

1 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
2 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
3 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary
4 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.
5 § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three bases, a strike is imposed
6 per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed
7 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
8 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
9 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

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

15 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
16 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
17 violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487
18 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987). A complaint
19 will be dismissed if it lacks a cognizable legal theory or fails to allege sufficient facts under a
20 cognizable legal theory. See *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th
21 Cir. 1990).

22 C. Pleading Requirements

23 1. Federal Rule of Civil Procedure 8(a)

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

1 the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512.

2 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs
3 when a pleading says too little -- the baseline threshold of factual and legal allegations required
4 was the central issue in the *Iqbal* line of cases. See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 678,
5 129 S.Ct. 1937 (2009). The Rule is also violated, though, when a pleading says *too much*.
6 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e
7 have never held -- and we know of no authority supporting the proposition -- that a pleading may
8 be of unlimited length and opacity. Our cases instruct otherwise.”) (citing cases); see also
9 *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8,
10 and recognizing that “[p]roliferous, confusing complaints such as the ones plaintiffs filed in this case
11 impose unfair burdens on litigants and judges”).

12 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
13 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
14 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
15 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
16 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
17 allegations are accepted as true, but legal conclusions are not. *Iqbal*, at 678; see also *Moss v. U.S.*
18 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

19 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
20 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
21 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
22 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,”
23 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights
24 complaint may not supply essential elements of the claim that were not initially pled,” *Bruns v.*
25 *Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*,
26 673 F.2d 266, 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences,
27 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
28 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient,

1 and “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
2 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

3 Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short
4 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),
5 when the opportunity to correct the pleadings has been afforded and there has been no
6 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
7 2013).

8 **D. Summary of the Complaint**

9 Plaintiff is currently housed at the California Correctional Institution in Tehachapi,
10 California (“CCI”). All three of Plaintiff’s claims are for slander and retaliation based on
11 allegations that the media has been slandering President Donald Trump over a variety of issues.
12 Plaintiff alleges that Senators Kamela Harris and Paul Ryan wrongly appointed FBI agents who
13 allow the slanderous acts to continue. This Court lacks jurisdiction over Plaintiff’s action as he
14 only seeks to pursue state court claims which are not properly venued in this action. However,
15 although Plaintiff indicates that each of his claims are based on retaliation and slander, as
16 discussed in detail below, Plaintiff cannot state cognizable claims for violation of his
17 constitutional rights based on the alleged facts. Accordingly, leave to amend need not be granted
18 since futile and transfer of this action to a court of proper venue would not be in the interest of
19 justice.

20 **DISCUSSION**

21 **A. Venue and Jurisdiction**

22 **1. Venue**

23 The federal venue statute requires that a civil action, other than one based on diversity
24 jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all
25 defendants are residents of the State in which the district is located, (2) a judicial district in which
26 a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part
27 of the property that is the subject of the action is situated, or (3) if there is no district in which an
28 action may otherwise be brought as provided in this section, any judicial district in which any

1 12 Cal.3d 447, 455 (1974) (citations omitted). Compliance with this “claim presentation
2 requirement” constitutes an element of a cause of action for damages against a public entity or
3 official. *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1244 (2004). Thus, in the state courts,
4 “failure to allege facts demonstrating or excusing compliance with the claim presentation
5 requirement subjects a claim against a public entity to a demurrer for failure to state a cause of
6 action.” *Id.* at 1239 (fn.omitted).

7 Plaintiff fails to state any allegations to show compliance with the CGCA to be allowed to
8 proceed on his claims under California law in this action.

9 **b. Supplemental Jurisdiction**

10 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
11 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the
12 action within such original jurisdiction that they form part of the same case or controversy under
13 Article III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under §
14 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is
15 discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997).

16 However, “[t]he district court may decline to exercise supplemental jurisdiction over a
17 claim under subsection (a) if . . . the district court has dismissed all claims over which it has
18 original jurisdiction.” 28 U.S.C. § 1367(c)(3); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146,
19 1156 (9th Cir. 2013); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir.
20 2001); *see also Watison v. Carter*, 668 F.3d 1108, 1117-18 (9th Cir. 2012) (even in the presence
21 of cognizable federal claim, district court has discretion to decline supplemental jurisdiction
22 over novel or complex issue of state law of whether criminal statutes give rise to civil liability).
23 The Supreme Court has cautioned that “if the federal claims are dismissed before trial, . . . the
24 state claims should be dismissed as well.” *United Mine Workers of America v. Gibbs*, 383 U.S.
25 715, 726 (1966)).

26 Supplemental jurisdiction should be declined in this case since Plaintiff only seeks to
27 pursue claims under state law and, as discussed below, cannot state cognizable claims for
28 violation of his own constitutional rights for this Court to exercise original jurisdiction.

1 **B. Plaintiff's Allegations**

2 Plaintiff's allegations under each of his claims are set forth below, verbatim.

3 **1. Claim I**

4 On and within the years of 2016-2017 All US Broadcasting News Centers
5 did not stop the first broadcasting slander that the voting system was hacked by
6 Russia or Russian spys (sic) from over seas to change the election system. Within
7 the years, the Broadcast News have been continuing to broadcast slander of
8 espionage with no evidence of or from any state electronic system local citys (sic)
9 within was hacked (even through lazer beams) to change anyone electronic voting
10 box (one man system) or was physically tampered with. Only reports espionage
11 in attempts to continually slander President Donald Trump and with no physical
12 documents that show unregistered voters voted or dead citizens voted only
13 espionage in evil intention to slander President Donald Trump.

14 Within years of 2016-2017 all news stations have broadcasted this slander.

15 ? Howe easy would it be to slander if we only need to use the word
16 espionage to free evil motives?

17 **2. Claim II**

18 On within years of 2016-2017 FBI Sacramento Office and DC FBI office
19 did not stop or have not stopped the slander of President Trump from being air-on
20 t.v. news. But have encouraged air-on slander of President Donald Trump with
21 only espionage and did not produce any form of voter fraud to any news station
22 that could be useful in reasonable drought, nor have they made any effort to check
23 voter count to voting count only use espionage of there was conflict between
24 Trump, Jr. and Russian Attorney.

25 Nor have they said that are Voter Boxes can be hacked into by and from
26 OverSeas.

27 ?Could not a link be made by finding what name or social security number
28 is being illegally used to add voters to vote to link other voting matters? As we
29 do have a lot of illegal ailians Obama has or had promised Driver Licenses to
30 according to T.V. and now Sanctuary citys for illegal imagreants.

31 **3. Claim III**

32 On within years of 2016-2017 California Senators Kamela Harris and Paul
33 Ryan House of Representative and House of Represitive House Speaker for
34 Congress. Have willingly and wrongfully appointed FBI agents to continue to
35 slander President Donald Trump and keep the public at bay-with espionage for
36 their hate against President Donald Trump by defiling slander laws and policys of
37 health care. They did not stop any one from slandering President Donald Trump.
38 The House Speaker Acts as if he is running the white house and probably through
39 the acts of slander against President Donald Trump. The did not say there is no
40 evidence to support the espionage. What I write is what they are air-on about and
41 with that slander. Both senators continue to express their dislike of President
42 Donald Trump through forms of obstruction of US matters for personal reasons.

1 Both Senators allow this illegal alien sanction cities to be in US and LA City now
2 since 9-20-2017 mayor declared.

3 None of Plaintiff's allegations meet the requirements for stating a cognizable claim for
4 retaliation or slander.

5 **C. Plaintiff Cannot State a Cognizable Retaliation Claim**

6 The First Amendment protects inmates from retaliation for engaging in protected conduct.
7 A retaliation claim has five elements. *Id.* at 1114. *Waitson v. Carter*, 668 F.3d 1108, 1114-1115
8 (9th Cir. 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009).

9 First, the plaintiff must allege that the retaliated-against conduct is protected. *Id.* The
10 filing of an inmate grievance is protected conduct, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th
11 Cir. 2005), as are the rights to speech or to petition the government, *Rizzo v. Dawson*, 778 F.2d
12 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989);
13 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Second, the plaintiff must show the
14 defendant took adverse action against the plaintiff. *Rhodes*, at 567. Third, the plaintiff must
15 allege a causal connection between the adverse action and the protected conduct. *Waitson*, 668
16 F.3d at 1114. Fourth, the plaintiff must allege that the "official's acts would chill or silence a
17 person of ordinary firmness from future First Amendment activities." *Robinson*, 408 F.3d at 568
18 (internal quotation marks and emphasis omitted). "[A] plaintiff who fails to allege a chilling
19 effect may still state a claim if he alleges he suffered some other harm," *Brodheim*, 584 F.3d at
20 1269, that is "more than minimal," *Robinson*, 408 F.3d at 568 n.11. Fifth, the plaintiff must
21 allege "that the prison authorities' retaliatory action did not advance legitimate goals of the
22 correctional institution. . . ." *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.1985).

23 It bears repeating that while Plaintiff need only allege facts sufficient to support a
24 plausible claim for relief, the mere possibility of misconduct is not sufficient, *Iqbal*, 556 U.S. at
25 678-79, and the Court is "not required to indulge unwarranted inferences," *Doe I v. Wal-Mart*
26 *Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

27 Plaintiff does not state any allegations in this action to show that he has been subjected to
28 retaliation, or that the acts of which he complains were directed at, or somehow harmed Plaintiff

1 in any way. Plaintiff's allegations do not set forth any basis which would entitle Plaintiff to
2 damages for the acts of which he complains, and the Court finds none. Certainly, Plaintiff may
3 be upset over the current political climate in our country and over what he feels is unfair and
4 inadequate policing of our politicians and the news media in general. However, there is no
5 constitutional basis for an individual citizen to seek damages based on incorrect or dishonest
6 news stories or for inadequacies of senators and congressional representatives. Plaintiff's current
7 factual allegations cannot be revised or amended to state a retaliation claim under § 1983.

8 **D. Plaintiff Cannot State a Cognizable Claim for Slander**

9 In California, to state a *prima facie* case of slander, a plaintiff must show an intentional
10 publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure
11 or which causes special damage. *Smith v. Maldonado*, 72 Cal.App.4th 637, 645 (1999).

12 California Civil Code section 46 provides as follows:

13 Slander is a false and unprivileged publication, orally uttered, . . . which:

- 14 1. Charges any person with crime, or with having been indicted, convicted, or
15 punished for crime;
- 16 2. Imputes in him the present existence of an infectious, contagious, or
loathsome disease;
- 17 3. Tends directly to injure him in respect to his office, profession, trade or
18 business, either by imputing to him general disqualification in those respects
19 which the office or other occupation peculiarly requires, or by imputing
something with reference to his office, profession, trade, or business that has a
20 natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

21 A statement that falls within one of the first four categories of California Civil Code section 46
22 constitutes slander *per se* and does not require proof of actual damages. *Regalia v. Nethercutt*
23 *Collection*, 172 Cal.App.4th 361, 367 (2009). Plaintiff cannot show that statements in the news
24 or Congress, about President Trump and the 2016 election, have damaged Plaintiff in any way.
25 Nor can Plaintiff allege any facts upon which he, as a prisoner, is authorized to bring suit on
26 behalf of the President of the United States and the Court finds none.

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