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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JAMES C. McCURDY,	)	Case No.: 1:17-cv-01356-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER DISMISSING COMPLAINT, WITH
v.	)	LEAVE TO AMEND, FOR FAILURE TO STATE
	)	A COGNIZABLE CLAIM FOR RELIEF
S. KERNAN, et al.,	)	
	)	[ECF No. 1]
Defendants.	)	
	)	
	)	

Plaintiff James C. McCurdy is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not consented or declined to United States Magistrate Judge jurisdiction.

Currently before the Court is Plaintiff’s complaint, filed on October 10, 2017.

**I.**

**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 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally  
6 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,  
7 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

8 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings  
9 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now  
10 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive  
11 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow  
12 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,  
13 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer  
14 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely  
15 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556  
16 U.S. at 678; Moss, 572 F.3d at 969.

## 17 II.

### 18 COMPLAINT ALLEGATIONS

19 Plaintiff was transferred to California State Prison, Corcoran on August 18, 2015, and was  
20 housed in the mental health crisis bed unit because he had received a rules violation report for  
21 attempted murder on an officer. Plaintiff was placed on forced medication and suffers from Irritable  
22 Bowel Syndrome (IBS) which affects his everyday functions.

23 Plaintiff was advised that his projected minimum early release date was May 2017, and that he  
24 would be housed in the security housing unit. While Plaintiff was housed at Corcoran he was seen by  
25 medical and mental health and provided medications to treat his chronic pain and other symptoms.  
26 Plaintiff also requested other accommodations such as medical transport and lower bunk chrono.

27 On April 15, 2016, Plaintiff was told by custody officials to transpack because he was being  
28 transferred to Pelican Bay State Prison. Plaintiff requested that custody staff alter medical and the

1 commanding officer because he never attended a hearing where he was put up for transfer. Plaintiff  
2 also indicated that he required a medical transport because of his issues. The custody officer told  
3 Plaintiff, “if you don’t pack we will use force to transfer you without your property.” Plaintiff asked  
4 the captain who was responsible for the transfer and he advised that it came from “higher ups.”  
5 Plaintiff requested to speak with medical officials but his request was denied.

6 The following Monday, Plaintiff was ordered to cuff-up because he was being transferred to  
7 Pelican Bay State Prison. Plaintiff was going to be put on the bus without his property, and the  
8 custody officer stated it was Plaintiff’s fault because he refused to transpack. Plaintiff was denied the  
9 ability to talk with the commanding officer and/or medical staff. Defendants threatened that if  
10 Plaintiff did not cuff-up and get on the bus, they were going to use force to extract him. They refused  
11 to allow Plaintiff to contact the medical department. Plaintiff was then subjected to excessive force by  
12 way of use of pepper spray and physical attack. When Plaintiff asked about his property, he was told  
13 that custody would pack it and it would follow him to Pelican Bay State Prison. Plaintiff then asked  
14 for the transport officer to obtain his glasses and legal work. Plaintiff’s glasses which were cracked  
15 were provided to him and he had a portion of his legal documents which had been placed in a  
16 pillowcase. Plaintiff never received any of his property, books, letters, pictures, address books,  
17 additional legal work, records, and receipts.

18 Plaintiff seeks a declaration that his constitutional rights were violated, a preliminary and  
19 permanent injunction to provide him adequate medical treatment and transportation, along with  
20 compensatory and punitive damages.

### 21 III.

### 22 DISCUSSION

#### 23 A. Linkage Under Section 1983

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

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

6 In this instance, Plaintiff names nineteen individuals as Defendants and sues them all in their  
7 individual and official capacities. However, Plaintiff fails to link each of the individual Defendants to  
8 affirmative actions or omissions which give rise to his alleged constitutional violations. Furthermore,  
9 the Court will not weed through the attached exhibits to determine and correct the linkage deficiencies.  
10 Accordingly, Plaintiff cannot proceed on his claims absent such linkage.

#### 11 **B. Individual Liability**

12 Supervisory personnel may not be held liable under section 1983 for the actions of subordinate  
13 employees based on *respondeat superior*, or vicarious liability. Crowley v. Bannister, 734 F.3d 967,  
14 977 (9th Cir. 2013); accord Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1074-75  
15 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc). “A  
16 supervisor may be liable only if (1) he or she is personally involved in the constitutional deprivation,  
17 or (2) there is a sufficient causal connection between the supervisor’s wrongful conduct and the  
18 constitutional violation.” Crowley, 734 F.3d at 977 (citing Snow, 681 F.3d at 989) (internal quotation  
19 marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693 F.3d at 915-16. “Under the latter  
20 theory, supervisory liability exists even without overt personal participation in the offensive act if  
21 supervisory officials implement a policy so deficient that the policy itself is a repudiation of  
22 constitutional rights and is the moving force of a constitutional violation.” Crowley, 734 F.3d at 977  
23 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks omitted).

24 Plaintiff names several supervisory individuals, including S. Kernan (Secretary of CDCR),  
25 Dave Davey (Warden at Corcoran State Prison), Christ Lesniak (Captain at Corcoran State Prison),  
26 and J. Espinoza (Lieutenant at Corcoran State Prison). However, Plaintiff fails to allege any facts that  
27 support a claim for supervisory liability, and his claims are therefore not cognizable.  
28

1           **C. Excessive Force**

2           The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments  
3 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citations omitted). For  
4 claims arising out of the use of excessive physical force, the issue is “whether force was applied in a  
5 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
6 Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam) (citing Hudson, 503 U.S. at 7) (internal  
7 quotation marks omitted); Furnace v. Sullivan, 705 F.3d 1021, 1028 (9th Cir. 2013). The objective  
8 component of an Eighth Amendment claim is contextual and responsive to contemporary standards of  
9 decency, Hudson, 503 U.S. at 8 (quotation marks and citation omitted), and although *de minimis* uses  
10 of force do not violate the Constitution, the malicious and sadistic use of force to cause harm always  
11 violates contemporary standards of decency, regardless of whether or not significant injury is evident,  
12 Wilkins, 559 U.S. at 37-8 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v.  
13 Keller, 289 F.3d 623, 628 (9th Cir. 2002).

14           Plaintiff fails to state a cognizable claim for excessive force. Although Plaintiff contends he  
15 was subjected to the use of excessive force and pepper spray, Plaintiff fails to set forth the factual  
16 allegations relating to the alleged use of physical force and subsequent injury. Plaintiff states only that  
17 Sergeant Hubbard used pepper spray, and “officers” used batons, shields, and physical force to extract  
18 him from his cell. However, Plaintiff fails to link any named individual to the alleged use of force,  
19 and Plaintiff does not indicate whether these individuals engaged in other conduct to defuse the use of  
20 force or what specific force was actually used, given his refusal to be transported. Accordingly, the  
21 Court cannot determine whether Plaintiff has stated a plausible claim for relief.

22           **D. Deliberate Indifference to Serious Medical Need**

23           While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical  
24 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to  
25 an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled  
26 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.  
27 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).  
28 Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat [his] condition

1 could result in further significant injury or the unnecessary and wanton infliction of pain,” and (2) that  
2 “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing  
3 Jett, 439 F.3d at 1096). Deliberate indifference is shown by “(a) a purposeful act or failure to respond  
4 to a prisoner’s pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680  
5 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective  
6 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and  
7 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

8 Plaintiff’s claim that he was not provided medical accommodations during his transport to  
9 Pelican Bay State Prison fails to give rise to a claim for deliberate indifference. Plaintiff has failed to  
10 set forth how any Defendant was deliberately indifferent to a serious medical need by transporting him  
11 from California State Prison-Corcoran to Pelican Bay State Prison. The fact that Plaintiff himself had  
12 medical and mental health concerns regarding his transfer, does not give rise to a constitutional claim  
13 for deliberate indifference. Accordingly, Plaintiff fails to state a cognizable claim for deliberate  
14 indifference to a serious medical need.

15 **E. Deprivation of Property**

16 The Due Process Clause is not violated by the random, unauthorized deprivation of property so  
17 long as the state provides an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533  
18 (1984); Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an adequate post-  
19 deprivation remedy under California law and therefore, he may not pursue a due process claim arising  
20 out of the unlawful confiscation of his personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov’t  
21 Code §§810-895).

22 In this instance, Plaintiff alleges that Defendants improperly confiscated his property and it  
23 was never forwarded to him after his transfer. Plaintiff’s claim that his property was either lost or  
24 destroyed denotes a random and unauthorized deprivation of his property that is not actionable under  
25 section 1983. Accordingly, Plaintiff fails to state a cognizable claim for the deprivation of his  
26 property.

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**F. Declaratory and Injunctive Relief**

In addition to monetary damages, Plaintiff seeks declaratory and injunctive relief. “A case or controversy exists justifying declaratory relief only when the challenged government activity is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties.” Feldman v. Bomar, 518 F.3d 637, 642 (9th Cir. 2008) (quoting Headwaters, Inc. v. Bureau of Land Management, Medford Dist., 893 F.2d 1012, 1015 (9th Cir. 1989) (internal quotations and citation omitted)). “Declaratory relief should be denied when it will neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and afford relief from the uncertainty and controversy faced by the parties.” U.S. v. State of Wash., 759 F.2d 1353, 1357 (9th Cir. 1985) (citations omitted). The conduct at issue in this action occurred in April 2016 at California State Prison-Corcoran, and Plaintiff’s remedy is damages should he prevail on his claim that his constitutional rights were violated.

Plaintiff also seeks an injunction directing that Defendants provide him adequate medical care and a special medical transport. “[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” City of Los Angeles v. Lyons, 461 U.S. 95, 101 (1983) (citations omitted); Jones v. City of Los Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006). “Abstract injury is not enough.” Lyons, 461 U.S. at 101. “[P]laintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.” Id. (internal quotations and citations omitted). “The key issue is whether the plaintiff is ‘likely to suffer future injury.’” Jones, 444 F.3d at 1126 (quoting Lyons, 461 U.S. at 105). Furthermore, any award of equitable relief is governed by the Prison Litigation Reform Act, which provides in relevant part, “Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than

1 necessary to correct the violation of the Federal right, and is the least intrusive means necessary to  
2 correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

3 Plaintiff’s claim for injunctive relief is moot because Plaintiff is presently incarcerated at  
4 California State Prison-Sacramento, not California State Prison-Corcoran where the alleged actions  
5 took place. Plaintiff’s subsequent transfer out of California State Prison-Corcoran rendered moot any  
6 prayer for injunctive relief. See Preiser v. Newkirk, 422 U.S. 395, 402-03 (1975); Johnson v. Moore,  
7 948 F.2d 517, 519 (9th Cir. 1991).

8 **G. Official-Capacity Suits**

9 Plaintiff sues each Defendant in his/her individual and official capacity.

10 “The Eleventh Amendment bars suits for money damages in federal court against a state, its  
11 agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public Safety, 488 F.3d  
12 1144, 1147 (9th Cir. 2007) (citations omitted). However, the Eleventh Amendment does not bar suits  
13 seeking damages against state officials in their personal capacities. Hafer v. Melo, 502 U.S. 21, 30  
14 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003).

15 “Personal-capacity suits . . . seek to impose individual liability upon a government officer for  
16 actions taken under color of state law.” Hafer, 502 U.S. at 25; Suever v. Connell, 579 F.3d 1047,  
17 1060-61 (9th Cir. 2009). Where a plaintiff is seeking damages against a state official and the  
18 complaint is silent as to capacity, a personal capacity suit is presumed given the bar against an official  
19 capacity suit. Shoshone-Bannock Tribes v. Fish & Game Comm’n, 42 F.3d 1278, 1284 (9th Cir.  
20 1994); Price v. Akaka, 928 F.2d 824, 828 (9th Cir. 1991). Because Plaintiff cannot proceed on a claim  
21 for monetary damages against any Defendant in his/her official capacity, his official capacity claims  
22 are subject to dismissal.

23 **IV.**

24 **CONCLUSION AND ORDER**

25 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be  
26 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.  
27 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by  
28 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.



1 2007) (no “buckshot” complaints).

2 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
3 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.  
4 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties  
5 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a  
6 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as  
7 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level. .  
8 . . .” Twombly, 550 U.S. at 555 (citations omitted).

9 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,  
10 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be  
11 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220. “All  
12 causes of action alleged in an original complaint which are not alleged in an amended complaint are  
13 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.  
14 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 16 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 17 2. Plaintiff’s complaint, filed October 10, 2017, is dismissed for failure to state a claim;
- 18 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an  
19 amended complaint; and
- 20 4. If Plaintiff fails to file an amended complaint in compliance with this order, this action  
21 will be dismissed for failure to state a claim.

22  
23  
24 IT IS SO ORDERED.

25 Dated: October 17, 2017



26 UNITED STATES MAGISTRATE JUDGE