliberate indifference to different medical issues) does not
19 necessarily make claims related for purposes of Rule 18(a); nor are Plaintiff's claims all related
20 because he feels the Warden, or other supervising personnel failed to properly train or supervise
21 all of the culpable actors.

22 All claims that do not comply with Rules 18(a) and 20(a)(2) are subject to dismissal.
23 Plaintiff is cautioned that if his amended complaint sets forth improperly joined claims, the Court
24 will determine which claims may proceed and which claims will be dismissed. *Visendi v. Bank of*
25 *America, N.A.*, 733 F.3d 863, 870-71 (9th Cir. 2013). Whether any claims will be subject to
26 severance by future order will depend on the viability of the claims raised in the first amended
27 complaint.

1 **3. Linkage and Causation**

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

13 Plaintiff’s allegations must demonstrate that each defendant personally participated in the
14 deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This requires the
15 presentation of factual allegations sufficient to state a plausible claim for relief against each
16 defendant. *Iqbal*, 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir.
17 2009). The mere possibility of misconduct falls short of meeting this plausibility standard. *Iqbal*,
18 556 U.S. at 678; *Moss*, 572 F.3d at 969. However, prisoners proceeding pro se in civil rights
19 actions are still entitled to have their pleadings liberally construed and to have any doubt resolved
20 in their favor. *Hebbe*, 627 F.3d at 342.

21 **4. Exhibits**

22 At screening, the submission of evidence is premature as Plaintiff is only required to state
23 a prima facie claim for relief via his factual allegations. Thus, in amending his Complaint,
24 Plaintiff would do well to simply state the facts upon which he alleges a defendant has violated
25 his constitutional rights and refrain from submitting exhibits.

26 If Plaintiff feels compelled to submit exhibits with an amended complaint, he is reminded
27 that such exhibits must be attached to the amended pleading and must be incorporated by
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1 reference. Fed. R. Civ. Pro. 10(c). For example, Plaintiff must state “see Exhibit A” or
2 something similar to direct the Court to the specific exhibit Plaintiff’s allegations reference and
3 Plaintiff would do well to state what he intends the exhibit to show the reader. Further, if the
4 exhibit consists of more than one page, Plaintiff must reference the specific page of the exhibit
5 (i.e. “See Exhibit A, page 3”).

6 Finally, even if exhibits are properly attached and incorporated in a pleading, Plaintiff is
7 cautioned that it is the Court’s duty on screening to assume the factual allegations are true and to
8 assess merely whether a cognizable claim is stated -- not to wade through exhibits to verify
9 evidentiary support. Therefore, it is generally unnecessary for Plaintiff to submit exhibits in
10 support of the allegations in a complaint.

11 **D. Plaintiff’s Allegations**

12 Plaintiff complains of a number of actions that occurred in 2015 and names 22 individuals
13 as defendants along with “Does 1-25.” Plaintiff seeks monetary damages as well as declaratory
14 and injunctive relief. The Complaint is 52 pages in length, 48 of which are Plaintiff’s factual
15 allegations -- most of which are less than double-spaced and difficult to read. The Court declines
16 to expend its limited resources to review and summarize Plaintiff’s allegations since the
17 Complaint clearly violates Rule 8 and likely also violates Rules 18 and 20. In light of Plaintiff’s
18 *pro se* status, he is given the legal standards for the claims it appears he is attempting to state and
19 is granted leave to file a first amended complaint that is no more than 25 double-spaced pages,
20 exclusive of exhibits.

21 **B. Legal Standards**

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

23 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a
24 prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need
25 is serious if failure to treat it will result in ‘ ‘significant injury or the unnecessary and wanton
26 infliction of pain.’ ’ ” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
27 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
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1 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
2 Cir.1997) (en banc))

3 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must
4 first “show a serious medical need by demonstrating that failure to treat a prisoner’s condition
5 could result in further significant injury or the unnecessary and wanton infliction of pain. Second,
6 the plaintiff must show the defendants’ response to the need was deliberately indifferent.”

7 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett v. Penner*, 439 F.3d 1091,
8 1096 (9th Cir. 2006) (quotation marks omitted)).

9 “Indications that a plaintiff has a serious medical need include the existence of an injury
10 that a reasonable doctor or patient would find important and worthy of comment or treatment; the
11 presence of a medical condition that significantly affects an individual’s daily activities; or the
12 existence of chronic or substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.
13 2014) (citation and internal quotation marks omitted); accord *Wilhelm v. Rotman*, 680 F.3d 1113,
14 1122 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000).

15 Deliberate indifference is “a state of mind more blameworthy than negligence” and
16 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’ ” *Farmer v.*
17 *Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319). Deliberate indifference is
18 shown where a prison official “knows that inmates face a substantial risk of serious harm and
19 disregards that risk by failing to take reasonable measures to abate it.” *Id.*, at 847. Deliberate
20 indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004).

21 “Under this standard, the prison official must not only ‘be aware of the facts from which the
22 inference could be drawn that a substantial risk of serious harm exists,’ but that person ‘must also
23 draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a prison official should
24 have been aware of the risk, but was not, then the official has not violated the Eighth
25 Amendment, no matter how severe the risk.” *Id.* (quoting *Gibson v. County of Washoe, Nevada*,
26 290 F.3d 1175, 1188 (9th Cir. 2002)).

27 In medical cases, this requires showing: (a) a purposeful act or failure to respond to a
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1 prisoner's pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680
2 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). More generally, deliberate indifference “may
3 appear when prison officials deny, delay or intentionally interfere with medical treatment, or it
4 may be shown by the way in which prison physicians provide medical care.” *Id.* (internal
5 quotation marks omitted). Under *Jett*, “[a] prisoner need not show his harm was substantial.” *Id.*;
6 *see also McGuckin*, 974 F.2d at 1060 (“[A] finding that the defendant's activities resulted in
7 ‘substantial’ harm to the prisoner is not necessary.”).

8 2. Excessive Force

9 The Eighth Amendment prohibits those who operate our prisons from using “excessive
10 physical force against inmates.” *Farmer v. Brennan*, 511 U.S. 825 (1994); *Hoptowit v. Ray*, 682
11 F.2d 1237, 1246, 1250 (9th Cir.1982) (prison officials have “a duty to take reasonable steps to
12 protect inmates from physical abuse”); *see also Vaughan v. Ricketts*, 859 F.2d 736, 741 (9th
13 Cir.1988), *cert. denied*, 490 U.S. 1012 (1989) (“prison administrators’ indifference to brutal
14 behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim”). As
15 courts have succinctly observed, “[p]ersons are sent to prison as punishment, not *for* punishment.”
16 *Gordon v. Faber*, 800 F.Supp. 797, 800 (N.D. Iowa 1992) (citation omitted), *aff’d*, 973 F.2d 686
17 (8th Cir.1992). “Being violently assaulted in prison is simply not ‘part of the penalty that criminal
18 offenders pay for their offenses against society.’” *Farmer*, 511 U.S. at 834, (*quoting Rhodes*, 452
19 U.S. at 347).

20 When a prison official stands accused of using excessive physical force in violation of the
21 cruel and unusual punishment clause of the Eighth Amendment, the question turns on “whether
22 force was applied in a good-faith effort to maintain or restore discipline, or maliciously and
23 sadistically for the purpose of causing harm.” *Hudson v. McMillian*, 503 U.S. 1, 7 (1992) (citing
24 *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In determining whether the use of force was
25 wanton and unnecessary, it is proper to consider factors such as the need for application of force,
26 the relationship between the need and the amount of force used, the threat reasonably perceived
27 by the responsible officials, and any efforts made to temper the severity of the forceful response.
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1 *Hudson*, 503 U.S. at 7. The extent of a prisoner’s injury is also a factor that may suggest whether
2 the use of force could plausibly have been thought necessary in a particular situation. *Id.*
3 Although the absence of serious injury is relevant to the Eighth Amendment inquiry, it is not
4 determinative. *Id.* That is, use of excessive physical force against a prisoner may constitute cruel
5 and unusual punishment even though the prisoner does not suffer serious injury. *Id.* at 9.

6 Further, verbal harassment or abuse alone is not sufficient to state a claim under section
7 1983. *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987). Even threats do not rise to the
8 level of a constitutional violation. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987).

9 3. Failure to Protect

10 Prison officials have a duty under the Eighth Amendment “to take reasonable measures to
11 guarantee the safety of inmates, which has been interpreted to include a duty to protect prisoners.”
12 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Farmer*,
13 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)).

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

18 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
19 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions
20 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
21 349 (1981). Second, subjectively, the prison official must “know of and disregard an excessive
22 risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th
23 Cir. 1995). A prison official must “be aware of facts from which the inference could be drawn
24 that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Farmer*, 511
25 U.S. at 837. Liability may follow only if a prison official “knows that inmates face a substantial
26 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
27 *Id.* at 847.

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4. Due Process

a. Procedural

The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005).

b. Substantive

“To establish a violation of substantive due process . . . , a plaintiff is ordinarily required to prove that a challenged government action was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. Where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing a plaintiff’s claims.” *Patel v. Penman*, 103 F.3d 868, 874 (9th Cir. 1996) (citations, internal quotations, and brackets omitted), *cert. denied*, 520 U.S. 1240 (1997); *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998).

c. Property

The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005). Prisoners have a protected interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974), but the procedural component of the Due Process Clause is not violated by a random, unauthorized deprivation of property if the state provides an adequate post-deprivation remedy, *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct. 3194, 3204 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Rather, the Due Process Clause is violated only when the agency “prescribes and enforces forfeitures of property without underlying statutory authority and competent procedural protections.” *Nevada Dept. of Corrections v. Greene*, 648 F.3d 1014, 1019 (9th Cir. 2011) (citing *Vance v. Barrett*, 345 F.3d 1083, 1090 (9th Cir. 2003))

1 (internal quotations omitted).

2 A state prisoner has no cause of action under 42 U.S.C. § 1983 for an unauthorized
3 deprivation of property, either intentional or negligent, by a state employee if a meaningful state
4 post-deprivation remedy for the loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).
5 California law provides an adequate post-deprivation remedy for any property deprivations.
6 *Barnett v. Centoni*, 31 F.3d 813, 816-817 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).

7 **5. Inmate Appeals**

8 The Due Process Clause protects prisoners from being deprived of liberty without due
9 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). However, “inmates lack a
10 separate constitutional entitlement to a specific prison grievance procedure.” *Ramirez v. Galaza*,
11 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
12 entitlement to a specific grievance procedure), citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.
13 1988). “[A prison] grievance procedure is a procedural right only, it does not confer any
14 substantive right upon the inmates.” *Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982)
15 accord *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); see also *Massey v. Helman*, 259
16 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on
17 prisoner). “Hence, it does not give rise to a protected liberty interest requiring the procedural
18 protections envisioned by the Fourteenth Amendment.” *Azeez v. DeRobertis*, 568 F. Supp. at 10;
19 *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

20 Actions in reviewing prisoner’s administrative appeal generally cannot serve as the basis
21 for liability under a § 1983 action. *Buckley*, 997 F.2d at 495. The argument that anyone who
22 knows about a violation of the Constitution, and fails to cure it, has violated the Constitution
23 himself is not correct. “Only persons who cause or participate in the violations are responsible.
24 Ruling against a prisoner on an administrative complaint does not cause or contribute to the
25 violation.” *Greeno v. Daley*, 414 F.3d 645, 656-57 (7th Cir.2005) accord *George v. Smith*, 507
26 F.3d 605, 609-10 (7th Cir. 2007); *Reed v. McBride*, 178 F.3d 849, 851-52 (7th Cir.1999); *Vance*
27 *v. Peters*, 97 F.3d 987, 992-93 (7th Cir.1996).

1 However, "a plaintiff may state a claim against a supervisor for deliberate indifference
2 based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by his or
3 her subordinates." *Starr v. Baca*, 652 F.3d 1202, 1207 (2011). Such knowledge and
4 acquiescence may be shown via the inmate appeals process where the supervisor was involved in
5 reviewing Plaintiff's applicable inmate appeal and had the ability, but failed to take corrective
6 action so as to allow the violation to continue. However, such involvement in processing or
7 reviewing an inmate appeal based on one incident is necessarily insufficient. A defendant may be
8 held liable as a supervisor under § 1983 "if there exists either (1) his or her personal involvement
9 in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's
10 wrongful conduct and the constitutional violation." *Hansen v. Black*, 885 F.2d 642, 646 (9th
11 Cir.1989). "[A] plaintiff must show the supervisor breached a duty to plaintiff which was the
12 proximate cause of the injury. The law clearly allows actions against supervisors under section
13 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under
14 color of law of a federally secured right." *Redman v. County of San Diego*, 942 F.2d 1435, 1447
15 (9th Cir. 1991) (internal quotation marks omitted)(abrogated on other grounds by *Farmer v.*
16 *Brennan*, 511 U.S. 825 (1994).

17 "The requisite causal connection can be established . . . by setting in motion a series of
18 acts by others," *id.* (alteration in original; internal quotation marks omitted), or by "knowingly
19 refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably
20 should have known would cause others to inflict a constitutional injury," *Dubner v. City & Cnty.*
21 *of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). "A supervisor can be liable in his individual
22 capacity for his own culpable action or inaction in the training, supervision, or control of his
23 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
24 reckless or callous indifference to the rights of others." *Watkins v. City of Oakland*, 145 F.3d
25 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted).

26 Thus, if a plaintiff complains of actions by prison personnel in an inmate appeal that state
27 a cognizable claim against the prison personnel involved, which is processed or ruled on by their
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1 supervisor and on which the supervisor fails to take actions to rectify or cease from continuing to
2 occur, which then reoccurs, a cognizable claim may be stated by showing that the supervisor
3 knowingly refused to terminate those acts by his subordinates.

4 **6. Retaliation**

5 Prisoners have a First Amendment right to file grievances against prison officials and to
6 be free from retaliation for doing so. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th Cir.
7 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009). A retaliation claim has five
8 elements. *Id.* at 1114.

9 First, the plaintiff must allege that the retaliated-against conduct is protected. *Id.* The
10 filing of an inmate grievance is protected conduct, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th
11 Cir. 2005), as are the rights to speech or to petition the government, *Rizzo v. Dawson*, 778 F.2d
12 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989);
13 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Second, the plaintiff must show the
14 defendant took adverse action against the plaintiff. *Rhodes*, at 567. Third, the plaintiff must
15 allege a causal connection between the adverse action and the protected conduct. *Waitson*, 668
16 F.3d at 1114. Fourth, the plaintiff must allege that the “official’s acts would chill or silence a
17 person of ordinary firmness from future First Amendment activities.” *Robinson*, 408 F.3d at 568
18 (internal quotation marks and emphasis omitted). “[A] plaintiff who fails to allege a chilling
19 effect may still state a claim if he alleges he suffered some other harm,” *Brodheim*, 584 F.3d at
20 1269, that is “more than minimal,” *Robinson*, 408 F.3d at 568 n.11. Fifth, the plaintiff must
21 allege “that the prison authorities’ retaliatory action did not advance legitimate goals of the
22 correctional institution. . . .” *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

23 It bears repeating that while Plaintiff need only allege facts sufficient to support a
24 plausible claim for relief, the mere possibility of misconduct is not sufficient, *Iqbal*, 556 U.S. at
25 678-79, and the Court is “not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart*
26 *Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
27 Thus, Plaintiff’s mere allegations that he engaged in protected activity, without knowledge
28

1 resulting in animus by a Defendant, is insufficient to show that Plaintiff's protected activity was
2 the motivating factor behind a Defendant's actions.

3 7. **Discrimination**

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

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

27 ///

1 **8. Conspiracy**

2 A claim brought for violation of section 1985(3) requires “four elements: (1) a conspiracy;
3 (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the
4 equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act
5 in furtherance of this conspiracy; (4) whereby a person is either injured in his person or property
6 or deprived of any right or privilege of a citizen of the United States.” *Sever v. Alaska Pulp*
7 *Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A claim for violation of section
8 1985(3) requires the existence of a conspiracy and an act in furtherance of the conspiracy.
9 *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (citation omitted). A mere allegation of
10 conspiracy is insufficient to state a claim. *Id.* at 676-77. “A racial, or perhaps otherwise class-
11 based, invidiously discriminatory animus is an indispensable element of a section 1985(3) claim.”
12 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (quotations and citation
13 omitted). Restraint must be exercised in extending section 1985(3) beyond racial prejudice.
14 *Butler v. Elle*, 281 F.3d 1014, 1028 (9th Cir. 2002). Bare allegations that all defendants conspired
15 to harass and/or retaliate against Plaintiff are conclusory at best and not cognizable. *See Iqbal*,
16 556 U.S. at 678.

17 **9. Heck Bar**

18 When a prisoner challenges the legality or duration of his custody, or raises a
19 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a
20 writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874
21 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an
22 allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the
23 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
24 invalid by a state tribunal authorized to make such determination, or called into question by a
25 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Heck v. Humphrey*, 512
26 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or
27 sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at 488.

1 **10. Claims Under California Law**

2 Under California’s Government Claims Act (“CGCA”),¹ set forth in California
3 Government Code sections 810 et seq., a plaintiff may not bring a suit for monetary damages
4 against a public employee or entity unless the plaintiff first presented the claim to the California
5 Victim Compensation and Government Claims Board (“VCGCB” or “Board”), and the Board
6 acted on the claim, or the time for doing so expired. “The Tort Claims Act requires that any civil
7 complaint for money or damages first be presented to and rejected by the pertinent public entity.”
8 *Munoz v. California*, 33 Cal.App.4th 1767, 1776 (1995). The purpose of this requirement is “to
9 provide the public entity sufficient information to enable it to adequately investigate claims and to
10 settle them, if appropriate, without the expense of litigation,” *City of San Jose v. Superior Court*,
11 12 Cal.3d 447, 455 (1974) (citations omitted), and “to confine potential governmental liability to
12 rigidly delineated circumstances: immunity is waived only if the various requirements of the Act
13 are satisfied,” *Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d
14 1111, 1125 (9th Cir. 2013). Compliance with this “claim presentation requirement” constitutes
15 an element of a cause of action for damages against a public entity or official. *State v. Superior*
16 *Court (Bodde)*, 32 Cal.4th 1234, 1244 (2004). Thus, in the state courts, “failure to allege facts
17 demonstrating or excusing compliance with the claim presentation requirement subjects a claim
18 against a public entity to a demurrer for failure to state a cause of action.” *Id.* at 1239
19 (fn.omitted).

20 To be timely, a claim must be presented to the VCGCB “not later than six months after
21 the accrual of the cause of action.” Cal. Govt.Code § 911.2. Thereafter, “any suit brought against
22 a public entity” must be commenced no more than six months after the public entity rejects the
23 claim. Cal. Gov. Code, § 945.6, subd. (a)(1).

24 Federal courts must require compliance with the CTCA for pendant state law claims that
25 seek damages against state employees or entities. *Willis v. Reddin*, 418 F.2d 702, 704 (9th
26 Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477 (9th

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 Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983, may
2 proceed only if the claims were first presented to the state in compliance with the applicable
3 requirements. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th
4 Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

5 **a. Assault & Battery**

6 Under California law, “[a]n assault is an unlawful attempt, coupled with a present ability,
7 to commit a violent injury on the person of another” and “[a] battery is any willful and unlawful
8 use of force or violence upon the person of another.” Cal. Penal Code § 240, 242 (West 2005); 5
9 B. E. Witkin, Summary of California Law, Torts § 346 (9th ed. 1988). For an assault claim under
10 California law, a plaintiff must show that (1) the defendant threatened to touch him in a harmful
11 or offensive manner; (2) it reasonably appeared to the plaintiff that the defendant was about to
12 carry out the threat; (3) the plaintiff did not consent to the conduct; (4) the plaintiff was harmed;
13 and (5) the defendant’s conduct was a substantial factor in causing the harm. *Tekle v. U.S.*, 511
14 F.3d 839, 855 (9th Cir. 2007) (citation omitted). For battery, a plaintiff must show that (1) the
15 defendant intentionally did an act that resulted in harmful or offensive contact with the plaintiff’s
16 person; (2) the plaintiff did not consent to the contact; and (3) the contact caused injury, damage,
17 loss, or harm to the plaintiff. *Id.* (citation and quotations omitted).

18 **b. Negligence**

19 “An action in negligence requires a showing that the defendant owed the plaintiff a legal
20 duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of
21 injuries suffered by the plaintiff. [Citations.]” *Regents of the Univ. of California v. Superior*
22 *Court of Los Angeles Cty.*, 240 Cal. App. 4th 1296, 1310, 193 Cal. Rptr. 3d 447, 458 (2015),
23 *reh'g denied* (Oct. 26, 2015) quoting *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th
24 666, 673, 25 Cal.Rptr.2d 137, 863 P.2d 207 (*Ann M.*) [disapproved on another ground in *Reid v.*
25 *Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5, 113 Cal.Rptr.3d 327, 235 P.3d 988].)

26 "In order to establish liability on a negligence theory, a plaintiff must prove duty, breach,
27 causation and damages. The threshold element of a cause of action for negligence is the existence
28

1 of a duty to use due care toward an interest of another that enjoys legal protection against
2 unintentional invasion. Whether this essential prerequisite to a negligence cause of action has
3 been satisfied in a particular case is a question of law to be resolved by the court. To say that
4 someone owes another a duty of care is a shorthand statement of a conclusion, rather than an aid
5 to analysis in itself. [D]uty is not sacrosanct in itself, but only an expression of the sum total of
6 those considerations of policy which lead the law to say that the particular plaintiff is entitled to
7 protection. [L]egal duties are not discoverable facts of nature, but merely conclusory expressions
8 that, in cases of a particular type, liability should be imposed for damage done.” *Los Angeles*
9 *Memorial Coliseum Commission v. Insomaniac, Inc.* 233 Cal.App.4th 803, 908 (2015) (citations
10 and quotations omitted).

11 There is no recognized cause of action for gross negligence under California law. *See*
12 *Martinez v. United States*, --- F.Supp.2d ---, 2010 WL 3895602, * 8 (C.D.Cal.2010); *Allen v.*
13 *Woodford*, Nos. 1:05-cv-01104-OWW-LJO, 1:05-cv-01282-OWW-WMW, 2006 WL 3762053,
14 *15 (E.D.Cal. Dec.20, 2006) (citing *Continental Ins. Co. v. American Prot. Indust.*, 197
15 Cal.App.3d 322, 329, 242 Cal.Rprt. 784, 788 (1987)) (“in light of the adoption of the doctrine of
16 comparative negligence in California, any attempt to categorize gross negligence separately from
17 ordinary negligence is unnecessary); *Saenz v. Whitewater Voyages, Inc.*, 226 Cal.App.3d 758, 766
18 n. 9, 276 Cal.Rptr. 672 (1990) (“California does not recognize a distinct cause of action for gross
19 negligence independent of a statutory basis.”).

20 **c. Intentional Infliction of Emotional Distress**

21 Under California law, the elements of intentional infliction of emotional distress are: (1)
22 extreme and outrageous conduct by the defendant with the intention of causing, or reckless
23 disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or
24 extreme emotional distress; and (3) actual and proximate causation of the emotional distress by
25 the defendant’s outrageous conduct. *Corales v. Bennett*, 567 F.3d 554, 571 (9th Cir. 2009)
26 (quotation marks omitted); *Tekkle v. United States*, 567 F.3d 554, 855 (9th Cir. 2007); *Simo v.*
27 *Union of Needletrades, Industrial & Textile Employees*, 322 F.3d 602, 621-22 (9th Cir. 2003).

1 Conduct is outrageous if it is so extreme as to exceed all bounds of that usually tolerated in a
2 civilized community. *Corales*, 567 F.3d at 571; *Tekkle*, 511 F.3d at 855; *Simo*, 322 F.3d at 622

3 In addition to the requirement that the conduct be intentional and outrageous, the conduct
4 must have been directed at Plaintiff or occur in the presence of Plaintiff, of whom Defendant was
5 aware. *Simo*, 322 F.3d at 622. Negligent infliction of emotional distress replaces the first
6 intentional element with the elements for a negligence claim previously listed.

7 **d. Supplemental Jurisdiction**

8 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
9 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the
10 action within such original jurisdiction that they form part of the same case or controversy under
11 Article III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under §
12 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is
13 discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). “The district court
14 may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the
15 district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. §
16 1367(c)(3). The Supreme Court has cautioned that “if the federal claims are dismissed before
17 trial, . . . the state claims should be dismissed as well.” *United Mine Workers of America v.*
18 *Gibbs*, 383 U.S. 715, 726 (1966).

19 **11. Supervisory Liability**

20 Under section 1983, liability may not be imposed on supervisory personnel for the actions
21 of their employees under a theory of *respondeat superior*. *Ashcroft v. Iqbal*, 556 U.S. 662, 677
22 (2009). Liability by a supervisor for “knowledge and acquiescence” in subordinates’ wrongful
23 discriminatory acts is likewise not cognizable. *Id.* “In a § 1983 suit or a *Bivens* action - where
24 masters do not answer for the torts of their servants - the term 'supervisory liability' is a
25 misnomer.” *Id.* Therefore, when a named defendant holds a supervisory position, the causal link
26 between him and the claimed constitutional violation must be specifically alleged. *See Fayle v.*
27 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.

1 1978), cert. denied, 442 U.S. 941 (1979).

2 To state such a claim, a plaintiff must allege facts that show supervisory defendants either:
3 personally participated in the alleged deprivation of constitutional rights; knew of the violations
4 and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the
5 policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional
6 violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted);
7 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). An unconstitutional policy cannot be proved
8 by a single incident "unless proof of the incident includes proof that it was caused by an existing,
9 unconstitutional policy." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 105 S.Ct. 2427
10 (1985). In this instance, a single incident establishes a "policy" only when the decision-maker has
11 "final authority" to establish the policy in question. *Collins v. City of San Diego*, 841 F.2d 337,
12 341 (9th Cir. 1988), citing *Pembauer v. City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292 (1986).

13 Further, "discrete wrongs – for instance, beatings – by lower level Government actors . . .
14 if true and if condoned by [supervisors] could be the basis for some inference of wrongful intent
15 on [the supervisor's] part." *Iqbal*, 556 U.S. at 683. To this end, the Ninth Circuit has held that,
16 where the applicable constitutional standard is deliberate indifference, a plaintiff may state a
17 claim for supervisory liability based on the supervisor's knowledge of and acquiescence in
18 unconstitutional conduct by others. *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011). A fundamental
19 premise of this form of liability requires that the actions or inaction by subordinate staff amount
20 to a cognizable claim for violation of a plaintiff's constitutional rights and that the supervisorial
21 defendant had knowledge of all such conduct.

22 **12. Declaratory and Injunctive Relief**

23 Plaintiff seeks both declaratory and injunctive relief. Because Plaintiff's claims for
24 damages necessarily entail a determination whether his rights were violated, his separate request
25 for declaratory relief is subsumed by those claims. *Rhodes v. Robinson*, 408 F.3d 559, 565-66 n.8
26 (9th Cir. 2004).

27 Plaintiff's request for injunctive relief seeks various forms of medical care and treatment
28

1 for the injuries he allegedly sustained in this action. Plaintiff mimicked his request in a separate
2 motion for preliminary injunctive relief which he filed on March 23, 2017. (Doc. 7.)

3 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
4 the merits and to suffer irreparable harm in the absence of preliminary relief, that the balance of
5 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural*
6 *Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). “A preliminary
7 injunction is an extraordinary remedy never awarded as a matter of right. In each case, courts
8 must balance the competing claims of injury and must consider the effect on each party of the
9 granting or withholding of the requested relief. In exercising their sound discretion, courts of
10 equity should pay particular regard for the public consequences in employing the extraordinary
11 remedy of injunction.” *Id.*, at 24 (citations and quotations omitted). An injunction may only be
12 awarded upon a clear showing that the plaintiff is entitled to such relief. *Id.*, at 22.

13 Requests for prospective relief are further limited by 18 U.S.C. § 3626 (a)(1)(A) of the
14 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly
15 drawn, extends no further than necessary to correct the violation of the Federal Right, and is the
16 least intrusive means necessary to correct the violation of the Federal Right.”

17 “An inmate seeking an injunction on the ground that there is a contemporary violation of a
18 nature likely to continue, must adequately plead such a violation;” *Farmer v. Brennan*, 511
19 U.S. 825, 845-46 (1994) (citations and quotations omitted). It is subsequent to screening, such as
20 in efforts to survive summary judgment, that a plaintiff “must come forward with evidence from
21 which it can be inferred that the defendant-officials were at the time suit was filed, and are at the
22 time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable
23 risk of harm, and that they will continue to do so; and finally to establish eligibility for an
24 injunction, the inmate must demonstrate the continuance of that disregard during the remainder of
25 the litigation and into the future.” *Id.*, at 845-46. However, at the pleading stage, the Court is not
26 in a position to determine questions of a claim’s merits which require submission of evidence as
27 opposed to merely determining whether a claim has been stated. *Barrett v. Belleque*, 544 F.3d
28

1 1060 (9th Cir. 2008).

2 At this point, Plaintiff's allegations have not been screened since, as discussed above, they
3 violate Rule 8. Thus, it has not been ascertained that he has stated any cognizable claims, let
4 alone is entitled to the relief he requests. However, even after screening, assuming that Plaintiff
5 states at least one cognizable claim, his request for a temporary restraining order/injunctive relief
6 cannot be adequately addressed until evidence is submitted. Thus, his request must be denied
7 without prejudice at this time.

8 However, the Litigation Office and Warden are requested to look into the matter and
9 facilitate Plaintiff's access to medical care that has been ordered for him by his treating physicians
10 and any specialists.²

11 **ORDER**

12 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
13 amended complaint **within 30 days**. Any such first amended complaint **shall not** exceed **25**
14 **pages** in length, exclusive of exhibits.

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

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

27 _____
28 ² How access is best facilitated in light of Plaintiff's housing status and other custody or classification factors is left to the sound discretion of prison officials.

1 (2007) (citations omitted).

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

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

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

- 11 1. Plaintiff's motion for preliminary injunctive relief, filed March 23, 2017 (Doc. 7),
12 is **DENIED** without prejudice for lack of jurisdiction. However, the Clerk's
13 Office is directed to forward a copy of this order and Plaintiff's motion to the
14 Litigation Coordinator and Warden of Salinas Valley State Prison that they might
15 facilitate Plaintiff's access to medical care that has been ordered for him;
- 16 2. Plaintiff's Complaint is **DISMISSED**, with leave to amend;
- 17 3. The Clerk's Office shall send Plaintiff a civil rights complaint form; and
- 18 4. **Within 30 days** from the date of service of this order, Plaintiff must file a first
19 amended complaint curing the deficiencies identified by the Court in this order or
20 a notice of voluntary dismissal.

21 **If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a**
22 **court order and to prosecute this action.**

23 IT IS SO ORDERED.

24 Dated: May 9, 2017

25 /s/ Jennifer L. Thurston
26 UNITED STATES MAGISTRATE JUDGE