

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RUFUS HERNANDEZ,

Plaintiff,

v.

DOE OFFICER ONE, et al.,

Defendants.

Case No. 1:17-cv-00429-JLT (PC)**ORDER DIMISSING THE COMAPLINT
WITH LEAVE TO AMEND OR
ALLOWING PLAINTIFF TO NOTIFY
COURT OF WILLINGNESS TO PROCEED
ONLY ON CLAIMS FOUND TO BE
COGNIZABLE AND NOT BARRED****(Doc. 1)****21-DAY DEADLINE**

In this action, Plaintiff alleges that he was brutalized by police officers when he was arrested, that he did not receive proper medical treatment for his injuries, and that the brutality he was subjected to during his arrest and various conditions of his confinement were in retaliation for his family winning a prior lawsuit against the Bakersfield Police Department regarding the death of his cousin. Plaintiff has stated one cognizable claim and may be able to correct the deficiencies in his pleading on other claims. Thus, the Court will allow Plaintiff to file a first amended complaint correcting the deficiencies or to advise the Court that he is willing to proceed only on the claims found cognizable herein.

A. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary
3 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.
4 § 1915(e)(2)(B)(i)-(iii).

5 **B. Plaintiff's Claims**

6 Plaintiff sets forth three claims against eight Doe defendants: (1) for excessive force,
7 unlawful detention, and illegal search and seizure (Doc. 1, pp. 5-6); (2) for medical malpractice
8 (*id.*, pp. 7-8); and (3) for cruel and unusual punishment and retaliation (*id.*, pp. 9-10). Though
9 Plaintiff is currently housed at the Central Valley Modified Community Correctional Facility
10 (CVMCCF) in McFarland, California, the events underlying his claims in this action occurred in
11 Bakersfield, California.

12 Plaintiff has stated some cognizable claims and may be able to amend to correct the
13 deficiencies in his pleading as to others. Thus, the Court provides the applicable standards related
14 to his purported claims and leave to file a second amended complaint. Alternatively, Plaintiff
15 may notify the Court that he wishes to proceed only on the claims now cognizable.

16 **C. Pleading Requirements**

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

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

24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
25 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
26 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
27 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
28 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual

1 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
2 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

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

15 If he chooses to file a first amended complaint, Plaintiff should make it as concise as
16 possible. He should simply state which of his constitutional rights he feels were violated by each
17 Defendant and factual basis. Where the allegations against two or more Defendants are factually
18 intertwined, Plaintiff need not repeat the factual allegations separately against each Defendant.
19 Rather, Plaintiff should present his factual allegations and identify the Defendants he feels are
20 thereby implicated.

21 **2. Linkage Requirement**

22 The Civil Rights Act (42 U.S.C. § 1983) requires that there be an actual connection or link
23 between the actions of the defendants and the deprivation alleged to have been suffered by
24 Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423
25 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation
26 of a constitutional right, within the meaning of section 1983, if he does an affirmative act,
27 participates in another’s affirmative acts or omits to perform an act which he is legally required to
28 do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743

1 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each
2 named defendant with some affirmative act or omission that demonstrates a violation of
3 Plaintiff's federal rights.

4 Plaintiff must clearly identify which Defendant he feels is responsible for each violation
5 of his constitutional rights and the factual basis for the claim so that each Defendant is placed on
6 notice of the claims against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir.
7 2004).

8 **D. Plaintiff's Claim**

9 **1. Claim I (Doc. 1, pp. 5-6)**

10 Plaintiff alleges that, on July 2, 2016, four Bakersfield police officers entered his house
11 through the front door, with their guns drawn, without a warrant and without knocking. Plaintiff
12 was sitting on the floor by the front door when they came in. Doe Officer #1 (D/O #1) ordered
13 Plaintiff's mother, father, and fiancé (who was holding their 3 year old son) to get out of the
14 house. D/O #1 held his family outside with his gun drawn.

15 D/Os #2, #3, and #4 held Plaintiff inside, still sitting on the floor. D/O #2 stood directly
16 behind Plaintiff while D/Os #3 and #4 stood in front of Plaintiff to his right and left, respectively.
17 While standing behind Plaintiff, D/O #1 asked Plaintiff's name, which Plaintiff stated. D/O #1
18 then closed the front door and told Plaintiff to lay face down. As Plaintiff complied, D/O #2
19 jumped on Plaintiff's back, pulled his head all the way back, and sprayed Plaintiff in the face with
20 O.C. spray. At the same time, D/O #3 pulled out his baton and started to hit Plaintiff's legs
21 numerous times -- ultimately breaking his left leg. While this was going on, D/O #4 started to
22 kick Plaintiff and grabbed Plaintiff's left arm, breaking it with a hard twist. During this, Plaintiff
23 was choking and trying to yell for help. At one point, D/O #2 stopped hitting Plaintiff's legs with
24 his baton and said to D/Os #3 and #4 "let's give him the Lopez treatment." D/O #2, #3, and #4
25 drew their guns at Plaintiff and D/O #4 yelled "Gun!" At that very moment, Plaintiff's fiancé
26 moved past D/O #1 and came through the front door. D/Os #2, #3, and #4 turned their guns
27 toward her and their son and D/O #4 told her "get the fuck out of here or the same will happen to
28 you." D/O #2 put his gun away, grabbed Plaintiff's arms and put him in handcuffs. D/Os #2 and

1 #4 grabbed Plaintiff's arms and drug him to the squad car because he could not walk. D/O #3
2 came to the Plaintiff in the care and told Plaintiff to tell him where the DVR to Plaintiff's security
3 camera was. Plaintiff did not tell him. Thereafter, D/O #1 drove Plaintiff to kern Medical Center
4 Hospital to be treated.

5 **a. Excessive Force**

6 The Fourth Amendment prohibits unreasonable searches and seizures. The use of
7 excessive force to effect an arrest is analyzed under the standards of the Fourth Amendment.
8 *Graham v. Connor*, 490 U.S. 386, 394 (1989) (citing *Tennessee v. Garner*, 471 U.S. 1, 7-22
9 (1985)). "[R]easonableness is always the touchstone of Fourth Amendment analysis," *Birchfield*
10 *v. North Dakota*, 579 U.S. ---, ---, 136 S.Ct. 2160, 2186 (2016), and "... is generally assessed by
11 carefully weighing the nature and quality of the intrusion on the individual's Fourth Amendment
12 interests against the importance of the governmental interests alleged to justify the intrusion."'
13 *Cty. of Los Angeles, Calif. v. Mendez*, --- U.S. ---, 137 S. Ct. 1539, 1546-47 (2017) (quoting
14 *Garner*, 471 U.S. at 8).

15 The Supreme Court's rulings have set forth a settled and exclusive framework for
16 analyzing whether the force used in making a seizure complies with the Fourth Amendment.
17 *Mendez*, 137 S.Ct. at 1546-47 (citing *Graham*, 490 U.S., at 395). "Determining whether the force
18 used to effect a particular seizure is 'reasonable' " requires balancing of the individual's Fourth
19 Amendment interests against the relevant government interests. *Graham.*, at 396, 109 S.Ct. 1865.
20 The operative question in excessive force cases is "whether the totality of the circumstances
21 justifie[s] a particular sort of search or seizure." *Garner*, 471 U.S. at 8-9.

22 This "objective" inquiry requires "careful attention to the facts and circumstances of each
23 particular case." *Graham*, at 396. "[T]he 'reasonableness' of a particular seizure depends not
24 only on *when* it is made, but also on *how* it is carried out." *Id.*, at 395, (citing *Garner*, at 7-8)
25 (emphasis in original). "The 'reasonableness' of a particular use of force must be judged from the
26 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."
27 *Ibid.* "Excessive force claims ... are evaluated for objective reasonableness based upon the
28 information the officers had when the conduct occurred." *Saucier v. Katz*, 533 U.S. 194, 207

1 (2001). “That inquiry is dispositive: When an officer carries out a seizure that is reasonable,
2 taking into account all relevant circumstances, there is no valid excessive force claim.” *Mendez*,
3 137 S.Ct. at 1547.

4 Plaintiff does not state a cognizable claim against D/O #1 because he fails to state any
5 allegations to show that D/O #1 was in any way involved in the attack. Likewise, the Court has
6 reviewed the docket of the Kern County Superior Court in Case Number BF16421A and has
7 learned that Plaintiff plead no contest to violation of California Penal Code Section 148(A)(1)
8 stemming from his arrest on July 2, 2016.¹ As a consequence, Plaintiff was sentenced to 28 days
9 in jail, 14 of which had already been served by the time of sentencing, and to pay a fine. Thus, it
10 appears that Plaintiff’s claims against D/Os #2, #3, and #4 may be *Heck* barred.

11 **b. Heck Bar**

12 When a complaint seeks damages in a § 1983 action and a judgment in the plaintiff’s favor
13 would necessarily imply the invalidity of the plaintiff’s criminal conviction based upon acts upon
14 which the § 1983 is premised, the action is barred unless the plaintiff demonstrates the conviction
15 has been reversed. *Heck v. Humphrey*, 512 U.S. 477, 486–487 (1994). “In evaluating whether
16 claims are barred by *Heck*, an important touchstone is whether a § 1983 plaintiff could prevail
17 only by negating ‘an element of the offense of which he has been convicted.’ ” *Cunningham v.*
18 *Gates*, 312 F.3d 1148, 1153–54 (9th Cir.2002) quoting *Heck* at 487 n. 6.

19 Plaintiff alleges that he did not resist the officers at all. However, in entering the plea to
20 the charge of violating California Penal Code section 148, he has admitted that he willfully
21 resisted, delayed, or obstructed a peace officer during the discharge of the officer’s duties. Thus,
22 if he wishes to pursue a claim of excessive force against D/Os #2, #3, and #4, he must file an
23 amended complaint which sets forth truthful factual allegations that his conviction has been set

24
25 ¹ The court may take notice of facts that are capable of accurate and ready determination by resort to sources whose
26 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333
27 (9th Cir. 1993). The record of state court proceeding is a source whose accuracy cannot reasonably be questioned,
28 and the Court may take judicial of these court records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9
(9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th
Cir.); see also *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989); *Rodic v. Thistledown Racing
Club, Inc.*, 615 F.2d 736, 738 (6th. Cir. 1980).

1 aside through direct appeal or that the acts upon which his conviction is based are unrelated to the
2 force used by the officers.

3 **b. Illegal Search & Seizure**

4 The Fourth Amendment guarantees the right of citizens to be free from unreasonable
5 governmental searches. *United States v. Ruckes*, 586 F.3d 713, 716 (9th Cir. 2009). “[S]ubject
6 only to a few specifically established and well-delineated exceptions, ‘a search is presumed to be
7 unreasonable under the Fourth Amendment if it is not supported by probable cause and conducted
8 pursuant to a valid search warrant.’” *Id.* (quoting *United States v. Caseres*, 533 F.3d 1064, 1070
9 (9th Cir. 2008)). “Probable cause exists when, under the totality of the circumstances, ‘there is a
10 fair probability that contraband or evidence of a crime will be found in a particular place.’”
11 *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006) (quoting *Illinois v. Gates*, 462 U.S.
12 213, 238, 103 S. Ct. 2317 (1983)) (emphasis added). Plaintiff alleges that D/Os #1, #2, #3, and
13 #4 entered the front door of his home without a warrant, which suffices at the pleading stage to
14 state a cognizable claim.

15 **c. Unlawful Detention**

16 Police may detain persons without probable cause while executing a search warrant if
17 justified by the circumstances. *Michigan v. Summers*, 452 U.S. 692, 705 (1981). Such a
18 detention may be unlawful under the Fourth Amendment “either because the detention itself is
19 [unreasonable] or because it is carried out in an unreasonable manner.” *Franklin v. Foxworth*, 31
20 F.3d 873, 876 (9th Cir. 1994). A seizure must be “carefully tailored” to the law enforcement
21 interests that, according to the *Summers* line of cases, justify detention while a search warrant is
22 being executed. *Ganwich v. Knapp*, 319 F.3d 1115, 1122 (9th Cir. 2003) (quoting *Florida v.*
23 *Royer*, 460 U.S. 491, 504 (1983)). Where such law enforcement interests arguably justify a
24 detention, we balance those interests against the intrusiveness of the seizure to the persons
25 detained. *Summers*, 452 U.S. at 699-705 (1981); *Ganwich*, 319 F.3d at 1120. Thus, the
26 reasonableness of a detention depends not only on *if* it is made, “but also on *how* it is carried out.”
27 *Franklin*, 31 F.3d at 875 (quoting *Tennessee v. Garner*, 471 U.S. 1, 7-8 (1985)). “[A] detention
28 conducted in connection with a search may be unreasonable if it is unnecessarily painful,

1 degrading, or prolonged [.]” *Id.* at 876. Plaintiff’s allegations that he was attacked and beaten by
2 the police during the July 2, 2016 incident is not cognizable against D/O #1 because Plaintiff did
3 not link that officer to the offending incident. Likewise, because the claims against D/Os #2, #3,
4 and #4 appear to be *Heck* barred, he has not stated a cognizable claim against these defendants
5 either.

6 **2. Claim II (Doc. 1, pp. 7-8)**

7 Plaintiff alleges that the officers took him to the Kern Medical Center Hospital for
8 treatment. There, Doe Dr. #5 came into the exam room and stated “this is what you get for
9 running from the police.” Plaintiff responded that he didn’t run from them. Dr. #5 asked Plaintiff
10 if he was hurting and Plaintiff indicated that his left arm and left leg hurt. Dr. #5 looked at his
11 arm and said it was fine and that his leg was broken. Dr. #5 put a “band” around Plaintiff’s leg
12 and told the officers that Plaintiff was done. Plaintiff asked for pain medications, but Dr. #5 just
13 said “don’t run from the police” and did not give him anything for pain. D/O #1 then drove
14 Plaintiff to the Kern County Jail where he was seen by Doe #8 in the medical center. Doe #8
15 looked at Dr. #5’s report and looked at Plaintiff and asked if Plaintiff had any other pain.
16 Plaintiff indicated that he did and that his left arm was broken as well. Doe #8 just said that
17 Plaintiff was done and did not give Plaintiff anything for pain, despite his request.

18 After booking, Plaintiff was placed in the jail. A few days later, Plaintiff was taken back
19 to the Kern Medical Center Hospital where he was seen by another physician who sent Plaintiff
20 for x-rays of his left arm and leg -- which revealed that both were broken. Plaintiff’s arm and leg
21 were placed in casts and he was returned to the jail with crutches. Plaintiff alleges that these
22 incidents amounted to medical negligence and checked the box for a medical care under § 1983.

23 **a. Medical Claims**

24 A decision, “if made by a professional,² is presumptively valid; liability may be imposed
25 only when the decision by the professional is such a substantial departure from accepted

26 ² The *Youngberg* Court defined a “ ‘professional’ decision-maker,” as “a person competent, whether by education,
27 training or experience, to make the particular decision at issue. Long-term treatment decisions normally should be
28 made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology,
physical therapy, or the care and training of the retarded.” 457 U.S. at 323, n. 30.

1 professional judgment, practice, or standards as to demonstrate that the person responsible
2 actually did not base the decision on such a judgment.” *Mitchell v. Washington*, 818 F.3d 436,
3 443 (9th Cir. 2016) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982)). *See Parham v. J.*
4 *R.*, 442 U.S. 584, 608, n. 16 (1979) (In limiting judicial review of medical decisions made by
5 professionals, “it is incumbent on courts to design procedures that protect the rights of the
6 individual without unduly burdening the legitimate efforts of the states to deal with difficult
7 social problems”); *see also Rhodes v. Chapman*, 452 U.S. 337, 352 (1981) (“[C]ourts cannot
8 assume that state legislatures and prison officials are insensitive to the requirements of the
9 Constitution or to the perplexing sociological problems of how best to achieve the goals of the
10 penal function in the criminal justice system ...”); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (In
11 the context of conditions of confinement of pretrial detainees, “[c]ourts must be mindful that
12 these inquiries spring from constitutional requirements and that judicial answers to them must
13 reflect that fact rather than a court’s idea of how best to operate a detention facility”); *Wolff v.*
14 *McDonnell*, 418 U.S. 539, 556 (1974) (In considering a procedural due process claim in the
15 context of prison, “there must be mutual accommodation between institutional needs and
16 objectives and the provisions of the Constitution that are of general application”); *compare*
17 *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1243-44 (9th Cir. 2010) (rejecting the
18 *Youngberg* standard and applying the deliberate indifference standard to a pretrial detainee’s right
19 to medical care, and noting that pretrial detainees, who are confined to ensure presence at trial,
20 are not similarly situated to those civilly committed).

21 This standard has been referred to as the “*Youngberg* professional judgment standard.”
22 *Ammons*, 648 F.3d at 1027. “The *Youngberg* standard differs from the ‘deliberate indifference’
23 standard used in Eighth Amendment cruel and unusual punishment cases, in that “[p]ersons who
24 have been involuntarily committed are entitled to more considerate treatment and conditions of
25 confinement than criminals whose conditions of confinement are designed to punish.”” *Mitchell*,
26 818 F.3d at 443 (citing *Ammons*, 648 F.3d at 1027 (quoting *Youngberg*, 457 U.S. at 321-22)
27 (internal quotation marks omitted)).). The professional judgment standard is an objective
28 standard and it equates “to that required in ordinary tort cases for a finding of conscious

1 indifference amounting to gross negligence.” *Ammons v. Washington Dep’t of Soc. & Health*
2 *Servs.*, 648 F.3d 1020, 1029 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2379 (2012) (citations and
3 internal quotation marks omitted).

4 Plaintiff does not state a cognizable claim under § 1983 against Doe Dr. #5 as he fails to
5 state any allegations upon which to find that Doe Dr. #5 is a public employee. Plaintiff states a
6 cognizable claim against Doe #8 as this individual appears to be a public employee, with medical
7 training, who merely looked at Doe Dr. #5’s report and did not provide Plaintiff any further
8 treatment, despite the fractures of both his leg and arm. Plaintiff may, however, be able to state a
9 claim against both Doe Dr. #5 and Doe #8 under California law for professional negligence --
10 medical malpractice.

11 “The elements of a medical malpractice claim are (1) the duty of the professional to use
12 such skill, prudence, and diligence as other members of his profession commonly possess and
13 exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent
14 conduct and resulting injury; and (4) actual loss or damage resulting from the professional's
15 negligence.” *Avivi v. Centro Medico Urgente Medical Center*, 159 Cal.App.4th 463, 468, n. 2, 71
16 Cal.Rptr.3d 707 (Ct.App.2008) (internal quotations and citation omitted); *Johnson v. Superior*
17 *Court*, 143 Cal.App.4th 297, 305, 49 Cal.Rptr.3d 52 (2006).

18 Medical professionals are negligent if they fail to use the level of skill, knowledge, and
19 care in diagnosis and treatment that other reasonably careful medical professional would use in
20 the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred
21 to as "the standard of care" and can usually only be opined by other medical professionals.
22 *Landeros v. Flood*, 17 Cal.3d 399, 408 (1976); *see also Brown v. Colm*, 11 Cal.3d 639, 642–643
23 (1974); *Mann v. Cracchiolo*, (1985) 38 Cal.3d 18, 36; and Judicial Council of California Civil
24 Jury Instruction 500, Summer 2008 Supplement Instruction. Plaintiff has not stated a cognizable
25 claim medical malpractice claim against Doe Dr. #5 or Doe #8 as he fails to state any allegations
26 to address any of the requisite elements.

27 Further, if Doe Dr. #5 and/or Doe #8 are public employees under the California
28 Government Claims Act, set forth in California Government Code sections 810 et seq., a plaintiff

1 may not bring a suit for monetary damages against a public employee or entity unless the plaintiff
2 first presented the claim to the California Victim Compensation and Government Claims Board,
3 and the Board acted on the claim, or the time for doing so expired. “The Tort Claims Act requires
4 that any civil complaint for money or damages first be presented to and rejected by the pertinent
5 public entity.” *Munoz v. California*, 33 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995). The
6 purpose of this requirement is “to provide the public entity sufficient information to enable it to
7 adequately investigate claims and to settle them, if appropriate, without the expense of litigation,”
8 *City of San Jose v. Superior Court*, 12 Cal.3d 447, 455 (1974) (citations omitted), and “to confine
9 potential governmental liability to rigidly delineated circumstances: immunity is waived only if
10 the various requirements of the Act are satisfied,” *Nuveen Mun. High Income Opportunity Fund*
11 *v. City of Alameda, Cal.*, 730 F.3d 1111, 1125 (9th Cir. 2013). Compliance with this “claim
12 presentation requirement” constitutes an element of a cause of action for damages against a public
13 entity or official. *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534, 90
14 P.3d 116 (2004). Thus, in the state courts, “failure to allege facts demonstrating or excusing
15 compliance with the claim presentation requirement subjects a claim against a public entity to a
16 demurrer for failure to state a cause of action.” *Id.* at 1239, 13 Cal.Rptr.3d 534, 90 P.3d 116
17 (fn.omitted).

18 Federal courts likewise must require compliance with the CGCA for pendant state law
19 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
20 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
21 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
22 may proceed only if the claims were first presented to the state in compliance with the claim
23 presentation requirement. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627
24 (9th Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008). Plaintiff
25 fails to state any allegations which show he complied with the CGCA upon which to be allowed
26 to pursue claims for violation of California law in this action.

27 Moreover, pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court
28 has original jurisdiction, the district court “shall have supplemental jurisdiction over all other

1 claims in the action within such original jurisdiction that they form part of the same case or
2 controversy under Article III,” except as provided in subsections (b) and (c). “[O]nce judicial
3 power exists under § 1367(a), retention of supplemental jurisdiction over state law claims under
4 1367(c) is discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). “The
5 district court may decline to exercise supplemental jurisdiction over a claim under subsection (a)
6 if . . . the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C.
7 § 1367(c)(3); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013); *Herman*
8 *Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001); *see also Watison v.*
9 *Carter*, 668 F.3d 1108, 1117-18 (9th Cir. 2012) (even in the presence of cognizable federal
10 claim, district court has discretion to decline supplemental jurisdiction over novel or complex
11 issue of state law of whether criminal statutes give rise to civil liability). The Supreme Court has
12 cautioned that “if the federal claims are dismissed before trial, . . . the state claims should be
13 dismissed as well.” *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966). If
14 Plaintiff has complied with the CTCA, jurisdiction over his claims under California law will only
15 be exercised by this Court as long as he has federal claims pending.

16 **3. Claim III (Doc. 1, pp. 9-10)**

17 When Plaintiff arrived at the Kern County Jail, while on crutches and with his left arm and
18 leg in casts, he was required to drag his mattress and bed roll all the way to his housing. Once
19 housed, Plaintiff submitted “a few sick call medical slips” indicating that his arm and leg were
20 broken and requested medication for pain. However, he was never seen by any other doctor and
21 did not receive any medication for pain.

22 Plaintiff alleges that a few times he did not get food because he was not able to get to the
23 door of his cell in time to receive a tray when chow was passed out. Plaintiff reported this to his
24 public defender who did nothing, and to his fiancée who called the Kern County Jail and reported
25 it without effect.

26 Plaintiff alleges that the deputies were retaliating against him because he said he was
27 going to sue the Bakersfield Police Department for the incidents alleged in this action. Plaintiff
28 says that after he “filed a claim against the City of Bakersfield” officers again went to his home

1 and searched it, saying they were looking for Plaintiff, and ended up taking Plaintiff's DVR and
2 security cameras.

3 Plaintiff alleges these incidents amounted to cruel & unusual punishment and retaliation.
4 However, Plaintiff fails to link the allegations in Claim III to any specific individual. As stated
5 above, § 1983 requires an actual connection or link between the actions of the defendants and the
6 deprivation Plaintiff allegedly suffered. *Monell*, 436 U.S. 658. Claim III fails to put any
7 defendant on notice of Plaintiff's claims against him or her. *Austin*, 367 F.3d at 1171. Despite
8 this, Plaintiff is given the legal standards for his delineated causes of action under Claim III and
9 opportunity to file an amended complaint.

10 **a. Cruel & Unusual Punishment**

11 Claims of a detainee challenging the conditions of confinement arise under the substantive
12 due process clause of the Fourteenth Amendment. *Youngberg v. Romeo*, 457 U.S. 307, 321-22
13 (1982); *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004). However, the Eighth Amendment
14 provides "a minimum standard of care" for determining the rights of pretrial detainees. *Or.*
15 *Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1120 (9th Cir.2003), quoting *City of Revere v. Mass. Gen.*
16 *Hosp.*, 463 U.S. 239, 244 (1983). Thus, though the Court is guided by the Eighth Amendment, if
17 the events at issue occurred before Plaintiff was convicted of any crime, he cannot state a claim
18 under the Eighth Amendment and, instead, must proceed only under the Fourteenth Amendment.

19 The Eighth Amendment protects from inhumane methods of punishment and from
20 inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Morgan v.*
21 *Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Thus, no matter where housed, officials have a
22 duty to ensure that those under their care are provided adequate shelter, food, clothing, sanitation,
23 medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000) (quotation
24 marks and citations omitted). To establish a violation of the Eighth Amendment, one must "show
25 that the officials acted with deliberate indifference. . . ." *Labatad v. Corrections Corp. of*
26 *America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v. County of Washoe*, 290 F.3d
27 1175, 1187 (9th Cir. 2002)).

28 The deliberate indifference standard involves both an objective and a subjective prong.

1 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” *Farmer* at 834.
2 Second, subjectively, the government official must “know of and disregard an excessive risk to
3 inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir.
4 1995).

5 Objectively, extreme deprivations are required to make out a conditions of confinement
6 claim and only those deprivations denying the minimal civilized measure of life’s necessities are
7 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
8 503 U.S. 1, 9 (1992). Although the Constitution “ ‘does not mandate comfortable prisons,’ ”
9 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 349), persons confined
10 “are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges,
11 particularly over a lengthy course of time,” *Howard*, 887 F.2d at 137. Some conditions of
12 confinement may establish an Eighth Amendment violation “in combination” when each would
13 not do so alone, but only when they have a mutually enforcing effect that produces the
14 deprivation of a single, identifiable human need such as food, warmth, or exercise -- for example,
15 a low cell temperature at night combined with a failure to issue blankets. *Wilson*, 501 U.S. at
16 304-05 (comparing *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979) (outdoor exercise
17 required when prisoners otherwise confined in small cells almost 24 hours per day), with *Clay v.*
18 *Miller*, 626 F.2d 345, 347 (4th Cir. 1980) (outdoor exercise not required when prisoners
19 otherwise had access to dayroom 18 hours per day)). To say that some prison conditions may
20 interact in this fashion is far from saying that all prison conditions are a seamless web for Eighth
21 Amendment purposes. *Id.* Amorphous “overall conditions” cannot rise to the level of cruel and
22 unusual punishment when no specific deprivation of a single human need exists. *Id.* Further,
23 temporarily unconstitutional conditions of confinement do not necessarily rise to the level of
24 constitutional violations. See *Anderson*, 45 F.3d 1310, *ref. Hoptowit*, 682 F.2d at 1258
25 (*abrogated on other grounds by Sandin*, 515 U.S. 472 (in evaluating challenges to conditions of
26 confinement, length of time the prisoner must go without basic human needs may be
27 considered)). Thus, Plaintiff’s factual allegations as to the conditions he was subjected to during
28 his time at the Kern County Jail must be evaluated to determine whether they demonstrate a

1 deprivation of a basic human need individually or in combination.

2 Subjectively, if an objective deprivation is shown, a plaintiff must show that government
3 officials acted with a sufficiently culpable state of mind, that of “deliberate indifference.” *Wilson*,
4 501 U.S. at 303; *Labatad*, 714 F.3d at 1160; *Johnson*, 217 F.3d at 733. “Deliberate indifference
5 is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004). “Under this
6 standard, the [] official must not only ‘be aware of the facts from which the inference could be
7 drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the
8 inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a [] official should have been
9 aware of the risk, but was not, then the official has not violated the Eighth Amendment, no matter
10 how severe the risk.’” *Id.* (quoting *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1188
11 (9th Cir. 2002)). To prove knowledge of the risk, however, one may rely on circumstantial
12 evidence; in fact, the very obviousness of the risk may be sufficient to establish knowledge.
13 *Farmer*, 511 U.S. at 842; *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995).

14 **b. Retaliation**

15 Individuals have a First Amendment right to file grievances against government officials
16 and to be free from retaliation for doing so. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115 (9th
17 Cir. 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 “retaliatory action did not advance legitimate goals of the [] institution. . . .” *Rizzo*
4 *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 he was retaliated against because he said he was going to
10 file a claim is insufficient to show that Plaintiff engaged in protected activity that was the
11 motivating factor behind a defendant’s actions.

12 E. CONCLUSION

13 Plaintiff is given the choice to either file a first amended complaint, or proceed on the
14 claims found cognizable in this order. Plaintiff must either notify the Court of his decision to
15 proceed on the cognizable claims, or file a first amended complaint within 21 days of the service
16 of this order.

17 If Plaintiff chooses to file a first amended complaint, he must demonstrate how the
18 conditions complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See*
19 *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). The first amended complaint must allege in
20 specific terms how each named defendant is involved. There can be no liability under section
21 1983 unless there is some affirmative link or connection between a defendant’s actions and the
22 claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167
23 (9th Cir. 1980); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

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

(2007) (citations omitted).

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

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

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

1. **Within 21 days** from the date of service of this order, Plaintiff must either:
 - a. file a first amended complaint curing the deficiencies identified by the Court in this order, or
 - b. notify the Court in writing that he does not wish to file a first amended complaint and wishes to proceed only on the claim that that D/Os #1, #2, #3, and #4 entered his home without lawful authority in violation of the Fourth Amendment; or
 - c. file a notice of voluntary dismissal; and
2. The Clerk's Office shall send Plaintiff a civil rights complaint form.

If Plaintiff fails to comply with this order, he will be allowed to proceed only on the claims found cognizable herein and all other claims and Defendants will be dismissed with prejudice.

IT IS SO ORDERED.

Dated: **June 27, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE