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

JARED RAMIREZ,

Plaintiff,

v.

MODESTO POLICE
ADMINISTRATION, *et al.*,

Defendants.

Case No. 1:18-cv-00374-LJO-EPG

ORDER FOR PLAINTIFF TO:

**(1) FILE A FIRST AMENDED
COMPLAINT; OR,**

**(2) NOTIFY THE COURT THAT HE
WISHES TO VOLUNTARILY DISMISS; OR**

**(3) NOTIFY THE COURT HE WISHES TO
STAND ON THE COMPLAINT, SUBJECT
TO FINDINGS AND RECOMMENDATIONS
TO DISTRICT JUDGE CONSISTENT WITH
THIS ORDER**

(ECF No. 1)

THIRTY (30) DAY DEADLINE

Plaintiff, Jared Ramirez, is appearing *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on March 20, 2018, alleging claims against Modesto Police Administration; Rick Armendariz, Assistant Chief of Police; Martha Delgado, Lieutenant; T.J. Moffett, Sergeant; and Galen Carroll, Chief of Police (collectively “Defendants”). (ECF No. 1.) Plaintiff’s claims relate to his employment as a police officer with the Modesto Police Department. Plaintiff’s complaint is before the Court for screening.

1 The Court has screened Plaintiff's complaint and finds that it does not state any
2 cognizable claims. Plaintiff may choose one of the following options: (1) file a first amended
3 complaint; or (2) file a notice of voluntary dismissal; or (3) notify the Court that he wishes to
4 stand on the complaint as written, in which case the undersigned will issue findings and
5 recommendations to the assigned District Judge consistent with this order.

6 I. SCREENING REQUIREMENT

7 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of a complaint in a case in
8 which the plaintiff is proceeding *in forma pauperis* to determine whether it "state[s] a claim on
9 which relief may be granted," is "frivolous or malicious," or "seek[s] monetary relief against a
10 defendant who is immune from such relief." If the Court determines that the complaint fails to
11 state a claim, it must be dismissed. *Id.* An action is frivolous if it is "of little weight or
12 importance: having no basis in law or fact" and malicious if it was filed with the "intention or
13 desire to harm another." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). Leave to amend
14 may be granted to the extent that the deficiencies of the complaint can be cured by amendment.
15 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

16 A complaint must contain "a short and plain statement of the claim showing that the
17 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
18 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
19 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
20 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual
21 matter, accepted as true, to 'state a claim that is plausible on its face.'" *Id.* at 663 (quoting
22 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
23 not. *Id.* at 678.

24 In determining whether a complaint states an actionable claim, the Court must accept the
25 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
26 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
27 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor. *Jenkins*
28 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs "must be held to less

1 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342
2 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after
3 *Iqbal*).

4 **II. SUMMARY OF COMPLAINT**

5 Plaintiff alleges that Defendants violated his First Amendment right of association, and his
6 Fourth Amendment right to privacy, as well as the right to privacy of an individual named Kristen
7 Zuidema; and that Defendants violated 18 U.S.C. §§ 241 and 242. Plaintiff also brings various
8 state law claims, including violations of his state due process rights, *Skelly* rights, and rights
9 regarding internal affairs investigations; violation of California Government Code §§ 3303(b)-(e),
10 3305, and 3309.5; violation of the California Penal Code; violation of California Labor Code §
11 980(a); and violations of MPD Domestic Violence Policy #320, and City of Modesto Policy (HR
12 Memo #2017-005 Policy Against Harassment, Discrimination, and Retaliation; and Anti-Bullying
13 Memo Personnel Rule 1.2, 1.5, Policy #2.1.3). (ECF No. 1 at 5-9.) The facts underlying
14 Plaintiff’s claims are difficult to discern, but Plaintiff has attached to his complaint a letter
15 addressed to Rick Armendariz, Assistant Chief of Police, from an individual named David P.
16 Clisham, dated October 18, 2017, and designated as a “Response to Notice of Termination,
17 Modesto Police Officer Jared Ramirez.” (ECF No. 1 at 9-19.) This letter lays out facts that appear
18 to underlie Plaintiff’s claims. The Court will assume that Plaintiff is incorporating the factual
19 allegations contained in the letter into his complaint. The letter alleges the following:

20 Plaintiff was a police officer and permanent employee with the Modesto Police
21 Department (“MPD”) for over 12 years. Prior to the incident underlying this action, Plaintiff had
22 not received any discipline. (ECF No. 1 at 9, 17-18.) At some point, an internal affairs (“IA”)
23 case was initiated involving a volunteer with MPD named Kristen Zuidema, Plaintiff, and a small
24 number of other MPD employees. (*Id.* at 18.) Plaintiff was facing recommended discipline,
25 including potential termination, because of his conduct underlying the IA case. It is not clear what
26 conduct was at issue in the IA case, but it appears to relate to an incident or potential incident of
27 domestic violence. Specifically, Plaintiff alleges that in the “IA case against me, Sgt. TJ Moffett,
28 Lt. Martha Delgado not only discovered domestic violence may have occurred, Lt. Delgado

1 actually spoke to Zuidema about it and never followed up with me the potential victim in the
2 incident.” (ECF No. 1 at 7.) It is not clear from this and other factual allegations whether Plaintiff
3 was the perpetrator of domestic violence, the alleged victim of domestic violence, or merely a
4 potential witness to an incident of domestic violence.

5 Plaintiff alleges that his conduct at issue in the IA case demonstrated “[d]iscretion was not
6 exercised appropriately by a volunteer and by a small number of employees including [Plaintiff],”
7 but he denies “that he engaged in any form of harassment against anybody,” and denies that he
8 violated anyone’s privacy through his conduct. (*Id.* at 18.) He alleges that the IA case involved
9 what was merely a “gross misunderstanding of what occurred.” (*Id.*) Plaintiff’s employment with
10 the MPD was eventually terminated as a result of the IA case.

11 Plaintiff alleges that Defendants violated his and Zuidema’s right to privacy by searching
12 “Zuidema’s cell phone and, possibly, other employees’ cell phones”; by asking “Zuidema about
13 extremely private matters involving her non-work related extremely personal and private off duty
14 activities which also constituted an invasion of her privacy” and requiring and pressuring her to
15 answer these highly personal questions; by not telling Zuidema that she “had a choice” on
16 whether to meet with superior officers and answer their questions; and by treating Zuidema in a
17 “brutal and deceitful” manner, using “many fear tactics all while under color of their authority
18 and position” as officers, and “essentially forc[ing] Zuidema to produce images depicting her face
19 and body engaging in sexual acts with me.” (ECF No. 1 at 5, 12-14.)

20 Plaintiff also alleges that MPD personnel who interviewed Zuidema “obtained
21 information from her private cell phone and did so without a warrant. The search of private cell
22 phones and the information on private cell phones without warrant is a violation of Ms.
23 Zuidema’s and other employees’ constitutional right to privacy.” (ECF No. 1 at 12.) “Without the
24 cell phone information, the MPD will be unable to prove that [Plaintiff] violated departmental
25 rules in connection with his off duty conduct.” (*Id.* at 12-13.) “Assuming the investigators used
26 the cell phone information when they interviewed other employees and [Plaintiff] and obtained
27 their statements, that information is also invalid.” (*Id.* at 13.) “Experienced police personnel know
28 these procedures and must be viewed as intentionally violating Miranda standards and

1 requirements in conducting their interviews and compelling Ms. Zuidema and the employees to
2 answer questions about private conduct.” (*Id.*)

3 Plaintiff also alleges that he was interviewed during the IA case and during that interview
4 he was told, “‘If you refuse to answer questions your silence could be deemed insubordination
5 and result in discipline up to and including termination. Any statement you make under
6 compulsion or threat of such discipline is for administrative purposes only and cannot be used
7 against you criminally.’” (ECF No. 1 at 11-12.) “Despite the admonition,” Plaintiff was charged
8 with a crime, violation of Cal. Penal Code § 647(j)(4). Charging Plaintiff with the crime breached
9 “the promise of immunity, totally invalid and must be removed from the charges.” (*Id.* at 12.)

10 **III. EVALUATION OF PLAINTIFF’S COMPLAINT**

11 The Civil Rights Act, under which this action was filed, provides:

12 Every person who, under color of any statute, ordinance, regulation, custom, or
13 usage, of any State or Territory or the District of Columbia, subjects, or causes to
14 be subjected, any citizen of the United States or other person within the
15 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

16 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
17 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490
18 U.S. 386, 393-94 (1989) (citation omitted).

19 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
20 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or
21 federal law. *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh v.*
22 *Cty. of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state law”). A
23 person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he does an
24 affirmative act, participates in another’s affirmative act, or omits to perform an act which he is
25 legally required to do that causes the deprivation of which complaint is made.’” *Preschooler II v.*
26 *Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588
27 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an
28 official sets in motion a ‘series of acts by others which the actor knows or reasonably should

1 know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183
2 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the standard
3 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d
4 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.
5 2008).

6 Additionally, a plaintiff must demonstrate that each named defendant personally
7 participated in the deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, a plaintiff
8 must allege facts demonstrating, or from which an inference can be drawn, that there is an actual
9 connection or link between the actions of the defendants and the deprivation alleged to have been
10 suffered by Plaintiff. *See Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691, 695 (1978).

11 **A. Supervisor Liability**

12 Supervisor liability can be imposed under § 1983 only if the supervisor “was personally
13 involved in the constitutional deprivation or a sufficient causal connection exists between the
14 supervisor’s unlawful conduct and the constitutional violation.” *Edgerly v. City & Cty. of San*
15 *Francisco*, 599 F.3d 946, 961 (9th Cir. 2010) (citations and internal quotation marks omitted).
16 Under this standard, a supervisor ““can be held liable for: 1) their own culpable action or inaction
17 in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional
18 deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous
19 indifference to the rights of others.”” *Id.* (quoting *Cunningham v. Gates*, 229 F.3d 1271, 1292 (9th
20 Cir. 2000)).

21 Plaintiff appears to be claiming Defendant Galen Carroll, whom Plaintiff identifies as the
22 Chief of MPD, is liable based on his capacity as a supervisor of other individuals. However,
23 Plaintiff has failed to allege facts showing Defendant Carroll’s unlawful conduct, let alone a
24 causal connection between that unlawful conduct and any alleged constitutional violation Plaintiff
25 is claiming. Plaintiff has accordingly failed to state a claim for relief based on supervisor liability
26 against Defendant Carroll and the claim must be dismissed.

27 **B. Municipal Liability**

28 “Municipalities and other local governmental units are ‘persons’ subject to suit under

1 § 1983, but to prevail on a claim against a municipal entity for a constitutional violation . . . a
2 plaintiff must show that an official’s action that caused the plaintiff’s injury was pursuant to
3 official municipal policy of some nature.” *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 788, 793
4 (9th Cir. 2016) (quoting *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 691 (1978))
5 (internal quotation marks omitted). “To do so, a plaintiff must go beyond the *respondeat superior*
6 theory of liability and demonstrate that the alleged constitutional deprivation was the product of a
7 policy or custom of the local governmental unit.” *Id.* (citing *Connick v. Thompson*, 563 U.S. 51,
8 60 (2011)).

9 Here, Plaintiff does not allege any facts demonstrating that an official’s action that caused
10 Plaintiff injury was taken pursuant to an official policy of the Modesto Police Administration.
11 Accordingly, Plaintiff has failed to state a claim for relief against Modesto Police Administration
12 and his claims against this defendant must be dismissed.

13 **C. First Amendment Right of Association**

14 The First Amendment guarantees the right to associate for the purpose of engaging in
15 activities protected by the First Amendment, such as speech, assembly, petition for the redress of
16 grievances, and the exercise of religion. *IDK, Inc. v. County of Clark*, 836 F.2d 1185, 1191-92
17 (9th Cir. 1988). The freedom of expressive association permits groups to engage in the same
18 activities that individuals can freely pursue under the First Amendment. *Id.* at 1193. The right of
19 association extends to individuals involved in an intimate relationship, and “protects those
20 relationships, including family relationships, that presuppose ‘deep attachments and commitments
21 to the necessarily few other individuals with whom one shares not only a special community of
22 beliefs but also distinctly personal aspects of one’s life.’” *Bd. of Directors of Rotary Int’l v.*
23 *Rotary Club of Duarte*, 481 U.S. 537, 545–46 (1987) (citation omitted).

24 Plaintiff appears to be alleging that Defendants violated his right of association by
25 interfering with, and/or punishing him because of, his intimate relationship with Zuidema.
26 Plaintiff also appears to be alleging that Defendants violated his right of association by
27 prohibiting him from discussing his IA interview or the IA investigation with other members of
28 the MPD until after the disposition of the IA case was final. Plaintiff does not, however, allege

1 what specific Defendant(s) engaged in what specific conduct that violated his right of association.
2 Accordingly, the complaint fails to state a claim for relief for violation of Plaintiff's right of
3 association, and his First Amendment claims must be dismissed.

4 **D. Fourth Amendment Right to Privacy**

5 The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons,
6 houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. art IV.
7 "The applicability of the Fourth Amendment turns on whether 'the person invoking its protection
8 can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy that has been
9 invaded by government action.'" *Hudson v. Palmer*, 468 U.S. 517, 524 (1984).

10 Plaintiff alleges that Defendants violated his and Zuidema's right to privacy by searching
11 "Zuidema's cell phone and, possibly, other employees' cell phones"; by asking "Zuidema about
12 extremely private matters involving her non-work related extremely personal and private off duty
13 activities which also constituted an invasion of her privacy" and requiring and pressuring her to
14 answer these highly personal questions; by not telling Zuidema that she "had a choice" on
15 whether to meet with superior officers or on whether to answer questions; by treating Zuidema in
16 a "brutal and deceitful" manner, using "many fear tactics all while under color of their authority
17 and position" as officers; by making "repeated attempts to download Zuidema's phone and
18 breaking her down mentally to get what they wanted from her cell phone"; and "essentially
19 forc[ing] Zuidema to produce images depicting her face and body engaging in sexual acts with
20 me." (ECF No. 1 at 5, 6, 13-14.)

21 Plaintiff lacks standing to bring claims based on alleged violations of Zuidema's or any
22 other third party's right to privacy. *See* Fed. R. Civ. P. 17(a) ("Every action shall be prosecuted in
23 the name of the real party in interest."); *Barrows v. Jackson*, 346 U.S. 249, 255 (1953)
24 ("Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of
25 some third party."); *Powers v. Ohio*, 499 U.S. 400, 410 (1991) ("In the ordinary course, a litigant
26 must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal
27 rights or interests of third parties."); *United States v. Stringer*, 739 F.3d 391, 396 (8th Cir. 2014)
28 ("He lacks standing to challenge the search of the Samsung cell phone belonging to G.R. . . . The

1 Fourth Amendment protects the people against unreasonable searches of ‘their’ effects . . .”).
2 Accordingly, the portions of Plaintiff’s complaint that seek to assert violations of Zuidema’s or
3 another third party’s rights must be dismissed.

4 The only factual allegation that comes close to alleging a violation of *Plaintiff’s* right to
5 privacy is the allegation that Defendants Moffett and Delgado “essentially forced Zuidema to
6 produce images depicting her face and body engaging in sexual acts with me.” However, this
7 allegation is still insufficient because Plaintiff does not have a reasonable expectation of privacy
8 in images of himself contained on Zuidema’s cell phone. *See Presley v. United States*, 895 F.3d
9 1284, 1291 (11th Cir. 2018) (“a party lacks a reasonable expectation of privacy under the Fourth
10 Amendment in information “revealed to a third party and conveyed by [that third party] to
11 Government authorities, even if the information is revealed on the assumption that it will be used
12 only for a limited purpose and the confidence placed in the third party will not be betrayed”)
13 (citing *United States v. Miller*, 425 U.S. 435, 443 (1976)).

14 The complaint fails to state a claim for relief under the Fourth Amendment. Accordingly,
15 Plaintiff Fourth Amendment claims must be dismissed.

16 **E. 18 U.S.C. §§ 241 and 242**

17 Plaintiff appears to allege that Defendants also violated 18 U.S.C. §§ 241 and 242.
18 Sections 241 and 242 “are criminal statutes that do not give rise to civil liability.” *Allen v. Gold*
19 *Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006). Accordingly, Plaintiff’s claim that
20 Defendants violated these statutes must be dismissed.

21 **F. State Law Claims**

22 Under the California Tort Claims Act (“CTCA”), a party seeking to recover money
23 damages from a public entity or its employees must submit a timely claim to the entity before
24 filing suit in court. *See* Cal. Gov’t Code §§ 905, 911.2, 945.4, and 950.2. Timely presentation of
25 claims subject to the CTCA is not merely a procedural requirement but is an element of the
26 plaintiff’s cause of action. *Shirk v. Vista Unified School District*, 64 Cal.Rptr.3d 210, 216 (2007).
27 A plaintiff may bring its action against a public entity and its employees only after the entity has
28 acted upon or is deemed to have rejected the plaintiff’s claims. *See id*; *see also Mangold v.*

1 *California Public Utilities Commission*, 67 F.3d 1470, 1477 (9th Cir. 1995) (“The California Tort
2 Claims Act requires, as a condition precedent to suit against a public entity, the timely
3 presentation of a written claim and the rejection of the claim in whole or in part.”).

4 A plaintiff asserting a claim that is subject to the CTCA must affirmatively allege in his
5 complaint that he complied with the CTCA’s claims presentation procedure or circumstances
6 excusing such compliance. *See Shirk*, 64 Cal. Rptr. 3d at 216; *State of California v. Superior*
7 *Court (Bodde)*, 13 Cal. Rptr. 3d 534, 541 (2004) (plaintiff must allege facts “demonstrating or
8 excusing compliance with the claim presentation requirement”). Compliance with the CTCA “is
9 mandatory and failure to file a claim is fatal to the cause of action.” *City of San Jose v. Superior*
10 *Court*, 115 Cal. Rptr. 797, 802 (1974) (internal citation omitted). The requirement to
11 affirmatively allege facts demonstrating or excusing compliance with the CTCA’s claims
12 presentation requirement applies in federal court. *Karim-Panahi v. Los Angeles Police Dep’t*, 839
13 F.2d 621, 627 (9th Cir. 1988).

14 Here, Plaintiff is asserting various state law claims seeking to recover money damages
15 from a public entity (Modesto Police Administration) and public employees. Plaintiff has not
16 alleged facts demonstrating that he complied with, or excusing his compliance with, the CTCA
17 claims presentation requirement for these state law claims. Accordingly, Plaintiff has failed to
18 state a claim for relief in relation to his state law claims, and his state law claims must be
19 dismissed. *See id.* (affirming dismissal of state law claims for failure of the plaintiff to allege
20 compliance with California’s tort claim procedures).¹

21 **IV. CONCLUSION AND ORDER**

22 The complaint fails to state any cognizable claims upon which relief may be granted.
23 Under Rule 15(a) of the Federal Rules of Civil Procedure, “leave to amend shall be freely given
24 when justice so requires.” Accordingly, the Court will grant Plaintiff the opportunity to file an

25
26 ¹ Plaintiff also alleges that he has been notified that he has been charged with a crime, that “[t]his charge is a
27 breach of the promise of immunity” he received from Defendants, and that the criminal charge is “totally invalid.”
28 (ECF No. 1 at 12.) To the extent Plaintiff’s claims overlap with pending criminal proceedings, the claims may be
subject to dismissal or abstention on that basis. Given the limited information before the Court regarding any pending
criminal proceedings, the Court declines to decide whether such criminal proceedings would affect Plaintiff’s ability
to pursue his claims.

1 amended complaint curing the deficiencies identified above. *See Lopez v. Smith*, 203 F.3d 1122,
2 1126-30 (9th Cir. 2000). If Plaintiff does not wish to amend, he may instead file a notice of
3 voluntary dismissal, and the action then will be terminated by operation of law. *See Fed. R. Civ.*
4 *P. 41(a)(1)(A)(i)*. Alternatively, Plaintiff may forego amendment and notify the Court that he
5 wishes to stand on his complaint. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1064-65 (9th
6 Cir. 2004) (plaintiff may elect to forego amendment). If the last option is chosen, the undersigned
7 will issue findings and recommendations to dismiss the complaint without leave to amend,
8 Plaintiff will have an opportunity to object, and the matter will be decided by a District Judge. No
9 further opportunity to amend will be given by the undersigned.

10 If Plaintiff elects to amend his complaint, he must file an amended complaint within thirty
11 days.² The amended complaint must state what each person did or did not do that caused the
12 alleged violation of Plaintiff's constitutional rights. Thus, although Plaintiff's amended complaint
13 should be brief, *see Fed. R. Civ. P. 8(a)*, it must state what each defendant did that led to the
14 deprivation of Plaintiff's constitutional rights. *Iqbal*, 556 U.S. at 678-79. In other words, each
15 claim and the involvement of each defendant must be sufficiently alleged. Although accepted as
16 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative
17 level. . . ." *Twombly*, 550 U.S. at 555 (citations omitted).

18 Plaintiff should note that although he has been given the opportunity to amend, it is not for
19 the purpose of changing the nature of this suit or adding unrelated claims. *George v. Smith*, 507
20 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints). Plaintiff should carefully review this
21 screening order and focus his efforts on curing the deficiencies set forth above.

22 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
23 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended
24 complaint must be "complete in itself without reference to the prior or superseding pleading."
25 Local Rule 220. The amended complaint should be clearly and boldly titled "First Amended
26 Complaint," refer to the appropriate case number, and be an original signed under penalty of

27 ² Plaintiff may wish to refer to the U.S. District Court for the Eastern District of California website, which has forms
28 for *pro se* litigants. *See* <http://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/representing-yourself-pro-se-litigant/>.

1 perjury.

2 Based on the foregoing, it is **HEREBY ORDERED** that:

3 1. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:

4 (i) File a First Amended Complaint curing the deficiencies identified by the Court
5 in this order if he believes additional true factual allegations would state a claim; or

6 (ii) File a notice of voluntary dismissal; or

7 (iii) File a notice of election to stand on the complaint, subject to this Court issuing
8 findings and recommendations to the assigned District Judge recommending that the case
9 be dismissed for failure to state a claim.

10 2. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the amended
11 complaint "First Amended Complaint" and refer to the case number 1:18-cv-00374-LJO-EPG.

12 3. If Plaintiff fails to file, within thirty (30) days from the date of service of this order,
13 either an amended complaint, a notice of voluntary dismissal, or a notice of election to stand on
14 the complaint, the Court will issue findings and recommendations to the assigned District Judge
15 recommending that the case be dismissed for failure to state a claim and failure to comply with a
16 Court order.

17
18 IT IS SO ORDERED.

19 Dated: September 26, 2018

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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