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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH ALAN SIERRA,
Plaintiff,

v.

DIRECTOR OF DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

No. 2: 16-cv-1067 MCE KJN P

ORDER

Plaintiff is a former state prisoner, proceeding pro se, with a civil rights action pursuant to 42 U.S.C. § 1983. On May 5, 2017, the court denied plaintiff’s application to proceed in forma pauperis and ordered plaintiff to pay the filing fee within thirty days. (ECF No. 64.) On April 27, 2021, the Ninth Circuit Court of Appeals reversed the May 5, 2017 order and remanded this action. (ECF No. 87.) On May 19, 2021, the mandate was issued. (ECF No. 88.)

On July 8, 2021, the undersigned granted plaintiff thirty days to file a second amended complaint raising all claims against all defendants he intends to name. (ECF No. 89.) The undersigned ordered that if plaintiff did not file a second amended complaint within that time, the undersigned would screen the amended complaint filed December 16, 2016. (Id.)

Thirty days passed from July 8, 2021, and plaintiff did not file a second amended complaint. Accordingly, the undersigned herein screens the amended complaint filed December

1 16, 2016. (ECF No. 34.) The amended complaint names 48 defendants and contains three
2 claims.

3 The undersigned observes that plaintiff attaches approximately 60 pages of exhibits to the
4 amended complaint, which appear to be administrative grievances. The amended complaint does
5 not to refer to these exhibits. The undersigned is not required to comb through these exhibits to
6 determine whether cognizable claims could be stated based on these exhibits. Woodrow v. Cty.
7 of Merced, 2015 WL 164427, at *4 (E.D. Cal. Jan. 13, 2015) (court is not required “to wade
8 through exhibits to determine whether cognizable claims have been stated.”)

9 *Claim One*

10 In claim one, plaintiff first alleges that defendants violated his Eighth Amendment rights
11 by removing his DPW status. (Id. at 5.) By DPW, plaintiff appears to mean his classification as
12 “disabled person wheelchair,” i.e., an inmate entitled to use of a wheelchair. Plaintiff also alleges
13 that defendants failed to provide him with necessary therapeutic therapy which caused plaintiff to
14 suffer atrophy and become bedridden. (Id.) In particular, plaintiff alleges that “defendants”
15 removed his DPW status on November 13, 2015. (Id.) Plaintiff alleges that defendant Singh
16 restored plaintiff’s DPW status on May 17, 2016. (Id.) However, “not all medical necessities
17 were returned.” (Id. at 6.)

18 Where a prisoner’s Eighth Amendment claim arises in the context of medical care, the
19 prisoner must allege and prove “acts or omissions sufficiently harmful to evidence deliberate
20 indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). An Eighth
21 Amendment medical claim has two elements: “the seriousness of the prisoner’s medical need and
22 the nature of the defendant’s response to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059
23 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th
24 Cir. 1997) (en banc).

25 A medical need is serious “if the failure to treat the prisoner’s condition could result in
26 further significant injury or the ‘unnecessary and wanton infliction of pain.’” McGuckin, 974
27 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include
28 “the presence of a medical condition that significantly affects an individual's daily activities.” Id.

1 at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the
2 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.
3 825, 834 (1994).

4 If a prisoner establishes the existence of a serious medical need, he must then show that
5 prisoner officials responded to the serious medical need with deliberate indifference. See Farmer,
6 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials deny,
7 delay, or intentionally interfere with medical treatment, or may be shown by the way in which
8 prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th
9 Cir. 1988).

10 Before it can be said that a prisoner's civil rights have been abridged with regard to
11 medical care, "the indifference to his medical needs must be substantial. Mere 'indifference,'
12 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton v. Cutter
13 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06); see also
14 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) ("Mere negligence in
15 diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth
16 Amendment rights.").

17 Finally, mere differences of opinion between a prisoner and prison medical staff or
18 between medical professionals as to the proper course of treatment for a medical condition do not
19 give rise to a § 1983 claim. See Toguchi, 391 F.3d at 1058.

20 Plaintiff's claim that defendant Singh restored plaintiff's DPW status does not state a
21 potentially colorable Eighth Amendment claim. Plaintiff may be claiming that defendant Singh
22 violated the Eighth Amendment by failing to return "all medical necessities." However, plaintiff
23 does not describe these medical necessities. Without this information, the undersigned cannot
24 determine whether plaintiff has stated a potentially colorable claim against defendant Singh.
25 Accordingly, these claims against defendant Singh are dismissed.

26 Plaintiff alleges that defendant Berreto: "Acting Warden and (ISU) Investigative Security
27 Unit Agent failed to adhere to expectations at that capacity to prevent targeting by defendants in
28 forcing deprivation by the concert collusive fabricated observations to remove DPW status in

1 wheelchair in room to which stranded plaintiff deferring program benefits.” (ECF No. 34 at 7.)
2 The undersigned does not understand plaintiff’s allegations against defendant Berreto. For this
3 reason, the claims against defendant Berreto are dismissed. If plaintiff is claiming that defendant
4 Berreto participated in the removal of plaintiff’s DPW status, he shall clarify this claim in a
5 second amended complaint.

6 Plaintiff alleges that defendant Adams, the Chief Medical Executive, failed to send
7 plaintiff to an outside hospital for rehabilitation of a nerve condition that left plaintiff bedridden
8 and caused plaintiff to suffer atrophy. (Id. at 7.) These allegations state a potentially colorable
9 Eighth Amendment claim against defendant Adams.

10 Plaintiff alleges that defendant Church, the Chief Physician and Surgeon, “failed to
11 supervise or even execute the appropriate review of neuralgia necessity in rehabilitation therapy
12 for lower back, having information in (CDCR) medical file that a nerve disorder prevents (MRI)
13 magnetic resonance image scan from picking up impingement or compression of nerves in the
14 lower back during scans.” (Id. at 7-8.) Plaintiff alleges that defendants told plaintiff that he had
15 no disability/paraplegia because the scan impression showed a lack of impingement or
16 compression. (Id. at 8.) Plaintiff claims that an MRI would not show impingement or
17 compression of nerves. (Id.) Plaintiff alleges that defendants’ failure to repair his nerve
18 impingement caused his paraplegia and kept him bedridden. (Id.) Plaintiff alleges that
19 defendants stopped treatment for plaintiff’s nerve disorder. (Id.)

20 While plaintiff appears to claim that “defendants” improperly used an MRI to determine
21 whether plaintiff had impingement or compression of nerves, plaintiff has not pled sufficient facts
22 demonstrating defendant Church’s involvement in this deprivation. Accordingly, this claim
23 against defendant Church is dismissed.

24 Plaintiff alleges that defendant Reynolds wrote a false report stating that plaintiff
25 threatened Nurse Sandhu with death. (Id. at 8.) Plaintiff alleges that the false report “did not
26 advance” because defendant Sandhu “refused to bare false witness.” (Id.) Plaintiff alleges that
27 “an appeal was filed but was illegally retained with CDC 128 form, as an incident serious rule
28 violation report to which is the very normal common practice...” (Id.)

1 It is not clear if plaintiff is claiming that defendant Reynolds issued a false rules violation
2 report or a false counseling chrono, i.e., CDC 128. However, a due process claim based on a
3 false rules violation report is not colorable if the inmate was afforded the procedural protections
4 required by federal law at the disciplinary hearing. Freeman v. Rideout, 808 F.2d 949, 951 (2d
5 Cir. 1986); Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984). In addition, “[t]he
6 issuance of [a] counseling chrono with no discipline attached simply [does] not implicate a
7 federally protected liberty interest.” Parks v. Chavez, 2013 WL 556783, at *3 (N.D. Cal. Feb. 12,
8 2013.) Accordingly, plaintiff’s claims against defendant Reynolds are dismissed. If plaintiff is
9 claiming that defendant Reynolds filed a false rules violation report, he shall clarify whether he
10 received procedural protections at his disciplinary hearing in the second amended complaint.

11 Plaintiff alleges that defendant Miller stated that she would “commence reports to have
12 [plaintiff] removed from CHCF. She participated in formulating false reports, observations...”
13 (ECF No. 34 at 9.) The legal grounds of plaintiff’s claim that defendant Miller prepared false
14 reports so that plaintiff would be transferred away from CHCF are not clear. It is not clear if
15 plaintiff is alleging that defendant Miller violated his Eighth Amendment right to adequate
16 medical care by preparing these reports or possibly retaliated against him. Plaintiff does not
17 allege that he was ever transferred away from CHCF. Plaintiff has no due process right to be
18 housed at any particular prison. Meachum v. Fano, 427 U.S. 215, 224-25 (1976). For these
19 reasons, this claim against defendant Miller is dismissed.

20 Plaintiff also alleges that defendant Miller was assigned to third watch duties and held
21 medical appeals by placing them in a desk drawer and locker, so that in the morning defendant
22 Reynolds could review them. (ECF No. 34 at 9.) The undersigned does not understand the legal
23 grounds for this claim. Accordingly, this claim against defendant Miller is dismissed.

24 Plaintiff alleges that defendant Golff was involved in a records review that “diverted the
25 proper alignment of outside hospital for nerve disorder placement.” (Id. at 10.) Plaintiff goes on
26 to allege that defendant Golff adopted the opinion of prison employees that plaintiff’s lower back
27 condition had been corrected, in apparent contradiction of the opinions of outside specialists. (Id.
28 at 11.) Plaintiff alleges that he received only physical therapy, which did not help his lower back.

1 (Id.) Plaintiff's claim that defendant Golff provided physical therapy, in contradiction of the
2 specialists' opinions and which did not help plaintiff's lower back, states a potentially colorable
3 claim for relief.

4 Plaintiff also alleges that defendant Golff made false observations that resulted in plaintiff
5 being deprived of a wheelchair for seven months. (Id. at 9.) Without knowing what false
6 observations defendant Golff allegedly made and where these observations were made (i.e., in
7 plaintiff's medical records, in response to a grievance, etc.), the undersigned cannot determine
8 whether plaintiff's claim that defendant Golff denied him access to a wheelchair states a
9 potentially colorable claim for relief. Accordingly, this claim is dismissed with leave to amend.

10 Plaintiff also alleges that defendant Golff on, "March 10, 15, 17 2016 illegally applied
11 herself as an 'other' authority over defendant Muniano, each of these days, to block out a
12 medically ordered form of ambulation to specialist for examination as to deprivation of DPW and
13 physical condition of this plaintiff of this plaintiff, as far as the ability to execute the acts raised
14 upon false observations." (Id.) It appears that plaintiff is claiming that on the dates alleged,
15 defendant Golff refused to provide plaintiff with transportation to an outside specialist. These
16 allegations state a potentially colorable claim for relief.

17 Plaintiff alleges that defendant Smith falsely reported that she saw plaintiff ambulating in
18 his assigned room without aids to ambulate. (Id. at 11.) Plaintiff alleges that based on this false
19 observation, plaintiff was deprived of ADA cell status. (Id.) These allegations state a potentially
20 colorable claim for relief.

21 Plaintiff alleges that defendant Williams "participated in false observations" resulting in
22 the removal of plaintiff's DPW status and ADA cell. (Id.) Plaintiff alleges that defendant
23 Williams refused to provide services to plaintiff while he was bedridden. (Id.) Plaintiff does not
24 describe the false observations made by defendant Williams which allegedly led to the removal of
25 plaintiff's DPW status and his ADA cell. Plaintiff also does not describe the services defendant
26 Williams allegedly failed to provide him. Without this information, the undersigned cannot
27 determine whether plaintiff has stated potentially colorable claims for relief against defendant
28 Williams. Accordingly, plaintiff's claims against defendant Williams are dismissed.

1 Plaintiff alleges that defendant Alvarez “participated in concert in application of false
2 observations” and refused to provide services to plaintiff while he was bedridden. (Id. at 12.)
3 Plaintiff does not describe the false observations made by defendant Alvarez. Plaintiff also does
4 not describe the services defendant Alvarez failed to provide plaintiff. Without this information,
5 the undersigned cannot determine whether plaintiff has stated a potentially colorable claim for
6 relief against defendant Alvarez. Accordingly, plaintiff’s claims against defendant Alvarez are
7 dismissed.

8 Plaintiff alleges that defendant Black made false observations and denied services to
9 plaintiff while he was bedridden. (Id.) Plaintiff alleges that defendant Black filed a false report
10 stating that she suffered an injury while bringing hot water to plaintiff’s cell. (Id.) Plaintiff
11 alleges that as a result of this false report, plaintiff was deprived of hot water. (Id.)

12 Plaintiff does not describe the false observations defendant Black allegedly made or the
13 services plaintiff failed to receive as a result of the false observations. Plaintiff also does not
14 explain why he was denied hot water based on defendant Black’s allegedly false report. Without
15 this information, the undersigned cannot determine whether plaintiff has stated potentially
16 colorable claims against defendant Black. Accordingly, the claims against defendant Black are
17 dismissed.

18 Plaintiff alleges that defendant Ballanza “applied himself to self-serving adjustments in
19 appeal reviews that caused delay, cancellation, other to appeals.” (Id.) Plaintiff’s claim against
20 defendant Ballanza is not clear. If plaintiff is claiming that defendant Ballanza failed to properly
21 process his appeals, plaintiff is informed that prisoners have no liberty interest in a grievance
22 procedure or due process rights to the handling of grievances in any particular manner. Ramirez
23 v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (recognizing that there is no liberty interest in the
24 processing of appeals because prisoners are not entitled to a specific grievance process). For
25 these reasons, plaintiff’s claim against defendant Ballanza is dismissed.

26 Plaintiff alleges that defendant Wein “organized false observations application towards
27 removal medical status and medical treatment.” (ECF No. 34 at 13.) Plaintiff does not describe
28 defendant Wein’s false observations that led to the removal of plaintiff’s medical treatment and

1 medical status. Plaintiff also does not specifically describe the medical treatment and medical
2 status that defendant Wein removed. Without this information, the undersigned cannot determine
3 whether plaintiff has stated a potentially colorable claim against defendant Wein. Accordingly,
4 this claim is dismissed.

5 Plaintiff alleges that defendant Zamora participated in the “orchestrations of refusing
6 posture to valid appeals by participating as a member of a medical panel and opined contrary to
7 medical necessities that were instated and in effect prior to obscurities...” (Id. at 13.) Plaintiff’s
8 claim against defendant Zamora is not clear. For this reason, the claims against defendant
9 Zamora are dismissed. If plaintiff files an amended complaint, he shall clarify whether he is
10 claiming that defendant Zamora denied plaintiff’s grievances regarding medical care. If so,
11 plaintiff shall specifically describe the medical treatment requested in these grievances.

12 Plaintiff alleges that defendant Infante participated in reviewing plaintiff’s grievances in
13 2014 up to 2016. (Id.) Plaintiff alleges that defendant Infante refused the appeals without
14 responses. (Id.) Plaintiff does not describe the medical care requested in these appeals. Without
15 this information, the undersigned cannot determine whether plaintiff has stated a potentially
16 colorable claim against defendant Infante. Accordingly, the claims against defendant Infante are
17 dismissed.

18 Plaintiff alleges that defendant Williams “participated in concert application to opine
19 contrary to appropriate medical treatment.” (Id.) Plaintiff does not specifically describe the acts
20 or omissions by defendant Williams which caused plaintiff to receive inadequate medical care.
21 Without this information, the undersigned cannot determine whether plaintiff has stated a
22 potentially colorable claim against defendant Williams. Accordingly, the claims against
23 defendant Williams are dismissed.

24 Plaintiff alleges that defendant Laude refused to provide plaintiff with “properly aligned
25 diet supplications 2400 calorie diet.” (Id.) Plaintiff appears to claim that his failure to receive the
26 special diet caused disruptions in plaintiff’s body functions that inflicted harm, pain and
27 discomfort. (Id.) The undersigned requires additional information regarding the special diet
28 before he can determine whether plaintiff has stated a potentially colorable claim against

1 defendant Laude. If plaintiff files an amended complaint, he shall describe the special diet and
2 address why he required the special diet. For these reasons, the claims against defendant Laude
3 are dismissed.

4 Plaintiff alleges that defendants Donnelly, Lowe and Richardson participated in a medical
5 panel that denied plaintiff proper medical treatment. (Id. at 13-14.) Plaintiff does not describe
6 the medical treatment these defendants denied plaintiff. Without this information, the
7 undersigned cannot determine whether plaintiff has stated a potentially colorable claim against
8 these defendants. Accordingly, the court against defendants Donnelly, Lowe and Richardson are
9 dismissed.

10 Plaintiff alleges that defendants Nelson, Garcia, Singh, Schafer, Stein, Malakka, Pearson,
11 Martin, Clark, Davis, Molina and Knight participated in a medical panel that denied plaintiff
12 proper medical treatment. (Id. at 14, 15, 19-21.) Plaintiff does not describe the medical treatment
13 he allegedly failed to receive based on defendants' participation in the medical panel. (Id.) For
14 this reason, the undersigned cannot determine whether plaintiff has stated potentially colorable
15 claims against these defendants. Accordingly, these claims against defendants Nelson, Garcia,
16 Singh, Schafer, Stein, Malakka, Pearson, Martin, Clark, Davis, Molina and Knight are dismissed.

17 Plaintiff alleges that defendant Lewis participated in responses to third level grievances,
18 causing the delay and denial of adequate medical care. (Id. at 15.) Plaintiff does not describe the
19 medical care he requested in the grievance addressed by defendant Lewis. Without this
20 information, the undersigned cannot determine whether plaintiff has stated a potentially colorable
21 claim against defendant Lewis. Accordingly, the claim against defendant Lewis is dismissed.

22 Plaintiff alleges that defendant Duffy "participated in allowing the denial, prolonging,
23 proper medical treatment" to plaintiff. (Id.) Plaintiff does not describe the acts or omissions by
24 defendant Duffy that led to the denial of proper medical treatment. Plaintiff also does not
25 describe the proper medical treatment he did not receive as a result of the acts or omissions by
26 defendant Duffy. Without this information, the undersigned cannot determine whether plaintiff
27 has stated a potentially colorable claim against defendant Duffy. Accordingly, this claim against
28 defendant Duffy is dismissed.

1 Plaintiff also alleges that defendant Duffy “participated in” a false report that caused a
2 guilty finding that impacted plaintiff’s release date. (Id.) As discussed above, a due process
3 claim based on a false rules violation report is not colorable if the inmate is afforded the
4 procedural protections required by federal law at the disciplinary hearing. Freeman v. Rideout,
5 808 F.2d 949, 951 (2d Cir. 1986); Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984).
6 For this reason, plaintiff’s claim against defendant Duffy is dismissed.¹

7 Plaintiff alleges that defendant Navarro “participated in the usage” of false reports to
8 sustain a finding of guilt in a disciplinary hearing. (Id.) Plaintiff alleges that the guilty finding
9 impacted plaintiff’s release date. (Id.) It appears that plaintiff is claiming that defendant Navarro
10 found plaintiff guilty of a rules violation based on a false rules violation report.

11 A challenge to the loss of good time credits is not a cognizable civil rights claim unless
12 the decision revoking the credits has been invalidated. In Heck v. Humphrey, 512 U.S. 477
13 (1994), the Supreme Court held that a prisoner-plaintiff’s civil rights complaint must be
14 dismissed if judgment in favor of the plaintiff would undermine the validity of his conviction or
15 sentence, unless the plaintiff can demonstrate that the conviction or sentence has already been
16 invalidated. Id. at 486-87. In Edwards v. Balisok, 520 U.S. 641 (1997), the Supreme Court
17 extended the Heck rule to civil rights claims that, if successful, would imply the invalidity of
18 deprivations of good-time credits in prison disciplinary proceedings. Id. at 643-47.

19 Although plaintiff is no longer incarcerated, it appears that a finding that plaintiff was not
20 guilty of the disciplinary conviction could impact the duration of plaintiff’s parole. Accordingly,
21 the claim against defendant Navarro is dismissed. If plaintiff files an amended complaint, he
22 shall clarify whether he is claiming that defendant Navarro found him guilty of a rules violation
23 based on a false report and whether a finding in his favor in this civil rights action would impact
24 the duration of his parole. Plaintiff shall also address whether the disciplinary conviction has
25 been invalidated, reversed or expunged.

26 ///

27 _____
28 ¹ Moreover, this claim may be barred by the favorable termination rule set forth in Heck v. Humphrey, 512 U.S. 477 (1994).

1 Plaintiff also alleges that defendant Navarro participated in the day-to-day operations of
2 the unit, but failed to address the obstruction of appeals and mail passage. (ECF No. 34 at 15.)
3 Plaintiff's claim that defendant Navarro failed to address the obstruction of appeals fails to state a
4 potentially colorable claim because prisoners have no stand-alone due process rights related to the
5 administrative grievance process. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding
6 that there is no liberty interest entitling inmates to a specific grievance process).

7 Plaintiff does not allege how his mail was obstructed or how he brought the alleged
8 obstruction of his mail to the attention of defendant Navarro. For this reason, the undersigned
9 cannot determine whether these allegations state a potentially colorable claim for relief.
10 Accordingly, this claim is dismissed.

11 Plaintiff alleges that defendants Day, Biggs, Castro and Phillip "participated in the
12 formulation" of false reports that caused the guilty finding at the disciplinary hearing. (ECF No.
13 34 at 16-17.) Plaintiff alleges that defendant Campigli "participated in the execution" of the false
14 rules report "toward the finding of guilt" when he acted as plaintiff's staff assistant/investigative
15 employee. (Id. at 17.) Plaintiff alleges that the guilty finding impacted plaintiff's release date.
16 (Id. at 16-17.)

17 Plaintiff's claims against defendants Day, Biggs, Castro, Phillip and Campigli appear to
18 be barred by Heck v. Humphrey. Accordingly, these claims are dismissed. If plaintiff files an
19 amended complaint, he shall clarify whether a finding in his favor regarding his claims against
20 these defendants would impact the duration of his parole. Plaintiff shall also address whether the
21 disciplinary conviction has been invalidated, reversed or expunged. Plaintiff shall also clarify
22 how defendants Day, Biggs, Castro and Phillip participated in the formulation of the allegedly
23 false rules violation report. Plaintiff shall also describe the acts or omissions of defendant
24 Campigli that allegedly violated plaintiff's right to due process.

25 Plaintiff also claims that defendants Day, Biggs and Castro failed to "prevent the
26 channeling of appeals to and from appeals office causing appeals failure." (Id. 16-17.) These
27 allegations do not state a potentially colorable claim for relief. Ramirez v. Galaza, 334 F.3d 850,
28 860 (9th Cir. 2003) (holding that there is no liberty interest entitling inmates to a specific

1 grievance process). To the extent plaintiff claims that the failure to properly process his appeals
2 caused delays in his receipt of adequate medical care, plaintiff has not plead sufficient facts
3 supporting this claim. If plaintiff files an amended complaint raising this claim, he shall describe
4 the medical care he requested in the at-issue appeals as well as the acts or omissions of defendants
5 related to these appeals. Accordingly, these claims are dismissed.

6 Plaintiff alleges that defendant Hubble “participated in the fabrication of observations to
7 remove medical status and housing.” (ECF No. 34 at 17.) Plaintiff alleges that defendant Hubble
8 removed plaintiff’s DPW status and “applied false reports” accusing plaintiff of “doing body
9 postures that are” impossible for plaintiff “to accomplish.” (Id.) Plaintiff appears to claim that
10 defendant Hubble removed plaintiff’s DPW status after preparing reports falsely stating that he
11 observed plaintiff engaging in physical activity that plaintiff was incapable of performing. These
12 allegations state a potentially colorable claim.

13 Plaintiff alleges that defendant Jones participated in the removal of plaintiff’s DPW status
14 “involving the usage of fabricated observations reports...” (Id. at 18.) Plaintiff appears to claim
15 that defendant Jones removed plaintiff’s DPW status based on false reports. However, plaintiff
16 does not describe the false reports relied on by defendant Jones. For this reason, the claim against
17 defendant Jones is dismissed. If plaintiff files a second amended complaint, he shall identify the
18 allegedly false reports relief on by defendant Jones and whether defendant Jones knew the reports
19 were false.

20 Plaintiff alleges that defendant Gines refused to pick up plaintiff’s legal mail, which
21 interfered with plaintiff’s ability to obtain appropriate medical care. (Id.) Plaintiff does not
22 explain how defendant Gines’s alleged refusal to pick up plaintiff’s legal mail interfered with
23 plaintiff’s ability to obtain appropriate medical care. Without this information, the undersigned
24 cannot determine whether plaintiff has stated a potentially colorable claim for relief against
25 defendant Gines. Accordingly, this claim is dismissed.

26 Plaintiff alleges that defendant Gutierrez “participated in the fabrication of observations
27 and coercing false observations, reports to include harassment tactics day to day.” (Id.) These
28 allegations are vague and conclusory. Accordingly, plaintiff’s claim that defendant Gutierrez

1 fabricated observations and harassed plaintiff are dismissed.

2 Plaintiff alleges that defendant Gutierrez “participated in letter and appeal channeling
3 away from plaintiff” that delayed and interfered with plaintiff’s receipt of proper medical care.
4 (Id.) Plaintiff does not describe the medical care he sought in the at-issue appeals. Plaintiff also
5 does not describe the acts or omissions by defendant Gutierrez in his processing of the appeals
6 leading to the alleged denial of adequate medical care. Without this information, the undersigned
7 cannot determine whether plaintiff has stated a potentially colorable claim against defendant
8 Gutierrez. Accordingly, this claim is dismissed.

9 Plaintiff alleges that defendant Miniano “participated in allowing the illegal removal of
10 active chronos with fabricated allegations that a policy disallows bed by sink when no such policy
11 exists.” (Id. at 19.) Plaintiff appears to claim that defendant Miniano caused plaintiff’s bed to be
12 moved away from the sink in his cell. However, he does not specifically allege how moving his
13 bed away from the sink violated his Eighth Amendment rights. Accordingly, this claim is
14 dismissed.

15 Plaintiff alleges that defendant Miniano allowed the alteration of medical orders that
16 “disallowed gurney transport to specialist at a crucial time to allow restoration of DPW.” (Id.)
17 Plaintiff may be claiming that he was unable to attend appointments with the outside specialist
18 because defendant Miniano changed medical orders providing for plaintiff’s transport to these
19 appointments. However, plaintiff does not specifically allege that he was unable to attend these
20 appointments due to lack of transportation. The undersigned cannot determine whether plaintiff
21 has stated a potentially colorable claim without this information. Accordingly, this claim is
22 dismissed.

23 Plaintiff alleges that defendant Voong participated in reviewing plaintiff’s third level
24 appeal. (Id. at 21.) Plaintiff alleges that defendant Voong denied a meritorious appeal that
25 resulted in the deterioration of plaintiff’s medical condition. (Id.) Plaintiff does not describe the
26 medical care he sought in the grievance. Plaintiff also does not describe defendant Voong’s
27 response to his grievance that resulted in the alleged denial of medical care. Without this
28 information, the undersigned cannot determine whether plaintiff has stated a potentially colorable

1 claim against defendant Voong. Accordingly, this claim is dismissed.

2 Plaintiff alleges that defendant Green found plaintiff guilty of a “severe” rules violation
3 based on the fabricated policy stating that medical staff could not bring hot water to an inmate’s
4 room. (Id.) Plaintiff does not allege that the guilty finding impacted his release date. However,
5 based on plaintiff’s allegation that defendant Green found him guilty of a “severe” rules violation,
6 this claim is dismissed with leave to amend so that plaintiff may clarify whether a finding in his
7 favor regarding this claim could impact the duration of his parole. Plaintiff shall also address
8 whether the disciplinary conviction has been invalidated, reversed or expunged.

9 Plaintiff alleges that defendant Slee used false information to find plaintiff guilty of a
10 serious rules violation. (Id. at 21-22.) Plaintiff does not allege that the guilty finding impacted
11 his release date. However, based on plaintiff’s allegation that defendant Slee found him guilty of
12 a “severe” rules violation, this claim is dismissed with leave to amend so that plaintiff may clarify
13 whether a finding in his favor regarding this claim could impact the duration of his parole.
14 Plaintiff shall also address whether the disciplinary conviction has been invalidated, reversed or
15 expunged.

16 Plaintiff alleges that defendant Brunner participated in the fabrication of a rules violation
17 report that resulted in a guilty finding following a disciplinary hearing. (Id. at 22.) As discussed
18 above, a due process claim based on a false rules violation report is not colorable if the inmate is
19 afforded the procedural protections required by federal law at the disciplinary hearing. Freeman
20 v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986); Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th
21 Cir. 1984). Accordingly, this claim is dismissed with leave to amend so that plaintiff may clarify
22 whether he received procedural due process at the hearing where he was found guilty based on
23 the allegedly false rules violation report prepared by defendant Brunner. Plaintiff shall also
24 address whether a finding in his favor regarding this claim could impact the duration of his
25 parole. Plaintiff shall also address whether the disciplinary conviction has been invalidated,
26 reversed or expunged.

27 Finally, the undersigned observes that claim one appears to contain unrelated claims
28 against unrelated defendants. Plaintiff may not bring unrelated claims against unrelated parties in

1 a single action. Fed. R. Civ. P. 18(a), 20(a)(2); George v. Smith, 507 F.3d 605, 607 (7th Cir.
2 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out
3 of the same transaction or occurrence, or series of transactions and occurrences, and (2) there are
4 common questions of law or fact. Fed. R. Civ. P. 20(a)(2). Coughlin v. Rogers, 130 F.3d 1348,
5 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity in the factual
6 background of a claim. Id. at 1349. Only if the defendants are properly joined under Rule 20(a)
7 will the court review the other claims to determine if they may be joined under Rule 18(a), which
8 permits the joinder of multiple claims against the same party.

9 If plaintiff files a second amended complaint, he may not raise unrelated claims against
10 unrelated defendants.

11 *Claims Two and Three*

12 In claim two, plaintiff alleges that defendants violated the Eighth Amendment by
13 removing his wheelchair. (Id. at 24.) In claim three, plaintiff alleges defendants violated the
14 Fourteenth Amendment by denying him physical therapy and other medical treatments. (Id. at
15 25.) No defendants are linked to claims two and three.

16 The Civil Rights Act under which this action was filed provides as follows:

17 Every person who, under color of [state law] . . . subjects, or causes
18 to be subjected, any citizen of the United States . . . to the deprivation
19 of any rights, privileges, or immunities secured by the Constitution .
20 . . shall be liable to the party injured in an action at law, suit in equity,
21 or other proper proceeding for redress.

22 42 U.S.C. § 1983.

23 The statute requires that there be an actual connection or link between the actions of the
24 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.
25 Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983 liability to
26 attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no affirmative
27 link between the incidents of police misconduct and the adoption of any plan or policy
28 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
affirmative act, participates in another’s affirmative acts or omits to perform an act which he is

1 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
2 588 F.2d 740, 743 (9th Cir. 1978).

3 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
4 their employees under a theory of respondeat superior and, therefore, when a named defendant
5 holds a supervisory position, the causal link between him and the claimed constitutional
6 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
7 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
8 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.
9 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
10 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
11 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
12 participation is insufficient).

13 Claims two and three are dismissed because no defendants are linked to these claims. In
14 addition, the substantive due process clause is not an appropriate vehicle to raise claims regarding
15 prison-related injuries that “implicated more specific constitutional rights” protected by the
16 Eighth Amendment. See Graham v. Connor, 490 U.S. 386, 393 (1989). Rather, the Supreme
17 Court has emphasized that the Eighth Amendment’s cruel and unusual punishments clause is the
18 appropriate mechanism for raising claims that challenge inhumane or unsafe conditions of
19 confinement. See Farmer v. Brennan, 511 U.S. 825, 832 (1994). Accordingly, the Fourteenth
20 Amendment claims raised in claim three are dismissed.

21 *Conclusion*

22 Plaintiff is granted thirty days to file a second amended complaint to cure the pleading
23 defects discussed above. Plaintiff is informed that the court cannot refer to a prior pleading in
24 order to make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
25 complaint be complete in itself without reference to any prior pleading. This requirement exists
26 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
27 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint
28 supersedes the original, the latter being treated thereafter as non-existent.’”) (internal citation

1 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
2 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
3 and the involvement of each defendant must be sufficiently alleged.


4 Plaintiff's second amended complaint may be no longer than fifteen pages. A second
5 amended complaint longer than fifteen pages will be ordered stricken.

6 If plaintiff does not file a second amended complaint, the undersigned will order service
7 of the claims found potentially colorable in this order. However, before the undersigned orders
8 service of the potentially colorable claims, plaintiff must inform the court that he intends to
9 prosecute this action.² If plaintiff fails to notify the court that he intends to prosecute this action,
10 the undersigned will recommend dismissal of this action for lack of prosecution.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's amended complaint is dismissed but for those claims found potentially
13 colorable, as discussed in this order;
- 14 2. Plaintiff is granted thirty days from the date of this order to file a second amended
15 complaint or a notice that he intends to proceed on the potentially colorable claims;
16 failure to respond to this order will result in a recommendation of dismissal for lack of
17 prosecution.

18 Dated: August 24, 2021

19 
20 _____
21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

23 Si1067.14
24
25
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27 _____
28 ² Although this action was on appeal for several years, plaintiff has not communicated with this
court since June 2017. (See ECF No. 72.)