

1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 **C. Pleading Requirements**

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

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

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

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

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

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

12 Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short
13 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),
14 when the opportunity to correct the pleadings has been afforded and there has been no
15 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
16 2013).

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

23 **2. Linkage and Causation**

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

1 conferred.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012)
2 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation
3 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,
4 or causal connection, between each defendant’s actions or omissions and a violation of his federal
5 rights. *Lemire v. California Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);
6 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

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

14 DISCUSSION

15 **A. Plaintiff’s Allegations**

16 Although Plaintiff is no longer incarcerated, he seeks money damages based on
17 circumstances that allegedly occurred at the North Kern State Prison (“NKSP”) in Delano,
18 California. Plaintiff names the California Department of Corrections and Rehabilitation
19 (“CDCR”); Correctional Plant Manager II, Carol A. Swearingen; Chief Engineer I, Neil Erling;
20 and Does 1-100 as Defendants in this action.

21 Plaintiff alleges that he was housed at NKSP from September of 2012 through December
22 of 2015. In October of 2014, the furnace that heats the five housing units in Facility A, where
23 Plaintiff was housed, became and remained inoperable through the first week of January in 2015.
24 The onset of cold weather began in November of 2014. Many days and nights were below
25 freezing in December of 2014. The cells had cement floors, walls, and ceilings. Moisture
26 accumulated and ran down the walls to the floor, where it occasionally formed a thin layer of ice.
27 Plaintiff states that it was so cold in his cell that he could see his breath when he exhaled.
28 Plaintiff wore socks on his hands and 3-4 pairs on his feet, but this was insufficient -- his fingers

1 and toes were in constant pain and sometimes went numb from the cold. Although each inmate
2 was given an extra blanket, it was not sufficient to protect them from the cold that permeated the
3 housing units. As a result of the cold temperatures, Plaintiff went into respiratory failure.
4 Eventually, he was diagnosed with bronchitis or asthma and was put on steroids and inhalers,
5 occasionally needing a breathing machine to relieve his symptoms.

6 Plaintiff alleges that Carol Swearingen was the Correctional Plant Manger II, that Neil
7 Erling was the Chief Engineer I, Does 1-100 worked under their supervision, and that they were
8 all employees of the CDCR. Plaintiff asserts claims under the Eighth Amendment for the
9 conditions of confinement, for supervisorial liability, and for negligence.

10 Plaintiff not only fails to state any cognizable claims, he also fails to link Swearingin,
11 Erling, and Does 1-100 to any of his factual allegations. However, Plaintiff is provided the
12 applicable legal standards for his stated claims and leave to file a first amended complaint.

13 **B. Legal Standards**

14 **1. Eleventh Amendment Immunity**

15 Plaintiff may not sustain an action against the California Department of Corrections and
16 Rehabilitation. The Eleventh Amendment prohibits federal courts from hearing suits brought
17 against an un-consenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053
18 (9th Cir. 1991); *see also Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto*
19 *Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State*
20 *Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars suits against
21 state agencies as well as those where the state itself is named as a defendant. *See Natural*
22 *Resources Defense Council v. California Dep't of Tranp.*, 96 F.3d 420, 421 (9th Cir. 1996);
23 *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *Taylor v. List*,
24 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a state
25 agency entitled to Eleventh Amendment immunity); *Mitchell v. Los Angeles Community College*
26 *Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). "Though its language might suggest otherwise, the
27 Eleventh Amendment has long been construed to extend to suits brought against a state by its
28 own citizens, as well as by citizens of other states." *Brooks*, 951 F.2d at 1053 (citations omitted).

1 “The Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and
2 departments as defendants, and applies whether the relief is legal or equitable in nature.” *Id.*
3 (citation omitted). Because the California Department of Corrections and Rehabilitation is a
4 state agency, it is immune to Plaintiff’s claims under the Eleventh Amendment.

5 2. Eighth Amendment -- Conditions of Confinement

6 The Eighth Amendment protects prisoners from inhumane methods of punishment and
7 from inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Morgan v.*
8 *Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Thus, no matter where they are housed, prison
9 officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing,
10 sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.
11 2000) (quotation marks and citations omitted). To establish a violation of the Eighth
12 Amendment, the prisoner must “show that the officials acted with deliberate indifference. . . .”
13 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v.*
14 *County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002).

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

19 For screening purposes, the extreme cold Plaintiff was forced to endure at NKSP is
20 sufficiently serious to meet the objective prong. Plaintiff’s allegations, however, fail to meet the
21 subjective prong. Specifically, Plaintiff fails to link Swearingen, Erling, or Does 1-100 to his
22 factual allegations and fails to show that they knew inmates were being exposed to extreme cold
23 before Plaintiff raised it in an inmate appeal. Further, the rulings on Plaintiff’s inmate appeal
24 reveal that no work requests were submitted by Facility A Building personnel prior to Plaintiff’s
25 inmate appeal, which is dated January 5, 2015. However, once brought to light, a troubleshooting
26 process was initiated which revealed that “all 15 outdoor duct furnaces had failures and/or
27 cracks.” (Doc. 5, p. 10.)¹ Replacement parts were obtained, installed, and all furnace units were

28 ¹ Plaintiff’s exhibits are considered as he submitted them only a week after he filed this action and explained that his

1 fully operational by January 9, 2015. (*Id.*) A four day turn-around from receipt of Plaintiff's
2 inmate appeal to correction of the problem does not establish deliberate indifference to the
3 situation. Further, Plaintiff's request for temporary space heaters in each cell was considered but
4 denied as it would have overloaded the electrical system and resulted in "catastrophic electrical
5 failures of equipment, panels, lighting, TV's, radios, etc." (*Id.*) Plaintiff does not state a
6 cognizable claim as he fails to show that Swearingin, Erling, or Does 1-100 knew of, and
7 deliberately disregarded, an excessive risk to his safety.

8 **3. Supervisory Liability**

9 It is clear that Plaintiff named Swearingin and Erling as defendants based on their
10 supervisory positions and he specifically alleges that they failed to train and supervise their
11 subordinates on the need to perform routine maintenance, inspection, and reporting of issues with
12 the heating furnaces. (Doc. 1, p. 10.)

13 Generally, supervisory personnel are not liable under section 1983 for the actions of their
14 employees under a theory of *respondeat superior*, *Iqbal*, 129 S.Ct. at 1949. When a named
15 defendant holds a supervisory position, the causal link between him and the claimed
16 constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th
17 Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941
18 (1979). To show this, "a plaintiff must show the supervisor breached a duty to plaintiff which
19 was the proximate cause of the injury. The law clearly allows actions against supervisors under
20 section 1983 as long as a sufficient causal connection is present and the plaintiff was deprived
21 under color of law of a federally secured right." *Redman v. County of San Diego*, 942 F.2d 1435,
22 1447 (9th Cir. 1991)(internal quotation marks omitted)(abrogated on other grounds by *Farmer v.*
23 *Brennan*, 511 U.S. 825 (1994).

24 To state a claim for relief under this theory, Plaintiff must allege some facts that would
25 support a claim that supervisory defendants either personally participated in the alleged
26 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or
27 promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of

28 failure to attach them to the Complaint was inadvertent. (Doc. 5.)

1 constitutional rights’ and is ‘the moving force of the constitutional violation.’” *Hansen v. Black*,
2 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045
3 (9th Cir. 1989).

4 “The requisite causal connection can be established . . . by setting in motion a series of
5 acts by others,” *id.* (alteration in original; internal quotation marks omitted), or by “knowingly
6 refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably
7 should have known would cause others to inflict a constitutional injury,” *Dubner v. City & Cnty.*
8 *of San Francisco*, 266 F.3d 959, 968 (9th Cir. 2001). “A supervisor can be liable in his individual
9 capacity for his own culpable action or inaction in the training, supervision, or control of his
10 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
11 reckless or callous indifference to the rights of others.” *Watkins v. City of Oakland*, 145 F.3d
12 1087, 1093 (9th Cir. 1998) (internal alteration and quotation marks omitted).

13 Although federal pleading standards are broad, some facts must be alleged to support
14 claims under section 1983. *See Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 168
15 (1993). General statements that a supervisor failed to train or supervise their subordinates are
16 legal conclusions that need not be accepted as true. *Iqbal*, 556 U.S. at 678. Thus, Plaintiff’s
17 conclusory allegations that Swearingin and Erling failed to train and supervise their subordinates
18 on the need to perform routine maintenance, inspection, and reporting of issues with the heating
19 furnaces are insufficient to state a cognizable claim.

20 Plaintiff’s allegations can also be construed to allege that by reviewing Plaintiff’s IAs on
21 this issue, Swearingin knew that Plaintiff was being exposed to cold temperatures and was
22 deliberately indifferent. However, “inmates lack a separate constitutional entitlement to a
23 specific prison grievance procedure.” *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (no
24 liberty interest in processing of appeals because no entitlement to a specific grievance procedure),
25 citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). “[A prison] grievance procedure is a
26 procedural right only, it does not confer any substantive right upon the inmates.” *Azeez v.*
27 *DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982) accord *Buckley v. Barlow*, 997 F.2d 494, 495 (8th
28 Cir. 1993); *see also Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance

1 procedure confers no liberty interest on prisoner).

2 Conversely, a plaintiff may “state a claim against a supervisor for deliberate indifference
3 based upon the supervisor’s knowledge of and acquiescence in unconstitutional conduct by his or
4 her subordinates,” *Starr v. Baca*, 652 F.3d 1202, 1207 (2011), which may be shown via the
5 inmate appeals process where the supervisor reviewed Plaintiff’s applicable inmate appeal and
6 failed to take corrective action, thereby allowing the violation to continue.

7 However, as discussed above, the rulings on Plaintiff’s inmate appeal show that no work
8 requests were submitted by Facility A Building personnel. (Doc. 5, p. 10.) Once Plaintiff’s
9 inmate appeal -- which he did not file until January 5, 2015 -- brought the issue to light, a
10 troubleshooting process was initiated which revealed the source of the furnace problem. (*Id.*)
11 Replacement parts were ordered, installed, and all furnace units were fully operational by January
12 9, 2015. (*Id.*) Plaintiff’s request for temporary space heaters in each cell was considered but
13 denied as it would have overloaded the electrical system and resulted in “catastrophic electrical
14 failures of equipment, panels, lighting, TV’s, radios, etc.” (*Id.*) Plaintiff does not state a
15 cognizable claim as he fails to show that either Swearingin, Erling, or Does 1-100 knew of, and
16 intentionally disregarded, an excessive risk to his safety.

17 **4. California’s Government Claims Act**

18 Under the Government Claims Act (“GCA”),² set forth in California Government Code
19 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
20 employee or entity unless the plaintiff first presented the claim to the California Victim
21 Compensation and Government Claims Board (“VCGCB” or “Board”), and the Board acted on
22 the claim, or the time for doing so has expired. “The Tort Claims Act requires that any civil
23 complaint for money or damages first be presented to and rejected by the pertinent public entity.”
24 *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The purpose of this
25 requirement is “to provide the public entity sufficient information to enable it to adequately
26 investigate claims and to settle them, if appropriate, without the expense of litigation.” *City of*

27 ² 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 *San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701 (1974)
2 (citations omitted). Compliance with this “claim presentation requirement” constitutes an
3 element of a cause of action for damages against a public entity or official. *State v. Superior*
4 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90 P.3d 116 (2004). In state courts,
5 “failure to allege facts demonstrating or excusing compliance with the claim presentation
6 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
7 action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116 (fn.omitted).

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

15 Plaintiff fails to state any allegations which show he complied with the GCA, but he
16 submitted the letter of rejection that the Board issued on August 28, 2015, which implies he
17 timely complied. (Doc. 5, p. 16.) However, pursuant to 28 U.S.C. § 1367(a), in any civil action
18 in which the district court has original jurisdiction, the district court “shall have supplemental
19 jurisdiction over all other claims in the action within such original jurisdiction that they form part
20 of the same case or controversy under Article III,” except as provided in subsections (b) and (c).
21 “[O]nce judicial power exists under § 1367(a), retention of supplemental jurisdiction over state
22 law claims under 1367(c) is discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th
23 Cir. 1997). “The district court may decline to exercise supplemental jurisdiction over a claim
24 under subsection (a) if . . . the district court has dismissed all claims over which it has original
25 jurisdiction.” 28 U.S.C. § 1367(c)(3); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156
26 (9th Cir. 2013); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir.
27 2001); *see also Watison v. Carter*, 668 F.3d 1108, 1117-18 (9th Cir. 2012) (even in the presence
28 of cognizable federal claim, district court has discretion to decline supplemental jurisdiction

1 over novel or complex issue of state law of whether criminal statutes give rise to civil liability).
2 The Supreme Court has cautioned that “if the federal claims are dismissed before trial, . . . the
3 state claims should be dismissed as well.” *United Mine Workers of America v. Gibbs*, 383 U.S.
4 715, 726 (1966). Jurisdiction over Plaintiff’s claims under California law will only be exercised
5 by this Court if Plaintiff states a cognizable federal claim.

6 **ORDER**

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

11 Plaintiff must demonstrate in any first amended complaint how the conditions of which he
12 complains resulted in a deprivation of his constitutional rights. *See Ellis v. Cassidy*, 625 F.2d 227
13 (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). Plaintiff is further reminded that an amended complaint supercedes
24 the original, *Lacey v. Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1
25 (9th Cir. Aug. 29, 2012) (en banc), and must be “complete in itself without reference to the prior
26 or superceded pleading,” Local Rule 220.

27 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
28 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff

1 may not change the nature of this suit by adding new, unrelated claims in his first amended
2 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

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

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

12 IT IS SO ORDERED.

13 Dated: June 28, 2017

14 */s/ Sheila K. Olerto*
15 UNITED STATES MAGISTRATE JUDGE

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