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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 MAURICE HUNT,

11 Plaintiff,

12 v.

13 ANDRE MATEVOUSIAN, et al,

14 Defendants.

15 Case No. 1:16-cv-01560-LJO-BAM (PC)

16 SCREENING ORDER DISMISSING
17 COMPLAINT WITH LEAVE TO AMEND
18 (ECF No. 1)

19 THIRTY-DAY DEADLINE

20 Plaintiff Maurice Hunt (“Plaintiff”) is a federal prisoner proceeding pro se and in forma
21 pauperis under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388
22 (1971). Plaintiff’s complaint, filed on October 17, 2016, is currently before the Court for
23 screening.

24 **I. Screening Requirement and Standards**

25 The Court is required to screen complaints brought by prisoners seeking relief against a
26 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
27 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
malicious, if it fails to state a claim upon which relief may be granted, or if it seeks 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)(ii).

28 A complaint must contain “a short and plain statement of the claim showing that the

1 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
2 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
3 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937,
4 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65
5 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
6 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
7 (internal quotation marks and citation omitted).

8 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
9 liberally construed and to have any doubt resolved in their favor. *Hebbe v. Pliler*, 627 F.3d 338,
10 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
11 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
12 named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949
13 (quotation marks omitted); *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir.
14 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
15 consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678,
16 129 S. Ct. at 1949 (quotation marks omitted); *Moss*, 572 F.3d at 969.

17 *Bivens* actions and actions under 42 U.S.C. § 1983 “are identical save for the replacement
18 of a state actor under § 1983 by a federal actor under *Bivens*.” *Van Strum v. Lawn*, 940 F.2d 406,
19 409 (9th Cir. 1991). Under *Bivens*, a plaintiff may sue a federal officer in his or her individual
20 capacity for damages for violating the plaintiff’s constitutional rights. *See Bivens*, 403 U.S. at
21 397. To state a claim a plaintiff must allege: (1) that a right secured by the Constitution of the
22 United States was violated, and (2) that the alleged violation was committed by a federal actor.

23 **II. Plaintiff’s Allegations**

24 Plaintiff is currently housed at the Terre Haute Federal Correctional Institution in Terre
25 Haute, Indiana. The events in the complaint are alleged to have occurred while Plaintiff was
26 housed at Atwater United States Penitentiary (“Atwater”) in Atwater, California. Plaintiff names
27 the following defendants: (1) Warden Andre Matevousian; (2) Lieutenant Helling; (3)
28 Correctional Officer W. Gunn; (4) Correctional Officer Graham; (5) Correctional Officer

1 Hellmuth; (6) Correctional Officer G. Villegas; (7) Atwater's Medical Department; (8) Associate
2 Warden Snider; (9) Facility Captain Garcia; (10) Western Regional Office, Bureau of Prisons;
3 and (11) Central Office, Bureau of Prisons.

4 Claim 1:

5 In claim 1, Plaintiff alleges that on August 6, 2015, he was assaulted by Correctional
6 Officers Helling, W. Gunn, and Graham. Correctional Officer Hellmuth was watching, but did
7 not participate. Plaintiff asserts that earlier that day, he had been complaining to Correctional
8 Officer Hansen that he needed access to a handicap toilet and shower due to his disability, which
9 had been an ongoing request since Plaintiff's arrival at Atwater on July 21, 2015.

10 On July 30, 2015, Plaintiff spoke directly to the Warden regarding his handicap needs and
11 appropriate housing to accommodate his disability, Plaintiff pointed out to the Warden, while he
12 was standing at the entrance of Plaintiff's cell, that the cell lacked any handrails or pull bars
13 around the toilet or shower. The Warden advised that he had been on vacation the week of
14 Plaintiff's arrival. Plaintiff further informed the Warden that Captain Garcia confiscated
15 Plaintiff's assistive devices, which were authorized by Atwater Medical Personnel on the day of
16 his arrival. The Warden informed Plaintiff that his medically prescribed assistive devices would
17 be returned and he would have Plaintiff moved to handicap housing.

18 The next day, on July 31, 2015, Associate Warden Snider came to Plaintiff's cell in the
19 SHU and brought him a cane, orthotic foot brace and ankle guard. Plaintiff inquired about his
20 other medically prescribed assistive devices and assignment to a handicap accessible cell.
21 Associate Warden Snider informed Plaintiff that the handicap accessible cell in the SHU was
22 inoperable and that was all of the assistive devices that Plaintiff was getting.

23 On August 4, 2015, Plaintiff again spoke to Associate Warden Snider about access to a
24 handicap accessible toilet and shower. Plaintiff informed Associate Warden Snider that prisons
25 are required to provide handicap accessible showers and toilets pursuant to Supreme Court
26 opinion. Associate Warden Snider again informed Plaintiff that cell #112 was inoperable and
27 there were no other handicap accessible cells available.

28 On August 6, 2015, Plaintiff and his cellmate were ordered to pack in order to move to

1 cell #112. Plaintiff immediately inquired as to the operability of the cell, but staff members did
2 not know. Approximately 20 minutes later, Plaintiff and his cellmate were transferred to cell
3 #112. Upon entering the cell, Plaintiff saw why the Associate Warden informed him that the cell
4 was inoperable. The shower was broken, with the handicap seat dangling attached to strips of
5 torn sheets. Plaintiff began to protest that not only did the cell not accommodate his disability,
6 but it also posed a clear hazard to his safety. At this point, Lieutenant Helling told Plaintiff that
7 he was getting sick of his complaining. Plaintiff countered that the cell was out of compliance
8 with the Americans with Disabilities Act. Lieutenant Helling told Plaintiff that he either went
9 into cell #112 or back to his previous cell. Plaintiff verbally objected to both. Lieutenant Helling
10 then told Plaintiff's cellmate to step out of the cell and that he did not need to be a part of what
11 was going to happen to Plaintiff. Plaintiff was then left alone in cell #112 while restrained in
12 handcuffs. About 10 minutes later, Lieutenant Helling returned and informed Plaintiff that
13 someone from the facilities department was coming to fix the shower and he was temporarily
14 placing Plaintiff in another cell while the cell was being fixed.

15 Plaintiff was wheeled to another cell and pushed inside, where he remained strapped in the
16 restraint chair in handcuffs. After about 30-40 minutes, the facility worker was standing outside
17 Plaintiff's cell. Plaintiff asked if he fixed the shower. The facility worker informed Plaintiff that
18 he was unable to fix the shower properly and he would need a new shower seat. About 5 minutes
19 later, Lieutenant Helling returned and ordered his staff to wheel Plaintiff to cell #112. Plaintiff
20 verbally objected, informing Lieutenant Helling what the facility worker told him and demanding
21 the basic necessities of a handicap accessible toilet and shower. Lieutenant Helling ordered
22 Correctional Officer Graham to remove the straps that were restraining Plaintiff to the restraint
23 chair. Once the straps were removed, Lieutenant Helling ordered Plaintiff to get out of the chair
24 while still handcuffed and enter the cell. Plaintiff refused, reiterating his request for handicap
25 accommodations. Lieutenant Helling and Officer Graham then lifted Plaintiff out of the chair and
26 walked him into the center of the cell where Correctional Office W. Gunn waited. Plaintiff was
27 turned around to face the entrance of the cell. Seconds after Plaintiff stopped walking, Lieutenant
28 Helling and Correctional Officers Gunn and Graham began to punch Plaintiff in the back and the

1 side of his head with closed fists. After numerous punches, Lieutenant Helling slammed Plaintiff
2 on the ground and all three started kicking Plaintiff repeatedly in the leg and side torso until
3 Lieutenant Helling yelled at them to stop. During the assault, Correctional Officer Hellmuth
4 stood at the entrance of the cell doorway and watched. Plaintiff alleges that Defendant Hellmuth
5 failed to act to protect him from the assault.

6 Once the assault stopped, Lieutenant Helling ordered Correctional Officer Hellmuth to get
7 some shackles and a camera. Plaintiff was then placed in the restraint chair, strapped in and
8 wheeled to see a nurse. Plaintiff immediately told the nurse that he had been assaulted. While
9 detailing the assault, the nurse told the officers to get him out of there because he was being
10 uncooperative. Plaintiff contends that he received no medical attention, though he was in great
11 pain. Plaintiff was then wheeled back to cell #112 and placed on the floor of the cell still
12 restrained, where he was left for a couple of hours.

13 Plaintiff asserts that Warden Matevousian was aware that Plaintiff had been complaining
14 daily of the confiscation of his assistive devices and lack of access to a handicap toilet and
15 shower. Warden Matevousian also was aware that Captain Garcia had assembled numerous use-
16 of-force teams that were used for movement to and from the shower area as well as the housing
17 units. Plaintiff alleges that the Warden knew or should have known, or was deliberately
18 indifferent to the situation that Plaintiff was complaining about and that this may lead to the
19 assault. Plaintiff further alleges that Warden Matevousian has a duty to protect inmates from staff
20 abuse once he becomes aware that there is an ongoing problem between staff and an inmate.
21 Plaintiff contends that the Warden failed to act to prevent an escalation of events that resulted in
22 Plaintiff being assaulted.

23 Plaintiff further alleges that Captain Garcia created the atmosphere that led to Plaintiff's
24 assault. Plaintiff contends that Captain Garcia assembled a use of force team to greet Plaintiff
25 upon his arrival at Atwater and immediately confiscated his assistive devices. Plaintiff also
26 contends that Captain Garcia assembled 3-4 use of force teams against Plaintiff, and by August 6,
27 2015, it was widely known by prison staff that Plaintiff was a problem inmate. Plaintiff alleges
28 that Captain Garcia knew or should have known or was deliberately indifferent that his orders to

1 staff to assemble use of force teams to deal with a handicapped inmate was a potentially serious
2 situation that may lead to Plaintiff being assaulted by staff.

3 Claim 2

4 In claim 2, Plaintiff alleges that on November 26, 2015, he was assaulted by Correctional
5 Officer G. Villegas. After the assault, a lieutenant responded to Plaintiff's location to take
6 photographs of his injured left hand. The next morning, paramedic staff Stacey Vasquez
7 responded to Plaintiff's cell to assess his injured hand. Without looking at his hand, Paramedic
8 Vasquez informed Plaintiff that he would be placed on the list for x-rays and to see the doctor.
9 Several days later, Plaintiff was transported to the x-ray department, but no x-ray was taken. The
10 x-ray tech claimed that her paperwork reflected that it was Plaintiff's right hand that was injured
11 and that she was only authorized to x-ray his right hand. The next day, Plaintiff informed
12 Paramedic Vasquez about the x-ray. Paramedic Vasquez informed Plaintiff that she would
13 submit the request again reflecting his left hand. Plaintiff alleges that he never received any x-ray
14 of his left hand or any treatment for it. Plaintiff informed the Western and Regional Offices that
15 he had been denied medical treatment, but both offices failed to act on his written complaints.

16 Claim 3

17 In claim 3, Plaintiff alleges that on November 26, 2015, he was assaulted by Correctional
18 Officer G. Villegas during the dinnertime meal. Plaintiff contends that he was standing at his cell
19 door with his hand on the open food port door attempting to complain to Correctional Officer
20 Villegas about the quantity of his meal. Realizing that his attempt to informally resolve the issue
21 was futile, Plaintiff requested to speak to the on-duty lieutenant or duty officer. Officer Villegas
22 became upset that Plaintiff was requesting to speak to his supervisor. Officer Villegas told
23 Plaintiff that he was not talking to anyone and ordered Plaintiff to remove his hand from the door
24 or he would break it. Plaintiff told Officer Villegas that he was not going to remove his hand
25 until he spoke with the Lieutenant as he believed that Officer Villegas had tampered with the
26 quantity of his meal. Officer Villegas then slammed up the tray door, smashing Plaintiff's hand
27 between the tray door and the cell door. Plaintiff began screaming, while Officer Villegas
28 continued to apply pressure. After about a minute and a half, Officer Villegas let the tray door

1 fall over, looked through the tray door into the cell and snatched Plaintiff's walking cane, causing
2 Plaintiff to fall to the ground. Plaintiff asked to see medical for his hand and to speak with the
3 Lieutenant. Officer Villegas snatched the cane out of the cell and shouted that he was going to
4 write Plaintiff up for assaulting him with the cane. Officer Villegas then closed the tray door and
5 exited with the cane.

6 **III. Discussion**

7 **A. Federal Rules of Civil Procedure 18 and 20**

8 Plaintiff raises numerous claims against different defendants based on different events.
9 However, Plaintiff may not bring unrelated claims against unrelated parties in a single action.
10 Fed. R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v.*
11 *Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff only may bring a claim against multiple
12 defendants so long as (1) the claim arises out of the same transaction or occurrence, or series of
13 transactions and occurrences, and (2) there are commons questions of law or fact. Fed. R. Civ. P.
14 20(a)(2); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v.*
15 *Insurance Co. of North America*, 623 F.2d 1371, 1375 (9th Cir. 1980). Only if the defendants are
16 properly joined under Rule 20(a) will the Court review the other claims to determine if they may
17 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party.

18 Plaintiff may not assert a claim for excessive force arising out of events on August 6,
19 2015, while simultaneously asserting an excessive force claim against Officer Villegas and denial
20 of medical care claim arising out of events on November 26, 2015. In other words, Plaintiff may
21 not simultaneously pursue his allegations in claim 1 in the same action as his allegations in claims
22 2 and 3 because those claims do not arise out of the same transaction, occurrence or series of
23 transactions or occurrences.

24 **B. Supervisory Liability**

25 Plaintiff may not bring a claim against any defendants, including the Warden, Associate
26 Warden, Facility Captain Garcia and the Western and Central Offices of the Bureau of Prisons,
27 based on a theory of supervisory liability. *Iqbal*, 556 U.S. at 677 ("In a § 1983 suit or a *Bivens*
28 action ... the term "supervisory liability" is a misnomer.") A government official is only liable for

1 his or her own misconduct. *Id.* Here, Plaintiff has failed to allege facts sufficient to demonstrate
2 that the supervisory defendants caused or contributed to any of the claimed excessive force
3 violations. Plaintiff's allegations related to the Warden, Associate Warden and Captain Garcia are
4 too attenuated and conclusory to suggest liability in this instance. There is no indication that any
5 of these defendants directed the use of force at issue in the August 6, 2015 event.

6 **C. Duplicative Claims**

7 On September 25, 2015, Plaintiff filed *Maurice Hunt v. Warden Matevousian, et al.*, Case
8 No. 1:15-cv-01456-DAD-SAB, which involved claims regarding the denial of assistive devices
9 and a handicap accessible cell against Defendants Matevousian, Associate Warden Snider,
10 Facility Captain Garcia, Lieutenant Helling, Lieutenant Putnam, and Dr. N. Peikar. That action is
11 currently on appeal to the Ninth Circuit. Although his complaint in this action includes
12 allegations regarding the denial of assistive devices and a handicap accessible cell, Plaintiff
13 admits that he has pursued such claims in a separate action, and does not appear to reassert them
14 here as separate claims. (ECF No. 1 at p. 4.) Nonetheless, to the extent Plaintiff is attempting to
15 pursue them here, he may not do so as they are duplicative of claims in his prior action. *See, e.g.,*
16 *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on*
17 *other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).

18 **D. Violation of Fifth and Fourteenth Amendments**

19 Although not entirely clear, it appears that Plaintiff is attempting to assert a due process or
20 equal protection claim by invoking both the Fourteenth and Fifth Amendments to the United
21 States Constitution. As a federal prisoner, however, Plaintiff's purported due process or equal
22 protection claim is secured by the Fifth Amendment, not the Fourteenth Amendment. *Castillo v.*
23 *McFadden*, 399 F.3d 993, 1002 n. 5 (9th Cir. 2005) ("The Fifth Amendment prohibits the federal
24 government from depriving persons of due process, while the Fourteenth Amendment explicitly
25 prohibits deprivations without due process by the several States."); *Consejo de Desarrollo*
26 *Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1170 n. 4 (9th Cir. 2007) (Fifth
27 Amendment's Due Process Clause subjects the federal government to constitutional limitations
28 that are equivalent of those imposed on the states by the Equal Protection Clause of the

1 Fourteenth Amendment) (citations and quotations omitted). Accordingly, Plaintiff cannot state a
2 cognizable Fourteenth Amendment claim.

3 Insofar as Plaintiff is attempting to pursue a claim for violation of the Fifth Amendment,
4 his allegations provide no indication that he suffered an equal protection or due process violation.
5 As discussed more fully below, Plaintiff shall be granted leave to amend his complaint to allege a
6 violation of the Fifth Amendment, if he so chooses.

7 **E. Eighth Amendment – Excessive Force**

8 The Eighth Amendment protects prisoners from inhumane methods of punishment and
9 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
10 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual
11 Punishments Clause of the Eighth Amendment. *Hudson v McMillian*, 503 U.S. 1, 5 (1992)
12 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must
13 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.
14 *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (quotations omitted).

15 For claims of excessive physical force, the issue is “whether force was applied in a good-
16 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”
17 *Hudson*, 503 U.S. at 7. Relevant factors for this consideration include “the extent of injury...[,] the
18 need for application of force, the relationship between that need and the amount of force used, the
19 threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the
20 severity of a forceful response.’ ” *Id.* (quoting *Whitley v. Albers*, 475 U.S. 1078, 1085 (1986)).

21 Plaintiff has alleged that Defendants Helling, Gunn, and Graham assaulted him on August
22 6, 2015. Those allegations are sufficient to state a cognizable claim for excessive force in
23 violation of the Eighth Amendment. Plaintiff also has alleged that Defendant Hellmuth failed to
24 intervene to stop the assault. Prison officials have a duty to take reasonable steps to protect
25 inmates from physical abuse. *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036,
26 1040 (9th Cir. 2005). “[A] prison official can violate a prisoner’s Eighth Amendment rights by
27 failing to intervene.” *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995). A prison official
28 may be held liable under the Eighth Amendment “only if he knows that inmates face a substantial

1 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
2 *Farmer*, 511 U.S. at 847. Plaintiff’s allegations are sufficient to state a cognizable claim against
3 Defendant Hellmuth for failure to intervene arising out of events on August 6, 2015.

4 Plaintiff also has alleged that Defendant Villegas assaulted him on November 26, 2015.
5 Those allegations also are sufficient to state a cognizable claim for excessive force in violation of
6 the Eighth Amendment. However, as discussed above, these claims are not properly joined in
7 this action. Plaintiff shall be granted leave to amend his complaint and in so doing shall choose
8 which claims he wishes to pursue in this action.

9 **F. Eighth Amendment - Denial of Medical Care**

10 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
11 inmate must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d
12 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Plaintiff must
13 show (1) a serious medical need and (2) defendant’s response to the need was deliberately
14 indifferent. *Jett*, 439 F.3d at 1096. Deliberate indifference is shown by “a purposeful act or failure
15 to respond to a prisoner’s pain or possible medical need, and harm caused by the indifference.”
16 *Jett*, 439 F.3d at 1096 (citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992)). To
17 establish a deliberate indifference claim arising from a delay in providing medical care, a plaintiff
18 must allege facts showing that the delay was harmful. *See Berry v. Bunnell*, 39 F.3d 1056, 1057
19 (9th Cir. 1994); *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir. 1989); *Shapley v. Nevada Bd.*
20 *of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985).

21 Plaintiff’s allegations are insufficient to state a claim against Atwater Medical Staff or the
22 Bureau of Prisons Offices. First, Plaintiff has not alleged any harm resulting from the delay in
23 receiving an x-ray. To the extent that the order for an x-ray improperly identified his right hand,
24 a complaint of negligence does not state a valid claim under the Eighth Amendment. *See Wilhelm*
25 *v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012). Second, Plaintiff has not alleged any harm to his
26 hand resulting from the failure to receive x-rays or the failure to receive treatment. Third,
27 Plaintiff has failed to adequately identify individual Atwater Medical Staff or Bureau of Prison
28 Offices staff and has failed to link them to a violation of his constitutional rights. Although

1 Plaintiff may sue individual prison employees for damages under *Bivens*, he must link each
2 named defendant to a violation of his constitutional rights; as discussed above, there is no
3 respondeat superior liability under *Bivens*. *Iqbal*, 556 U.S. at 676-77; *Starr v. Baca*, 652 F.3d
4 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 566 U.S. 982 (2012); *Serra v. Lappin*, 600 F.3d
5 1191, 1200 (9th Cir. 2010).

6 **IV. Conclusion and Order**

7 Based on the foregoing, Plaintiff has stated a cognizable claim for excessive force against
8 Defendants Helling, Gunn and Graham and a failure to intervene claim against Defendant
9 Hellmuth arising out of allegations that Plaintiff was assaulted on August 6, 2015. Plaintiff also
10 has stated a cognizable claim for excessive force against Defendant Villegas arising out of events
11 on November 26, 2015. However, claims regarding the events of August 6, 2015 and claims
12 regarding events of November 26, 2015 are improperly joined in this action. Additionally,
13 Plaintiff has failed to state any other cognizable claims. The Court will grant Plaintiff leave to
14 amend to cure the identified deficiencies to the extent he is able to do so in good faith. *Lopez v.*
15 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

16 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
17 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556
18 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must
19 be [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. at 555
20 (citations omitted).

21 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
22 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
23 "buckshot" complaints). Plaintiff also may not improperly join claims in this action. In any
24 amended complaint, Plaintiff must choose which claims he seeks to pursue in this action. If he
25 fails to do so, the Court will dismiss any improperly joined claims.

26 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
27 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended
28 complaint must be "complete in itself without reference to the prior or superseded pleading."

1 Local Rule 220.

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

3 1. The Clerk's Office shall send Plaintiff a complaint form;

4 2. Plaintiff's complaint is dismissed with leave to amend;

5 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a

6 first amended complaint;

7 4. **If Plaintiff fails to file an amended complaint in compliance with this order,**

8 **this action will be dismissed for failure to obey a court order.**

9
10 IT IS SO ORDERED.

11 Dated: November 16, 2017

12 /s/ *Barbara A. McAuliffe*
13 UNITED STATES MAGISTRATE JUDGE

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