

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

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

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

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

24 **III. Screening Order**

25 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds
26 that it must be dismissed with leave to amend for failure to state a claim. The complaint alleges
27 that on March 25, 2016, defendant Gertz refused to “uncuff and unchain” plaintiff so that plaintiff
28 could use the bathroom. Plaintiff allegedly defecated on himself and was forced to sit for 45

1 minutes because defendants Gertz, Honea, and Hannah refused to let plaintiff clean up.
2 According to the complaint, plaintiff had to “go into [] court” without first cleaning up. Plaintiff
3 seeks damages for emotional distress, personal injury, and “professional neglect.” ECF No. 1,
4 § IV. In addition to defendants Gertz, Honea, and Hannah, the complaint names as a defendant
5 the Butte County Sheriff Department.

6 The complaint fails to plead a proper claim for relief against Butte County or its Sheriff’s
7 Department, because it does not allege that plaintiff was injured as a result of employees acting
8 pursuant to any policy or custom of Butte County. A municipal entity or its departments is liable
9 under section 1983 only if plaintiff shows that his constitutional injury was caused by employees
10 acting pursuant to the municipality’s policy or custom. *Mt. Healthy City Sch. Dist. Bd. of Ed. v.*
11 *Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658,
12 691 (1978); *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9th Cir. 2008). Local
13 government entities may not be held vicariously liable under section 1983 for the unconstitutional
14 acts of its employees under a theory of respondeat superior. *See Board of Cty. Comm’rs. v.*
15 *Brown*, 520 U.S. 397, 403 (1997).

16 Further, the complaint fails to state a claim pursuant to 42 U.S.C. § 1983. To state a claim
17 under § 1983, a plaintiff must allege: (1) the violation of a federal constitutional or statutory right;
18 and (2) that the violation was committed by a person acting under the color of state law. *See West*
19 *v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

20 “Professional neglect” is not a violation of a federal constitutional or statutory right,² and the

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22 ² Moreover, the complaint does not properly allege a state law claim of negligence
23 because it does not plead compliance with the California Torts Claims Act (“Act”). The Act
24 requires that a party seeking to recover money damages from a public entity or its employees
25 submit a claim to the entity *before* filing suit in court, generally no later than six months after the
26 cause of action accrues. Cal. Gov’t Code §§ 905, 911.2, 945, 950.2 (emphasis added). Timely
27 claim presentation is not merely a procedural requirement of the Act but is an element of a
28 plaintiff’s cause of action. *Shirk v. Vista Unified Sch. Dist.*, 42 Cal. 4th 201, 209 (2007). Thus,
when a plaintiff asserts a claim subject to the Act, he must affirmatively allege compliance with
the claim presentation procedure, or circumstances excusing such compliance, in his complaint.
Id. The requirement that a plaintiff asserting claims subject to the Act must affirmatively allege
compliance with the claims filing requirement applies in federal court as well. *Karim-Panahi v.*
Los Angeles Police Dep’t, 839 F.2d 621, 627 (9th Cir. 1988).

1 allegations fall short of what is required to demonstrate a violation of the Eighth Amendment.
2 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
3 inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
4 2006). To show a violation of the Eighth Amendment, plaintiff must allege facts sufficient to
5 support a claim that prison officials knew of and disregarded a substantial risk of serious harm to
6 the plaintiff. *E.g.*, *Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *Frost v. Agnos*, 152 F.3d 1124,
7 1128 (9th Cir. 1998). Extreme deprivations are required to make out a conditions of confinement
8 claim, and only those deprivations denying the minimal civilized measure of life’s necessities are
9 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
10 503 U.S. 1, 9 (1992). Prison officials “must provide humane conditions of confinement,”
11 including “adequate food, clothing, shelter, and medical care.” *Farmer*, 511 U.S. at 832-33.
12 They may not treat any inmate “in a way antithetical to human dignity . . . under circumstances
13 that [are] both degrading and dangerous.” *Hope v. Pelzer*, 536 U.S. 730, 745, (2002). Here, the
14 allegations that plaintiff was made to wait 45 minutes and to appear in court after defecating on
15 himself, while plainly degrading, do not demonstrate that plaintiff was exposed to any serious risk
16 of danger. At some point, the protracted delay and lack of sanitation would surely pose such a
17 risk, but plaintiff has not alleged such a danger here. Further, although the complaint alleges that
18 plaintiff has had to “double” his depression medication as a result of the incident, *see* ECF No. 1,
19 § IV, it does not allege that any defendant had reason to believe that plaintiff would suffer such
20 adverse health consequences or that they otherwise knew of and disregarded an excessive risk to
21 plaintiff’s health or safety from a 45 minute delay. The allegations thus fail to state a cognizable
22 claim of cruel and unusual punishment in violation of the Eighth Amendment.

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

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1 Should plaintiff choose to file an amended complaint, the amended complaint shall clearly set
2 forth the claims and allegations against each defendant. Any amended complaint must cure the
3 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 **IV. Summary of Order**

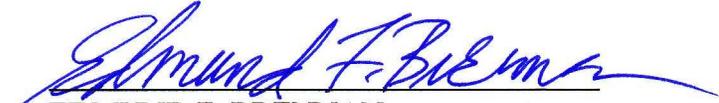
23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.
- 25 2. The complaint is dismissed with leave to amend within 30 days. The complaint
26 must bear the docket number assigned to this case and be titled “Amended
27 Complaint.” Failure to comply with this order may result in dismissal of this
28 action for failure to prosecute and failure to state a claim. If plaintiff files an

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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