



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

### 3 **II. Pleading Standard**

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

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

15 A complaint must contain “a short and plain statement of the claim showing that  
16 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
17 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
18 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
19 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
20 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief  
21 that is plausible on its face.” Id. Facial plausibility demands more than the mere  
22 possibility that a defendant committed misconduct and, while factual allegations are  
23 accepted as true, legal conclusions are not. Id. at 677-78.

### 24 **III. Plaintiff's Allegations**

25 Plaintiff is incarcerated at the California Substance Abuse Treatment Facility  
26 (“SATF”), but complains of acts that occurred at San Quentin State Prison, High Desert  
27 State Prison, and SATF. He names Scott Kernan, Secretary of CDCR, as the sole  
28 defendant.

1 Briefly stated, Plaintiff complains that he is not housed in a single cell. He alleges  
2 that double celling violates his Fourth, Fifth, Eighth and Fourteenth Amendment rights.  
3 He alleges that double celling carries general risks of assault and rape; allows others to  
4 view his private activities such as using the toilet; and is lacking in fairness, kindness,  
5 and dignity.

6 He seeks an injunction placing him on permanent single cell status.

#### 7 **IV. Analysis**

##### 8 **A. Linkage**

9 Under § 1983, Plaintiff must demonstrate that each named defendant personally  
10 participated in the deprivation of his rights. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons  
11 v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton,  
12 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
13 2002). Liability may not be imposed on supervisory personnel under the theory of  
14 respondeat superior, as each defendant is only liable for his or her own misconduct.  
15 Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may only be held liable  
16 if they “participated in or directed the violations, or knew of the violations and failed to act  
17 to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v.  
18 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570  
19 (9th Cir. 2009); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th  
20 Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

21 Plaintiff’s complaint does not state any facts regarding Defendant Kernan. Indeed,  
22 the complaint states very few facts and is comprised largely of citation to and quotation  
23 from legal authorities. It appears Plaintiff wishes to proceed against Kernan merely  
24 because he is the Secretary of CDCR. This supervisory position is not a sufficient basis  
25 for liability under section 1983. Plaintiff must allege facts to show that Kernan  
26 participated in a violation of Plaintiff’s rights or knew of a violation but failed to act.  
27 Alternatively, he must name as defendants the individuals to whom Plaintiff attributes  
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1 such violations and must state facts sufficient to establish liability of the part of these  
2 individuals.

3 Plaintiff will be given leave to amend. The legal standards applicable to what  
4 appear to be his intended claims are provided below.

5 **B. Exhaustion of Administrative Remedies**

6 Plaintiff states that he has not exhausted administrative remedies and that he is  
7 attempting to exhaust such remedies through this complaint.

8 Pursuant to the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought  
9 with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by  
10 a prisoner confined in any jail, prison, or other correctional facility until such  
11 administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).  
12 Prisoners are required to exhaust the available administrative remedies prior to filing  
13 suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198,  
14 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the  
15 prisoner and regardless of the relief offered by the process, Booth v. Churner, 532 U.S.  
16 731, 741 (2001), and the exhaustion requirement applies to all suits relating to prison  
17 life. Porter v. Nussle, 435 U.S. 516, 532 (2002). Because exhaustion must precede the  
18 filing of the complaint, compliance with § 1997e(a) is not achieved by exhausting  
19 administrative remedies while the lawsuit is pending. See McKinney, 311 F.3d at 1199.

20 A prison inmate in California satisfies the administrative exhaustion requirement by  
21 following the procedures set forth in §§ 3084.1-3084.8 of Title 15 of the California Code  
22 of Regulations. In California, inmates "may appeal any policy, decision, action, condition,  
23 or omission by the department or its staff that the inmate...can demonstrate as having a  
24 material adverse effect upon his or her health, safety, or welfare." Cal. Code Regs. tit.  
25 15, § 3084.1(a). The inmate must submit his appeal on the proper form, and is required  
26 to identify the staff member(s) involved as well as describing their involvement in the  
27 issue. See Cal. Code Regs. tit. 15, § 3084.2(a). These regulations require the prisoner  
28 to proceed through three levels of appeal. See Cal. Code Regs. tit. 15, §§ 3084.1(b),

1 3084.2, 3084.7. A decision at the third formal level, which is also referred to as the  
2 director's level, is not appealable and exhausts a prisoner's administrative remedies. See  
3 id.

4 The PLRA, however, does not require exhaustion when circumstances render  
5 administrative remedies effectively unavailable. Sapp v. Kimbrell, 623 F.3d 813, 822  
6 (9th Cir. 2010) (citing Nunez v. Duncan, 591 F.3d 1217, 1226 (9th Cir. 2010)); see also  
7 Dale v. Lappin, 376 F.3d 652, 656 (7th Cir. 2004) (exhaustion not required where prison  
8 officials failed to give grievance forms to Plaintiff); Dole v. Chandler, 438 F.3d 804, 809,  
9 811 (7th Cir. 2006) (prison officials' failure to respond to properly filed grievance made  
10 exhaustion effectively unavailable).

11 “[I]nmates are not required to specially plead or demonstrate exhaustion in their  
12 complaints.” Jones, 549 U.S. at 216. The PLRA's exhaustion requirement is not  
13 jurisdictional; it creates an affirmative defense that defendants must plead and prove. Id.  
14 However, “in those rare cases where a failure to exhaust is clear from the face of the  
15 complaint,” dismissal for failure to state a claim is appropriate, even at the screening  
16 stage. Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014). See also Wyatt v. Terhune,  
17 315 F.3d 1108, 1120 (9th Cir. 2003) (stating that “[a] prisoner's concession to  
18 nonexhaustion is a valid ground for dismissal”), overruled on other grounds by Albino,  
19 747 F.3d at 1166; Sorce v. Garikpaetiti, 2014 WL 2506213 (S.D. Cal. June 2, 2014)  
20 (relying on Albino and dismissing the complaint on screening because “it is clear from  
21 the face of [plaintiff's] pleading that he has conceded that he failed to exhaust all  
22 available administrative remedies . . . before he commenced this action”).

23 The instant complaint does not enlighten as to whether Plaintiff has exhausted  
24 administrative remedies. Plaintiff must exhaust the prison grievance process before he  
25 can initiate suit. Failure to do so renders his complaint subject to dismissal.

26 If Plaintiff chooses to amend, he should allege facts to show that he has exhausted  
27 administrative remedies, or that his failure to exhaust should be excused because  
28 administrative remedies were effectively unavailable to him.

1           **C.       Improper Joinder**

2           Plaintiff claims that he was denied single cell status at several different institutions.  
3 He does not identify the person or persons responsible for these denials, the reasons  
4 given, or even Plaintiff's particular need for single cell status. Thus, the Court is unable  
5 to tell whether claims arising at different institutions are properly joined in this action.

6           Accordingly, Plaintiff is advised that he may not bring unrelated claims against  
7 unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley,  
8 653 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).  
9 Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out  
10 of the same transaction or occurrence, or series of transactions and occurrences, and  
11 (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); Coughlin v.  
12 Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997); Desert Empire Bank v. Insurance Co. of  
13 North America, 623 F.2d 1371, 1375 (9th Cir. 1980). Only if the defendants are properly  
14 joined under Rule 20(a) will the Court review the other claims to determine if they may  
15 be joined under Rule 18(a), which permits the joinder of multiple claims against the same  
16 party.

17           **D.       Fourth Amendment**

18           Plaintiff appears to allege a privacy violation under the Fourth Amendment  
19 resulting from double celling and the fact that others can see into his cell. The precise  
20 nature of this claim is unclear. Nonetheless, the general legal standard that would  
21 appear applicable to such a claim is provided below.

22           “A right of privacy in traditional Fourth Amendment terms is fundamentally  
23 incompatible with the close and continual surveillance of inmates and their cells required  
24 to ensure institutional security and internal order.” Hudson v. Palmer, 468 U.S. 517, 527-  
25 28 (1984). “The recognition of privacy rights for prisoners in their individual cells simply  
26 cannot be reconciled with the concept of incarceration and the needs and objectives of  
27 penal institutions.” Id. at 526.

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**E. Fifth Amendment**

It appears Plaintiff intends to bring a Fifth Amendment Due Process claim. “[T]he Fifth Amendment’s due process clause applies only to the federal government.” Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008). As the only Defendant here is a state actor, Plaintiff’s claim will be considered under the Fourteenth Amendment.

**F. Eighth Amendment**

**1. Failure to Protect**

The Eighth Amendment protects prisoners from inhumane methods of punishment and from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). Although prison conditions may be restrictive and harsh, prison officials must provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v. Brennan, 511 U.S. 825, 832-33, 114 S.Ct. 1970 (1994) (quotations omitted). Prison officials have a duty under the Eighth Amendment to protect prisoners from violence at the hands of other prisoners because being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society. Farmer, 511 U.S. at 833-34 (quotation marks omitted); Clem v. Lomeli, 566 F.3d 1177, 1181 (9th Cir. 2009); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable under the Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious harm. Farmer, 511 U.S. at 834, 841 (quotations omitted); Clem, 566 F.3d at 1181; Hearns, 413 F.3d at 1040.

**2. Conditions of Confinement**

Plaintiff appears to allege that double celling, in itself, constitutes an unconstitutional condition of confinement. However, double-celling, by itself, does not violate the Eighth Amendment. Rhodes v. Chapman, 452 U.S. 337 (1981).

1 Like a failure to protect claim, a conditions of confinement claim has both an  
2 objective and a subjective component. See Farmer, 511 U.S. at 834. “First, the  
3 deprivation alleged must be . . . sufficiently serious,” and must “result in the denial of the  
4 minimal civilized measure of life’s necessities.” Id. “[E]xtreme deprivations are required  
5 to make out a conditions-of-confinement claim.” Hudson, 503 U.S. at 9. Second, the  
6 prison official must have acted with “deliberate indifference” to a substantial risk of  
7 serious harm to the inmate. Farmer, 511 U.S. at 834. “Mere negligence is not sufficient  
8 to establish liability.” Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). Rather, a  
9 plaintiff must set forth facts to show that a defendant knew of, but disregarded, an  
10 excessive risk to inmate safety. Farmer, 511 U.S. at 837. That is, “the official must both  
11 be aware of facts from which the inference could be drawn that a substantial risk of  
12 serious harm exists, and he must also draw the inference.” Id.

### 13 **G. Fourteenth Amendment**

14 Plaintiff claims that double-celling violates his Due Process rights under the  
15 Fourteenth Amendment.

16 Being assigned to a single-cell has not been found to be a right protected by the  
17 Due Process Clause. See Bell v. Wolfish, 441 U.S. 520, 542 (1979). Generally, prison  
18 classifications do not give rise to a federal liberty interest. Hernandez v. Johnston, 833  
19 F.2d 1316, 1318 (9th Cir.1987) (citing Moody v. Daggett, 429 U.S. 78, 88 n. 9 (1976)). In  
20 addition, although “States may under certain circumstances create liberty interests which  
21 are protected by the Due Process Clause,” those circumstances are generally limited to  
22 freedom from restraint that “imposes atypical and significant hardship on the inmate in  
23 relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 483-84  
24 (1995). Thus, it is well-established that inmates do not have a constitutional right to be  
25 incarcerated at a particular correctional facility or in a particular cell or unit within a  
26 facility. See Meachum v. Fano, 427 U.S. 215, 224-25 (1976); Rizzo v. Dawson, 778 F.2d  
27 527, 530 (9th Cir.1985) (“An inmate's liberty interests are sufficiently extinguished by his  
28 conviction so that the state may change his place of confinement even though the

1 degree of confinement may be different and prison life may be more disagreeable in one  
2 institution than in another.”)

3 This allegation fails to state a claim.

4 **V. Conclusion and Order**

5 Plaintiff’s complaint does not state a cognizable claim for relief. Although these  
6 defects do not appear capable of being cured through amendment, the Court  
7 nonetheless will grant Plaintiff an opportunity to file an amended complaint. Noll v.  
8 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff chooses to amend, he must  
9 demonstrate that the alleged acts resulted in a deprivation of his constitutional rights.  
10 Iqbal, 556 U.S. at 677-78. Plaintiff must set forth “sufficient factual matter . . . to ‘state a  
11 claim that is plausible on its face.’” Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)).  
12 Plaintiff must also demonstrate that each named Defendant personally participated in a  
13 deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

14 Plaintiff should note that although he has been given the opportunity to amend, it  
15 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th  
16 Cir. 2007). Plaintiff should carefully read this screening order and focus his efforts on  
17 curing the deficiencies set forth above.

18 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
19 complaint be complete in itself without reference to any prior pleading. As a general rule,  
20 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
21 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no  
22 longer serves any function in the case. Therefore, in an amended complaint, as in an  
23 original complaint, each claim and the involvement of each defendant must be  
24 sufficiently alleged. The amended complaint should be clearly and boldly titled “First  
25 Amended Complaint,” refer to the appropriate case number, and be an original signed  
26 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
27 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a  
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1 right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations  
2 omitted).

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. Plaintiff’s complaint is dismissed for failure to state a claim upon which relief  
5 may be granted;
- 6 2. The Clerk’s Office shall send Plaintiff a blank civil rights complaint form and a  
7 copy of his complaint, filed February 9, 2017;
- 8 3. Within thirty (30) days from the date of service of this order, Plaintiff must file a  
9 first amended complaint curing the deficiencies identified by the Court in this  
10 order or a notice of voluntary dismissal; and
- 11 4. If Plaintiff fails to file an amended complaint or notice of voluntary dismissal,  
12 the Court will recommend the action be dismissed, with prejudice, for failure to  
13 comply with a court order and failure to state a claim, subject to the “three  
14 strikes” provision set forth in in 28 U.S.C. § 1915(g).

15  
16 IT IS SO ORDERED.

17 Dated: February 13, 2017

*/s/ Michael J. Seng*  
18 UNITED STATES MAGISTRATE JUDGE

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