

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
2 § 1915A(b)(1), (2). If an action is dismissed on one of these three bases, a strike is imposed per
3 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed as
4 frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has not
5 alleged imminent danger of serious physical injury does not qualify to proceed *in forma pauperis*.
6 See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

7 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
8 immunities secured by the Constitution and laws of the United States.” *Wilder v. Virginia Hosp.*
9 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source
10 of substantive rights, but merely provides a method for vindicating federal rights conferred
11 elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

12 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
13 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
14 violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487
15 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

16 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
17 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
18 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii); see also *Balistreri v.*
19 *Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990).

20 C. **Pleading Standards -- Federal Rule of Civil Procedure 8(a)**

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

27 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
28 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at

1 678, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff must set forth
2 “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*,
3 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual allegations are accepted as true, but
4 legal conclusions are not. *Iqbal*, 556 U.S. at 678; *see also Moss v. U.S. Secret Service*, 572 F.3d
5 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

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

19 **C. Summary of the Second Amended Complaint**

20 Plaintiff is currently incarcerated at Sierra Conservation Center (“SCC”) in Jamestown,
21 California, where the instances he contends violated his civil rights occurred. Plaintiff names Dr.
22 Ridge and Dr. Savage as Defendants and seeks monetary relief.

23 Plaintiff alleges that at facilities where he was previously housed, his Primary Care
24 Physician (PCP) had him “sign a document of acknowledgement,” after which he was “removed
25 off of insulin.” (Doc. 19, p. 3.) Plaintiff states that, after he was transferred to SCC, the medical
26 department required him to take insulin shots each day, even though before he arrived at SCC, he
27 “informed them” of his decision to be taken off insulin. (*Id.*, p. 4.) When Plaintiff requested to
28 be taken off of insulin at SCC, he was threatened with being placed in a “suicide cell,” which he

1 describes generally as worse than Ad-Seg, so Plaintiff continued to receive insulin shots “for
2 years.” (*Id.*) Subsequently, Plaintiff explained to Dr. Ridge and Dr. Savage (his PCPs at SCC)
3 that, since his “hemoglobin A1C was 7.9, which meets the C.D.C.R. standard,” he preferred oral
4 meds as his treatment. (*Id.*) Both defendants denied Plaintiff’s request and told Plaintiff to either
5 take the insulin shots or go to a “suicide cell.” (*Id.*) Plaintiff states that he did not take the threats
6 lightly as he knew of inmates who were put in a “suicide cell” for repeatedly refusing insulin,
7 then placed in Ad-Seg pending high risk medical transfer for their choice. (*Id.*) Plaintiff
8 contends that these circumstances have violated his rights under the Fourteenth Amendment to
9 refuse medical treatment. However, for the reasons discussed below, Plaintiff fails to state any
10 cognizable claims necessitating dismissal.

11 **D. Discussion**

12 The Fourteenth Amendment protects the right to refuse unwanted medical treatment. *See*
13 *Cruzan by Cruzan v. Dir., Mo. Dept. of Health*, 497 U.S. 261, 278 (1990) (A “competent person
14 has a constitutionally protected liberty interest in refusing unwanted medical treatment.”). To
15 determine whether Plaintiff’s right to refuse treatment was violated, the Court must balance
16 Plaintiff’s “liberty interests against the relevant state interests.” *Cruzan*, 497 U.S. at 279.
17 Specifically, the Court must consider “the need for the government action in question, the
18 relationship between the need and the action, the extent of harm inflicted, and whether the action
19 was taken in good faith or for the purpose of causing harm.” *Plumeau v. Sch. Dist. No. 40*, 130
20 F.3d 432, 438 (9th Cir.1997) (quotation omitted); *see also Jacobson v. Massachusetts*, 197 U.S.
21 11, 24-30 (1905) (where the Court balanced an individual’s liberty interest in declining an
22 unwanted smallpox vaccine against the State’s interest in preventing the disease). In the prison
23 context, “[p]rison administrators have not only an interest in ensuring the safety of prison staff
24 and administrative personnel . . . but also the duty to take reasonable measures for the prisoners’
25 own safety.” *Washington v. Harper*, 494 U.S. 210, 223 (1990) (citing *Hudson v. Palmer*, 468
26 U.S. 517, 526-27 (1984)).

27 Though Plaintiff contends that his rights under the Fourteenth Amendment have been
28 violated, he fails to state any allegations to show that he refused to be injected with insulin and it

1 was forcibly administered, or that he was punished for making that decision. Rather, Plaintiff's
2 allegations show that he preferred oral medication over of insulin injections, which is confirmed
3 by Plaintiff's inmate grievance which he attached to the original Complaint. (Doc. 1, pp. 7-16.)

4 In that grievance, Plaintiff made clear that he desired to be taken off of insulin injections
5 and to be "prescribed 1 or 2 more oral meds to go with Metformin." (Doc. 1, p. 7.) Throughout
6 the grievance process, Plaintiff acknowledged that it was not in his best interest to completely
7 discontinue his insulin and that he planned to continue taking it, but that he desired to do so orally
8 instead of via injection. (*Id.*, pp. 7-16.) At most, this equates to a difference of opinion as to
9 which form of treatment Plaintiff received for his diabetes, which as stated in the prior screening
10 orders, is not actionable. *See Estelle v. Gamble*, 429 U.S. 97, 107 (1976).

11 Likewise, as also stated in the prior screening orders, these allegations do not show
12 deliberate indifference by Dr. Ridge or Dr. Savage to Plaintiff's diabetic condition for a claim
13 under the Eighth Amendment. *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012).
14 Plaintiff also fails to show any harm he suffered as a result of the actions by Dr. Ridge and Dr.
15 Savage. *Id.* Finally, Plaintiff's allegations that Dr. Ridge and Dr. Savage refused his requests to
16 receive oral medications rather than insulin injections, fall short of satisfying the plausibility
17 standards since such conclusory allegations are "merely consistent with" a defendant's liability."
18 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

19 **II. RECOMMENDATION**

20 For the reasons discussed above, Plaintiff's Second Amended Complaint fails to state any
21 cognizable claims. Given that the Second Amended Complaint suffers from the same defects as
22 Plaintiff's prior pleadings, it appears futile to allow further amendment. Plaintiff should not be
23 granted leave to amend as the defects in his pleading are not capable of being cured through
24 amendment. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012).

25 Accordingly, the Court **RECOMMENDS** that this entire action be dismissed with
26 prejudice. The Clerk of the Court is directed to assign a district judge to the action.

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 21**

1 **days** after being served with these Findings and Recommendations, Plaintiff may file written
2 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
3 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
4 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
5 839 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: April 12, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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