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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESHAWN D. LESLIE,

 Plaintiff,

 v.

MADRIGAL, et al.,

 Defendants.

Case No. 1:16-cv-01698-SKO (PC)

**ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND**

(Doc. 1)

TWENTY-ONE (21) DAY DEADLINE

INTRODUCTION

A. Background

Plaintiff, Deshawn D. Leslie, is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. As discussed below, Plaintiff fails to state a cognizable claim upon which relief may be granted and the Complaint is **DISMISSED** with leave to file a second amended complaint.

B. Screening Requirement and Standard

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 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 **C. Pleading Requirements**

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

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

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

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

27 While “plaintiffs [now] face a higher burden of pleadings facts,” *Al-Kidd v. Ashcroft*,
28 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally

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

11 Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short
12 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),
13 when the opportunity to correct the pleadings has been afforded and there has been no
14 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
15 2013).

16 If he chooses to file a second amended complaint, Plaintiff should make it as concise as
17 possible by simply stating which of his constitutional rights he believes were violated by each
18 defendant and the factual basis for each claim. Plaintiff need not cite legal authority for his
19 claims in a second amended complaint as his factual allegations are accepted as true. The
20 amended complaint should be clearly legible (*see* Local Rule 130(b)), and double-spaced
21 pursuant to Local Rule 130(c).

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

23 Federal Rule of Civil Procedure 18(a) allows a party asserting a claim for relief as an
24 original claim, counterclaim, cross-claim, or third-party claim to join, either as independent or as
25 alternate claims, numerous claims against an opposing party. However, Plaintiff may not bring
26 unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2);
27 *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605, 607 (7th
28 Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the claims arise

1 out of the same transaction or occurrence, or series of transactions and occurrences, and (2) there
2 are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d
3 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co. of North America*, 623 F.3d
4 1371, 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a) will the
5 Court review the additional claims to determine if they may be joined under Rule 18(a), which
6 permits the joinder of multiple claims against the same party.

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

17 **3. Linkage and Causation**

18 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
19 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
20 1087, 1092 (9th Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
21 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). "Section 1983 is not itself a source of
22 substantive rights, but merely provides a method for vindicating federal rights elsewhere
23 conferred." *Crowley v. Nevada ex rel. Nevada Sec'y of State*, 678 F.3d 730, 734 (9th Cir. 2012)
24 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation
25 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,
26 or causal connection, between each defendant's actions or omissions and a violation of his federal
27 rights. *Lemire v. California Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);
28 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

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

8 DISCUSSION

9 **A. Plaintiff's Allegations**

10 Plaintiff is currently incarcerated at California Correctional Institution ("CCI") in
11 Tehachapi, California. Plaintiff names Correctional Officers Oscar M. Madrigal and Darren
12 Brown as Defendants and seeks monetary damages.

13 Plaintiff's Complaint is styled as a criminal complaint and he seeks to have C/O Madrigal
14 and C/O Brown criminally charged with numerous violations of his rights. The Court can find no
15 basis to support Plaintiff's desire to pursue criminal charges and to prosecute the correctional
16 officers. Plaintiff may instead pursue an action under 42 U.S.C. § 1983 for violation of his
17 constitutional or other federal rights by persons acting under color of state law. *Nurre*, 580 F.3d
18 at 1092; *Long*, 442 F.3d at 1185; *Jones*, 297 F.3d at 934.

19 Although the First Amended Complaint contains very sparse factual allegations, Plaintiff
20 uses a few words which indicate that he believes Defendants violated some of his civil rights.
21 Thus, Plaintiff is provided the pleading requirements and the applicable legal standards for those
22 claims so he may file a second amended complaint, if he elects to do so.

23 **B. Legal Standards**

24 **1. Cruel & Unusual Punishment**

25 "The treatment a prisoner receives in prison and the conditions under which he is confined
26 are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832
27 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials have a duty "to take
28 reasonable measures to guarantee the safety of inmates, which has been interpreted to include a

1 duty to protect prisoners.” *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th
2 Cir. 2013) (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir.
3 2005)).

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

8 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
9 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions
10 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
11 349 (1981). Second, subjectively, the prison official must “know of and disregard an excessive
12 risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th
13 Cir. 1995). A prison official must “be aware of facts from which the inference could be drawn
14 that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Farmer*, 511
15 U.S. at 837. Liability may follow only if a prison official “knows that inmates face a substantial
16 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
17 *Id.* at 847.

18 Further, the Supreme Court has stated that a remedy for unsafe conditions need not await
19 a tragic event; rather, where a risk/injury has yet to occur, plaintiff must prove that his future
20 health/safety is unreasonably endangered, “contrary to current standards of decency for anyone to
21 be so exposed against his will, and that prison officials are deliberately indifferent to his plight.”
22 *Helling*, 509 U.S. at 33-35.

23 The question under the Eighth Amendment is whether prison officials, acting with
24 deliberate indifference, exposed a prisoner to a sufficiently substantial “risk of serious damage to
25 his future health” *Farmer*, at 843 (citing *Helling*, 509 U.S. at 35). The Supreme Court has
26 explained that “deliberate indifference entails something more than mere negligence . . . [but]
27 something less than acts or omissions for the very purpose of causing harm or with the knowledge
28 that harm will result.” *Id.*, at 835. The Court defined this “deliberate indifference” standard as

1 equal to “recklessness,” in which “a person disregards a risk of harm of which he is aware.” *Id.*,
2 at 836-37.

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

6 **2. Unreasonable Searches**

7 The Supreme Court of the United States has held that “society is not prepared to recognize
8 as legitimate *any* subjective expectation of privacy that a prisoner might have in his prison cell,”
9 and, therefore, “the Fourth Amendment proscription against unreasonable searches does not apply
10 within the confines of a prison cell.” *Hudson v. Palmer*, 468 U.S. 517, 525-26 (1984) (emphasis
11 added). Concomitantly, Plaintiff has no basis to pursue a civil rights claim because his cell was
12 not left in a neat and orderly manner after it was searched by prison officials.

13 **3. Equal Protection**

14 The Equal Protection Clause requires that persons who are similarly situated be treated
15 alike. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439(1985); *Hartmann v.*
16 *California Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013); *Furnace v. Sullivan*,
17 705 F.3d 1021, 1030 (9th Cir. 2013); *Shakur v. Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). To
18 state a claim, Plaintiff must show that Defendants intentionally discriminated against him based
19 on his membership in a protected class. *Hartmann*, 707 F.3d at 1123; *Furnace*, 705 F.3d at 1030;
20 *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003); *Thornton v. City of St. Helens*, 425 F.3d
21 1158, 1166-67 (9th Cir. 2005); *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).

22 If the action in question does not involve a suspect classification, a plaintiff may establish
23 an equal protection claim by showing that similarly situated individuals were intentionally treated
24 differently without a rational relationship to a legitimate state purpose. *Engquist v. Oregon*
25 *Department of Agriculture*, 553 U.S. 591, 601-02 (2008); *Village of Willowbrook v. Olech*, 528
26 U.S. 562, 564 (2000); *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1972); *Lazy Y Ranch*
27 *Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008); *North Pacifica LLC v. City of Pacifica*, 526
28 F.3d 478, 486 (9th Cir. 2008), *see also Squaw Valley Development Co. v. Goldberg*, 375 F.3d

1 936, 944 (9th Cir.2004); *Sea River Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 679 (9th
2 Cir. 2002). To state an equal protection claim under this theory, a plaintiff must allege that: (1)
3 the plaintiff is a member of an identifiable class; (2) the plaintiff was intentionally treated
4 differently from others similarly situated; and (3) there is no rational basis for the difference in
5 treatment. *Village of Willowbrook*, 528 U.S. at 564. To establish a violation of the Equal
6 Protection Clause, the prisoner must also present evidence of discriminatory intent. *See*
7 *Washington v. Davis*, 426 U.S. 229, 239-240 (1976); *Serrano*, 345 F.3d at 1081-82; *Freeman v.*
8 *Arpio*, 125 F.3d 732, 737 (9th Cir. 1997).

9 4. Retaliation

10 Prisoners have a First Amendment right to file grievances against prison officials and to
11 be free from retaliation for doing so. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th Cir.
12 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009). A retaliation claim has five
13 elements. *Id.* at 1114.

14 First, the plaintiff must allege that the retaliated-against conduct is protected. *Id.* The
15 filing of an inmate grievance is protected conduct, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th
16 Cir. 2005), as are the rights to speech or to petition the government, *Rizzo v. Dawson*, 778 F.2d
17 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989);
18 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Second, the plaintiff must show the
19 defendant took adverse action against the plaintiff. *Rhodes*, at 567. Third, the plaintiff must
20 allege a causal connection between the adverse action and the protected conduct. *Waitson*, 668
21 F.3d at 1114. Fourth, the plaintiff must allege that the “official’s acts would chill or silence a
22 person of ordinary firmness from future First Amendment activities.” *Robinson*, 408 F.3d at 568
23 (internal quotation marks and emphasis omitted). “[A] plaintiff who fails to allege a chilling
24 effect may still state a claim if he alleges he suffered some other harm,” *Brodheim*, 584 F.3d at
25 1269, that is “more than minimal,” *Robinson*, 408 F.3d at 568 n.11. Fifth, the plaintiff must
26 allege “that the prison authorities’ retaliatory action did not advance legitimate goals of the
27 correctional institution. . . .” *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

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

8 **5. Conspiracy**

9 A claim brought for violation of section 1985(3) requires “four elements: (1) a conspiracy;
10 (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the
11 equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act
12 in furtherance of this conspiracy; (4) whereby a person is either injured in his person or property
13 or deprived of any right or privilege of a citizen of the United States.” *Sever v. Alaska Pulp*
14 *Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A racial, or perhaps otherwise
15 class-based, invidiously discriminatory animus is an indispensable element of a section 1985(3)
16 claim. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (quotations and
17 citation omitted).

18 **6. State Law Claims**

19 **a. Government Claims Act**

20 Under the Government Claims Act (“GCA”),¹ set forth in California Government Code
21 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
22 employee or entity unless the plaintiff first presented the claim to the California Victim
23 Compensation and Government Claims Board (“VCGCB” or “Board”), and the Board acted on
24 the claim, or the time for doing so expired. “The Tort Claims Act requires that any civil
25 complaint for money or damages first be presented to and rejected by the pertinent public entity.”
26 *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The purpose of this

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 requirement is “to provide the public entity sufficient information to enable it to adequately
2 investigate claims and to settle them, if appropriate, without the expense of litigation.” *City of*
3 *San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701 (1974)
4 (citations omitted). Compliance with this “claim presentation requirement” constitutes an
5 element of a cause of action for damages against a public entity or official. *State v. Superior*
6 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). Thus, in the state
7 courts, “failure to allege facts demonstrating or excusing compliance with the claim presentation
8 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
9 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn.omitted).

10 Federal courts likewise must require compliance with the GCA for pendant state law
11 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
12 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
13 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
14 may proceed only if the claims were first presented to the state in compliance with the claim
15 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
16 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

17 Plaintiff fails to state any allegations which show he complied with the GCA so as to be
18 allowed to pursue claims for violation of California law in this action. Further, although Plaintiff
19 seeks to bring criminal charges against the Defendants, a private right of action under a criminal
20 statute has rarely been implied. *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979). Where a
21 private right of action has been implied, ““there was at least a statutory basis for inferring that a
22 civil cause of action of some sort lay in favor of someone.”” *Chrysler Corp.*, 441 U.S. at 316
23 (quoting *Cort v. Ash*, 422 U.S. 66, 79 (1975)). The Court finds no indication that civil
24 enforcement of any kind is available on the criminal charges Plaintiff seeks to bring against the
25 Defendants. *Cort*, 422 U.S. at 79-80; *Keaukaha-Panaewa Cmty. Ass’n v. Hawaiian Homes*
26 *Comm’n*, 739 F.2d 1467, 1469-70 (9th Cir. 1984).

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1 **ORDER**

2 For the reasons set forth above, Plaintiff’s First Amended Complaint is dismissed with
3 leave to file a second amended complaint within **twenty-one (21) days**. If Plaintiff needs an
4 extension of time to comply with this order, Plaintiff shall file a motion seeking an extension of
5 time no later than **twenty-one (21) days** from the date of service of this order.

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

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

19 Plaintiff is further reminded that an amended complaint supercedes the original, *Lacey v.*
20 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
21 2012) (en banc), and must be “complete in itself without reference to the prior or superceded
22 pleading,” Local Rule 220.

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

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

- 28 1. Plaintiff’s Second Amended Complaint is dismissed, with leave to amend;

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- 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 3. Within **twenty-one (21) days** from the date of service of this order, Plaintiff must file a second amended complaint curing the deficiencies identified by the Court in this order or a notice of voluntary dismissal; and
- 4. **If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order and for failure to state a cognizable claim.**

IT IS SO ORDERED.

Dated: **June 15, 2017**

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE