

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint,¹ or any portion
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
4 relief.” *Id.* § 1915A(b).

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable for the
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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26 ¹ Plaintiff has filed three complaints in this action. ECF Nos 1, 4, & 6. In screening this
27 action, the court looks exclusively to the most recent Second Amended Complaint (ECF No. 6).
28 *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989)
(holding that an amended pleading supersedes the original).

1 **III. Screening Order**

2 The complaint (ECF No. 6) names S. Gunderson, S. Castellon, L. Fetzer, and Cody James
3 Phelps as defendants and alleges that they violated plaintiff’s constitutional rights. According to
4 the complaint, plaintiff was being transported by bus from California State Prison Sacramento to
5 California Men’s Colony- San Luis Obispo on February 6, 2013. *Id.* at 4. Gunderson was the
6 transportation supervisor, Castellon was driving the bus, and Fetzer was sitting in the rear area of
7 the bus with a firearm. *Id.* Plaintiff alleges that, while the bus was headed southbound on the
8 freeway, Castellon began driving recklessly. *Id.* The inmates allegedly urged him to slow down,
9 but were ignored and told to be quiet. *Id.* Plaintiff alleges that he was shackled and the
10 correctional officers knew that he had no seatbelt. *Id.*

11 Shortly thereafter, defendant Cody James Phelps, who was also travelling southbound,
12 lost control of his vehicle while trying to pass the prison bus. *Id.* at 5. His vehicle struck the rear
13 tires of the bus, causing plaintiff to be tossed from his seat and into the adjacent wall. *Id.*
14 Plaintiff claims that he suffered injuries to his face, neck, and back as a result of the crash. *Id.*
15 Afterwards, defendants Gunderson, Castellon, and Fetzer asked if any inmates needed medical
16 attention and coordinated the transport of injured inmates to nearby facilities. *Id.* Now, plaintiff
17 alleges that the defendant correctional officers were deliberately indifferent by driving recklessly
18 and failing to provide him with a seatbelt. *Id.* at 5-6. He also alleges that defendant Phelps
19 violated his rights by driving recklessly and causing the accident. *Id.* at 6. As set forth below, the
20 allegations fail to state a cognizable claim under the applicable standards.

21 First, defendant Phelps is not a state actor and must be dismissed on this basis. To state a
22 viable claim under § 1983 the defendant must act under color of state law. *Gibson v. United*
23 *States*, 781 F.2d 1334, 1338 (9th Cir. 1986). A private individual is liable under § 1983 only if he
24 conspires or enters into a joint action with a state actor. *Radcliffe v. Rainbow Constr. Co.*, 254
25 F.3d 772, 783 (9th Cir. 2001). There is no indication that defendant Phelps acted in concert with
26 any state official.

27 Plaintiff’s claims against defendants Gunderson, Castellon, and Fetzer must also be
28 dismissed. First, it is well settled that the failure to provide seatbelts in a prison vehicle “does

1 not, standing alone, violate the Eighth or Fourteenth Amendments.” *Jabbar v. Fischer*, 683 F.3d
2 54, 57 (2d Cir. 2012). Second, plaintiff has not alleged sufficient facts to establish that defendant
3 Castellon’s reckless driving was the cause of any of his injuries. The complaint explicitly states
4 that the accident was caused by defendant Phelps’ attempt to pass the bus and the loss of control
5 of his vehicle during this maneuver. ECF No. 6 at 5. Plaintiff alleges that “[d]efendant Cody
6 James Phelps reckless driving caused and resulted in the crash against the CDCR Departmental
7 Transport Bus . . .” *Id.* The complaint does not allege that defendant Castellon’s own reckless
8 driving contributed to or worsened that accident in any way. *Johnson v. Duffy*, 588 F.2d 740,
9 743 (9th Cir. 1978) (“A person subjects another to the deprivation of a constitutional right, within
10 the meaning of section 1983, if he does an affirmative act, participates in another's affirmative
11 acts, or omits to perform an act which he is legally required to do that *causes the deprivation of*
12 *which complaint is made.*”) (internal quotations omitted) (emphasis added).

13 Plaintiff does go on to make the conclusory allegation that Castellon’s reckless driving
14 resulted in a crash against another vehicle on the freeway. ECF No. 6 at 5. Plaintiff has failed to
15 provide any details regarding this crash. He does not, for instance, allege: (1) how Castellon’s
16 reckless driving contributed to that crash; (2) how (if at all) this crash was related to the first
17 accident involving Phelps; (3) when this crash occurred; or (4) the basic circumstances of the
18 crash, i.e. whether the bus struck the second car or vice versa, whether Castellon had a reasonable
19 opportunity to avoid or lessen the impact of the second crash, what (if any) actions the other
20 defendants undertook at the time of the second crash, etc. Plaintiff appears to be alleging that the
21 first crash involving Phelps instigated the second crash which, in turn, was made worse due to
22 Castellon’s driving. The court will not interpret a plaintiff’s complaint by substituting facts that
23 are not present, however. He may address these deficiencies in his amended complaint.

24 **IV. Leave to Amend**

25 Plaintiff will be granted leave to file an amended complaint, affording him an opportunity
26 to allege a cognizable legal theory against a proper defendant and sufficient facts in support of
27 that cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*)
28 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in

1 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint
2 shall clearly set forth the claims and allegations against each defendant. Any amended complaint
3 must cure the deficiencies identified above and also adhere to the following requirements:

4 Any amended complaint must identify as a defendant only persons who personally
5 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
6 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
7 constitutional right if he does an act, participates in another's act or omits to perform an act he is
8 legally required to do that causes the alleged deprivation).

9 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

10 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
11 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

12 Any amended complaint must be written or typed so that it so that it is complete in itself
13 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
14 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
15 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
16 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
17 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
18 1967)).

19 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
20 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
21 *See* E.D. Cal. L.R. 110.

22 **V. Summary of Order**

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's request to proceed in forma pauperis (ECF Nos. 10) is granted and his
25 other applications to proceed in forma pauperis (ECF Nos. 5 &7) are denied as
26 moot.

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2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. The complaint is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled "Amended Complaint." Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

Dated: October 4, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE