

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

4 **B. The Complaint**

5 Plaintiff complains of 20 apparently unrelated events that occurred over two years -- from
6 March 20, 2014 to March 16, 2016. Plaintiff names 28 individual defendants and Does 1-50 and
7 seeks monetary damages and injunctive relief. Plaintiff contends that her civil rights have been
8 violated and identifies six claims: (1) cruel and unusual punishment; (2) deliberate indifference
9 to her medical needs; (3) unsafe prison conditions; (4) retaliation; (5) medical negligence; and (6)
10 professional negligence. The Court declines to expend its limited resources evaluating all of
11 Plaintiff's allegations and asserted claims since it is clear that pursuing them all in one action
12 violates Rules 18 and 20. Thus, Plaintiff is given the pleading requirements, the legal standards
13 for the claims Plaintiff lists, and leave to file a first amended complaint.

14 **C. Pleading Requirements**

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

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

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

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

13 If she chooses to file a first amended complaint, Plaintiff should make it as concise as
14 possible. She should simply state which of her constitutional rights she feels were violated by
15 each Defendant and its factual basis. Where the allegations against two or more Defendants are
16 factually intertwined, Plaintiff need not repeat the factual allegations separately against each
17 Defendant. Rather, Plaintiff should present her factual allegations and identify the Defendants
18 she feels are thereby implicated. Plaintiff need not cite legal authority for her claims in a first
19 amended complaint as her factual allegations are accepted as true. The amended complaint
20 should be clearly legible (*see* Local Rule 130(b)), and double-spaced pursuant to Local Rule
21 130(c).

22 **2. Exhibits**

23 The Court is not a repository for the parties’ evidence. Originals, or copies of evidence
24 (i.e., prison or medical records, witness affidavits, etc.) need not be submitted until the course of
25 litigation brings the evidence into question (for example, on a motion for summary judgment, at
26 trial, or when requested by the Court). If Plaintiff attaches exhibits to his amended complaint,
27 each exhibit must be specifically referenced. Fed. R. Civ. Pro. 10(c). For example, Plaintiff must
28 state “see Exhibit A” or something similar in order to direct the Court to the specific exhibit

1 Plaintiff is referencing. Further, if the exhibit consists of more than one page, Plaintiff must
2 reference the specific page of the exhibit (i.e. “See Exhibit A, page 3”).

3 At this point, the submission of evidence is premature as Plaintiff is only required to state
4 a prima facie claim for relief. Plaintiff is reminded that, for screening purposes, the Court must
5 assume that Plaintiff’s factual allegations are true. It is unnecessary for a plaintiff to submit
6 exhibits in support of the allegations in a complaint. Thus, if Plaintiff chooses to file a first
7 amended complaint, she would do well to simply state the facts upon which she alleges a
8 Defendant has violated her constitutional rights and refrain from submitting exhibits.

9 **3. Linkage Requirement**

10 Section 1983 of Title 42 of the United States Code requires that there be an actual
11 connection or link between the actions of the defendants and the deprivation alleged to have been
12 suffered by Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v.*
13 *Goode*, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
14 deprivation of a constitutional right, within the meaning of section 1983, if she does an
15 affirmative act, participates in another’s affirmative acts or omits to perform an act which she is
16 legally required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*,
17 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff
18 must link each named defendant with some affirmative act or omission that demonstrates a
19 violation of Plaintiff’s federal rights.

20 Plaintiff must clearly identify which Defendant(s) she feels are responsible for each
21 violation of her constitutional rights and their factual basis as her Complaint must put each
22 Defendant on notice of Plaintiff’s claims against him or her. *See Austin v. Terhune*, 367 F.3d
23 1167, 1171 (9th Cir. 2004).

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

25 Federal Rule of Civil Procedure 18(a) allows a party asserting a claim for relief as an
26 original claim, counterclaim, cross-claim, or third-party claim to join, either as independent or as
27 alternate claims, numerous claims against an opposing party. However, Plaintiff may not bring
28 unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2);

1 *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605, 607 (7th
2 Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the claims arise
3 out of the same transaction or occurrence, or series of transactions and occurrences, and (2) there
4 are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d
5 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co. of North America*, 623 F.3d
6 1371, 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a) will the
7 Court review the additional claims to determine if they may be joined under Rule 18(a), which
8 permits the joinder of multiple claims against the same party.

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

20 **D. Claims for Relief**

21 **1. Eighth Amendment**

22 **a. Excessive Force**

23 The Eighth Amendment prohibits those who operate our prisons from using "excessive
24 physical force against inmates." *Farmer v. Brennan*, 511 U.S. 825 (1994); *Hoptowit v. Ray*, 682
25 F.2d 1237, 1246, 1250 (9th Cir. 1982) (prison officials have "a duty to take reasonable steps to
26 protect inmates from physical abuse"); *see also Vaughan v. Ricketts*, 859 F.2d 736, 741 (9th
27 Cir. 1988), *cert. denied*, 490 U.S. 1012 (1989) ("prison administrators' indifference to brutal
28 behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim"). As

1 courts have succinctly observed, “[p]ersons are sent to prison as punishment, not for
2 punishment.” *Gordon v. Faber*, 800 F.Supp. 797, 800 (N.D. Iowa 1992) (citation omitted), *aff’d*,
3 973 F.2d 686 (8th Cir.1992). “Being violently assaulted in prison is simply not ‘part of the
4 penalty that criminal offenders pay for their offenses against society.’” *Farmer*, 511 U.S. at 834,
5 (quoting *Rhodes*, 452 U.S. at 347).

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

19 Although the Eighth Amendment protects against cruel and unusual punishment, this does
20 not mean that federal courts can or should interfere whenever prisoners are inconvenienced or
21 suffer *de minimis* injuries. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (8th Amendment
22 excludes from constitutional recognition *de minimis* uses of force). The malicious and sadistic
23 use of force to cause harm always violates contemporary standards of decency, regardless of
24 whether significant injury is evident. *Id.* at 9; *see also Oliver v. Keller*, 289 F.3d 623, 628 (9th
25 Cir.2002) (Eighth Amendment excessive force standard examines *de minimis* uses of force, not *de*
26 *minimis* injuries). “Injury and force, . . . , are only imperfectly correlated, and it is the latter that
27 ultimately counts. An inmate who is gratuitously beaten by guards does not lose his ability to
28 pursue an excessive force claim merely because he has the good fortune to escape without serious

1 injury.” *Wilkins v. Gaddy*, -- S.Ct. --, 2010 WL 596153, *3 (Feb. 22, 2010). However, not
2 “every malevolent touch by a prison guard gives rise to a federal cause of action.” *Hudson*, 503
3 U.S. at 9. “The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily
4 excludes from constitutional recognition *de minimis* uses of physical force, provided that the use
5 of force is not of a sort ‘repugnant to the conscience of mankind.’” *Id.* at 9-10 (internal
6 quotations marks and citations omitted).

7 **b. Conditions of Confinement**

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

17 The deliberate indifference standard involves both an objective and a subjective prong.
18 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” *Farmer* at 834.
19 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate
20 health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995).

21 Objectively, extreme deprivations are required to make out a conditions of confinement
22 claim and only those deprivations denying the minimal civilized measure of life’s necessities are
23 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
24 503 U.S. 1, 9 (1992). Although the Constitution “ ‘does not mandate comfortable prisons,’ ”
25 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 349), “inmates are
26 entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly
27 over a lengthy course of time,” *Howard*, 887 F.2d at 137. Some conditions of confinement may
28 establish an Eighth Amendment violation “in combination” when each would not do so alone, but

1 only when they have a mutually enforcing effect that produces the deprivation of a single,
2 identifiable human need such as food, warmth, or exercise -- for example, a low cell temperature
3 at night combined with a failure to issue blankets. *Wilson*, 501 U.S. at 304-05 (comparing *Spain*
4 *v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979) (outdoor exercise required when prisoners
5 otherwise confined in small cells almost 24 hours per day), with *Clay v. Miller*, 626 F.2d 345, 347
6 (4th Cir. 1980) (outdoor exercise not required when prisoners otherwise had access to dayroom
7 18 hours per day)). To say that some prison conditions may interact in this fashion is far from
8 saying that all prison conditions are a seamless web for Eighth Amendment purposes. *Id.*
9 Amorphous “overall conditions” cannot rise to the level of cruel and unusual punishment when
10 no specific deprivation of a single human need exists. *Id.* Further, temporarily unconstitutional
11 conditions of confinement do not necessarily rise to the level of constitutional violations. *See*
12 *Anderson*, 45 F.3d 1310, *ref. Hoptowit*, 682 F.2d at 1258 (*abrogated on other grounds by Sandin*,
13 515 U.S. 472 (in evaluating challenges to conditions of confinement, length of time the prisoner
14 must go without basic human needs may be considered)). Thus, Plaintiff’s factual allegations as
15 to the conditions he was subjected to during his confinement on management cell/ASU must be
16 evaluated to determine whether they demonstrate a deprivation of a basic human need
17 individually or in combination.

18 Subjectively, if an objective deprivation is shown, a plaintiff must show that prison
19 officials acted with a sufficiently culpable state of mind, that of “deliberate indifference.” *Wilson*,
20 501 U.S. at 303; *Labatad*, 714 F.3d at 1160; *Johnson*, 217 F.3d at 733. “Deliberate indifference
21 is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004). “Under this
22 standard, the prison official must not only ‘be aware of the facts from which the inference could
23 be drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the
24 inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison official should have
25 been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no
26 matter how severe the risk.’” *Id.* (quoting *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175,
27 1188 (9th Cir. 2002)). To prove knowledge of the risk, however, the prisoner may rely on
28 circumstantial evidence; in fact, the very obviousness of the risk may be sufficient to establish

1 knowledge. *Farmer*, 511 U.S. at 842; *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995).

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

5 **c. Medical Needs**

6 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a
7 prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need
8 is serious if failure to treat it will result in “significant injury or the unnecessary and wanton
9 infliction of pain.”” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
10 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
11 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
12 Cir.1997) (en banc))

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

19 As to the first prong, indications of a serious medical need “include the existence of an
20 injury that a reasonable doctor or patient would find important and worthy of comment or
21 treatment; the presence of a medical condition that significantly affects an individual’s daily
22 activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060,
23 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); *accord Wilhelm*, 680 F.3d at
24 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000).

25 As to the second prong, deliberate indifference is “a state of mind more blameworthy than
26 negligence” and “requires ‘more than ordinary lack of due care for the prisoner’s interests or
27 safety.’ ” *Farmer*, 511 U.S. at 835 (quoting *Whitley*, 475 U.S. at 319). Deliberate indifference is
28 shown where a prison official “knows that inmates face a substantial risk of serious harm and

1 disregards that risk by failing to take reasonable measures to abate it.” *Id.*, at 847. In medical
2 cases, this requires showing: (a) a purposeful act or failure to respond to a prisoner’s pain or
3 possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680 F.3d at 1122
4 (quoting *Jett*, 439 F.3d at 1096). “A prisoner need not show his harm was substantial; however,
5 such would provide additional support for the inmate’s claim that the defendant was deliberately
6 indifferent to his needs.” *Jett*, 439 F.3d at 1096, citing *McGuckin*, 974 F.2d at 1060.

7 Deliberate indifference is a high legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060
8 (9th Cir.2004). “Under this standard, the prison official must not only ‘be aware of the facts from
9 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
10 ‘must also draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison
11 official should have been aware of the risk, but was not, then the official has not violated the
12 Eighth Amendment, no matter how severe the risk.’ ” *Id.* (quoting *Gibson v. County of Washoe,*
13 *Nevada*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

14 **2. Retaliation**

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

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

1 effect may still state a claim if he alleges he suffered some other harm,” *Brodheim*, 584 F.3d at
2 1269, that is “more than minimal,” *Robinson*, 408 F.3d at 568 n.11. Fifth, the plaintiff must
3 allege “that the prison authorities’ retaliatory action did not advance legitimate goals of the
4 correctional institution. . . .” *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

5 It bears repeating that while Plaintiff need only allege facts sufficient to support a
6 plausible claim for relief, the mere possibility of misconduct is not sufficient, *Iqbal*, 556 U.S. at
7 678-79, and the Court is “not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart*
8 *Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
9 Thus, Plaintiff’s mere allegations that she engaged in protected activity, without knowledge
10 resulting in animus by a Defendant, is insufficient to show that Plaintiff’s protected activity was
11 the motivating factor behind a Defendant’s actions.

12 **3. State Law Claims**

13 **a. Government Claims Act**

14 Plaintiff lists negligence and professional malpractice under California law as two of the
15 claims she is asserting against various of the Defendants. Under the California Government
16 Claims Act (“CGCA”),¹ set forth in California Government Code sections 810 et seq., a plaintiff
17 may not bring a suit for monetary damages against a public employee or entity unless the plaintiff
18 first presented the claim to the California Victim Compensation and Government Claims Board
19 (“VCGCB” or “Board”), and the Board acted on the claim, or the time for doing so expired. “The
20 Tort Claims Act requires that any civil complaint for money or damages first be presented to and
21 rejected by the pertinent public entity.” *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39
22 Cal.Rptr.2d 860 (1995).

23 The purpose of this requirement is “to provide the public entity sufficient information to
24 enable it to adequately investigate claims and to settle them, if appropriate, without the expense of
25 litigation,” *City of San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d
26 701 (1974) (citations omitted), and “to confine potential governmental liability to rigidly

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 delineated circumstances: immunity is waived only if the various requirements of the Act are
2 satisfied,” *Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d 1111,
3 1125 (9th Cir. 2013). Compliance with this “claim presentation requirement” constitutes an
4 element of a cause of action for damages against a public entity or official. *State v. Superior*
5 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). Thus, in the state
6 courts, “failure to allege facts demonstrating or excusing compliance with the claim presentation
7 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
8 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn.omitted).

9 Federal courts likewise must require compliance with the CGCA for pendant state law
10 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
11 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
12 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
13 may proceed only if the claims were first presented to the state in compliance with the claim
14 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
15 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

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

18 **b. Supplemental Jurisdiction**

19 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
20 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the
21 action within such original jurisdiction that they form part of the same case or controversy under
22 Article III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under §
23 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is
24 discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). “The district
25 court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . .
26 the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. §
27 1367(c)(3); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013); *Herman*
28 *Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001); *see also Watison v.*

1 *Carter*, 668 F.3d 1108, 1117-18 (9th Cir. 2012) (even in the presence of cognizable federal
2 claim, district court has discretion to decline supplemental jurisdiction over novel or complex
3 issue of state law of whether criminal statutes give rise to civil liability). The Supreme Court has
4 cautioned that “if the federal claims are dismissed before trial, . . . the state claims should be
5 dismissed as well.” *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966).

6 If Plaintiff has complied with the CTCA, jurisdiction over her claims under California law
7 will only be allowed to proceed in this Court as long as she has federal claims pending.

8 **4. Supervisory Liability**

9 It appears that Plaintiff may have named a number of defendants, including California
10 Governor Jerry Brown and CDCR Secretary Scott Kernan, not because they were involved in any
11 specific incident, but merely because of their supervisory positions. Supervisory personnel are
12 generally not liable under section 1983 for the actions of their employees under a theory of
13 *respondeat superior* and, therefore, when a named defendant holds a supervisory position, the
14 causal link between him and the claimed constitutional violation must be specifically alleged. *See*
15 *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th
16 Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief under section 1983 based
17 on a theory of supervisory liability, Plaintiff must allege some facts that would support a claim
18 that supervisory defendants either: personally participated in the alleged deprivation of
19 constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or
20 “implemented a policy so deficient that the policy ‘itself is a repudiation of constitutional rights’
21 and is ‘the moving force of the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642, 646
22 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
23 Under section 1983, liability may not be imposed on supervisory personnel for the actions of their
24 employees under a theory of *respondeat superior*. *Iqbal*, 556 U.S. at 677. “In a § 1983 suit or a
25 *Bivens* action - where masters do not answer for the torts of their servants - the term ‘supervisory
26 liability’ is a misnomer.” *Id.* Knowledge and acquiescence of a subordinate’s misconduct is
27 insufficient to establish liability; each government official is only liable for his or her own
28 misconduct. *Id.*

1 “[B]are assertions . . . amount[ing] to nothing more than a “formulaic recitation of the
2 elements” of a constitutional discrimination claim,’ for the purposes of ruling on a motion to
3 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth.” *Moss*,
4 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). “Such
5 allegations are not to be discounted because they are ‘unrealistic or nonsensical,’ but rather
6 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the
7 form of a factual allegation.” *Id.*

8 Thus, any allegation that supervisory personnel, such as the Warden, are somehow liable
9 solely based on the acts of those under his or her supervision does not state a cognizable claim.

10 **5. Injunctive Relief**

11 In addition to monetary damages, Plaintiff seeks injunctive relief to require various prison
12 personnel to refrain from offending acts, and to require others to perform desired acts.

13 As an initial matter and as stated in the recently issued screening order, Plaintiff has not
14 stated a cognizable claim upon which relief may be granted, such that there is no actual case or
15 controversy before the Court at this time, and Court lacks the jurisdiction to issue the order sought
16 by Plaintiff. *Summers v. Earth Island Institute*, 129 S.Ct. 1142, 1149 (2009); *Stormans, Inc. v.*
17 *Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009); 18 U.S.C. § 3626(a)(1)(A). If the Court does not
18 have an actual case or controversy before it, it has no power to hear the matter in question. *Id.*

19 Further, requests for prospective relief are limited by 18 U.S.C. § 3626 (a)(1)(A) of the
20 Prison Litigation Reform Act, which requires that the Court ensure the relief “is narrowly drawn,
21 extends no further than necessary to correct the violation of the Federal Right, and is the least
22 intrusive means necessary to correct the violation of the Federal Right.” Relief cannot be
23 narrowly drawn here since Plaintiff seeks relief that is unrelated to the violations of rights
24 asserted in this action.

25 Plaintiff is not precluded from attempting to state cognizable claims in a new action if he
26 believes his civil rights are being violated beyond his pleadings in this action. The issue is not
27 that Plaintiff’s allegations are not serious, or that Plaintiff is not entitled to relief if sought in the
28 proper forum. The seriousness of Plaintiff’s accusations cannot and do not overcome what is a

1 *jurisdictional* bar. *Steel Co.*, 523 U.S. at 103-04 (“[The] triad of injury in fact, causation, and
2 redressability constitutes the core of Article III’s case-or-controversy requirement, and the party
3 invoking federal jurisdiction bears the burden of establishing its existence.”) This action is
4 simply not the proper vehicle for conveyance of the relief Plaintiff seeks.

5 **II. CONCLUSION**

6 For the reasons set forth above, Plaintiff’s Complaint is dismissed with leave to file a first
7 amended complaint **within 21 days**. If Plaintiff no longer desires to pursue this action, she may
8 file a notice of voluntary dismissal. If Plaintiff needs an extension of time to comply with this
9 order, Plaintiff shall file a motion seeking an extension of time no later than **21 days** from the
10 date of service of this order.

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

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

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

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

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

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

- 5 1. Plaintiff’s Complaint is dismissed, with leave to amend;
- 6 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form; and
- 7 3. **Within 21 days** from the date of service of this order, Plaintiff must file a first
8 amended complaint curing the deficiencies identified by the Court in this order or
9 a notice of voluntary dismissal.

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

12 IT IS SO ORDERED.

13 Dated: June 20, 2017

14 /s/ Jennifer L. Thurston
15 UNITED STATES MAGISTRATE JUDGE