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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYDE HOLLIS HARRIS,  
Plaintiff,  
v.  
S. KERNAN, et al.,  
Defendants.

No. 2:17-cv-0680 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a  
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific  
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what  
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93  
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).  
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Plaintiff names nine individuals as defendants, including S. Kernan, Secretary of the  
5 California Department of Corrections and Rehabilitation (“CDCR”), and E. Arnold, Warden of  
6 California State Prison, Solano (“CSP-SOL”). Plaintiff claims violation of his First, Eighth,  
7 Ninth, and Fourteenth Amendment rights. (ECF No. 1 at 4.) However, his specific claims are  
8 unclear. Plaintiff expresses bitterness over his underlying criminal proceedings. (ECF No. 1 at  
9 5.) He claims he has been designated as an irritant to staff, both medical and custody, because he  
10 asserts his rights and disturbs the status quo. (ECF No. 1 at 5-6.) In the injuries portion of the  
11 complaint form, plaintiff states:

12 There was an incident which could be construed as use of excessive  
13 force by staff and resulting in some bumps and bruises to the side of  
14 [his] face, but most of [his] injuries come from the irreparable  
15 harm(s) in violation of [his] constitutional rights to seek redress of  
grievances, to due process, and equal protection, and deliberate  
indifference to medical needs, and protection against cruel and  
inhuman punishment under the Eighth Amendment.

16 (ECF No. 1 at 6.) Plaintiff seeks preliminary injunctive relief,<sup>1</sup> including an order enjoining  
17 defendants from transferring plaintiff from CSP-SOL pending treatment; reserves claim for  
18 money damages in amended claim; and require defendants to secure leave of court before  
19 plaintiff can be transferred. (Id.)

#### 20 I. Linkage Requirement

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

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

25 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between  
26 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See

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27 <sup>1</sup> The court ordered further briefing on plaintiff’s separate motion for injunctive relief, and  
28 separately rules on such motion.

1 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
2 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a  
3 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
4 in another's affirmative acts, or omits to perform an act which he is legally required to do that  
5 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th  
6 Cir. 1978).

7 Here, plaintiff fails to link the individuals named as defendants to any alleged  
8 constitutional violation. In other words, plaintiff failed to include charging allegations as to each  
9 named defendant. Plaintiff will be given leave to cure this deficiency. If plaintiff elects to amend  
10 his complaint, he must allege what each defendant did that resulted in a violation of plaintiff’s  
11 constitutional rights.

## 12 II. Respondeat Superior

13 Plaintiff names Scott Kernan, Secretary of the CDCR, and Warden Arnold as defendants,  
14 and claims that Kernan is responsible for overall CDCR operations. To the extent plaintiff seeks  
15 to bring suit against any defendant based on his or her role as a supervisor, plaintiff may not do  
16 so. Supervisory personnel may not be held liable under section 1983 for the actions of  
17 subordinate employees based on respondeat superior or vicarious liability. Crowley v. Bannister,  
18 734 F.3d 967, 977 (9th Cir. 2013); accord Lemire v. California Dep't of Corr. and Rehab., 726  
19 F.3d 1062, 1074-75 (9th Cir. 2013. “A supervisor may be liable only if (1) he or she is personally  
20 involved in the constitutional deprivation, or (2) there is a sufficient causal connection between  
21 the supervisor’s wrongful conduct and the constitutional violation.” Crowley, 734 F.3d at 977  
22 (internal citation and quotation marks omitted); accord Lemire, 726 F.3d at 1074-75. “Under the  
23 latter theory, supervisory liability exists even without overt personal participation in the offensive  
24 act if supervisory officials implement a policy so deficient that the policy itself is a repudiation of  
25 constitutional rights and is the moving force of a constitutional violation.” Crowley, 734 F.3d at  
26 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks  
27 omitted).

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1 Plaintiff has not alleged that each defendant was personally involved in a specific  
2 constitutional deprivation or that any defendant instituted the allegedly deficient policy. Plaintiff  
3 will be given leave to cure this deficiency, but to the extent he claims Kernan violated plaintiff's  
4 rights based on Kernan's role as Secretary, in charge of the overall operation of the CDCR, such  
5 allegation is based on respondeat superior and Kernan should not be named as a defendant on  
6 such basis in any amended complaint.

### 7 III. Grievance Process

8 Plaintiff appears to allege that defendants interfered with his ability to seek redress of  
9 grievances.

10 The Due Process Clause protects plaintiff against the deprivation of liberty without the  
11 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,  
12 221 (2005). However, plaintiff has no stand-alone due process rights related to the administrative  
13 grievance process. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855  
14 F.2d 639, 640 (9th Cir. 1988). A prison official's denial of a grievance does not itself violate the  
15 constitution. Evans v. Skolnik, 637 Fed. Appx. 285, 288 (9th Cir. 2015), cert. dismissed, 136 S. Ct.  
16 2390 (2016). Thus, the denial, rejection, or cancellation of a grievance does not constitute a due  
17 process violation. See, e.g., Wright v. Shannon, 2010 WL 445203, at \*5 (E.D. Cal. Feb. 2, 2010)  
18 (plaintiff's allegations that prison officials denied or ignored his inmate appeals failed to state a  
19 cognizable claim under the First Amendment); Towner v. Knowles, 2009 WL 4281999 at \*2  
20 (E.D. Cal. Nov. 20, 2009) (plaintiff's allegations that prison officials screened out his inmate  
21 appeals without any basis failed to indicate a deprivation of federal rights); Williams v. Cate,  
22 2009 WL 3789597, at \*6 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty interest in  
23 the vindication of his administrative claims.").

24 Plaintiff should not renew his claims based on the grievance process.

### 25 IV. Unrelated Claims

26 Plaintiff refers to myriad constitutional violations without underlying factual support, and  
27 thus, the court cannot determine whether the claims are properly joined under Federal Rule of  
28 Civil Procedure 20(a) regarding joinder of claims and defendants. Rule 20(a) provides that all

1 persons may be joined in one action as defendants if “any right to relief is asserted against them  
2 jointly, severally, or in the alternative with respect to or arising out of the same transaction,  
3 occurrence, or series of transactions or occurrences” and “any question of law or fact common to  
4 all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

5 Here, for example, it appears that a claim concerning the use of excessive force during a  
6 specific incident, in violation of the Eighth Amendment, would not be related to plaintiff’s claim  
7 that certain defendants are being deliberately indifferent to his serious medical needs. Before  
8 plaintiff files his amended complaint, he should review his claims and ensure that he only raises  
9 related claims in this action. Other, unrelated claims must be brought in a separate action.

#### 10 V. Plaintiff’s Intended Claims for Relief

11 The following legal standards may apply to plaintiff’s intended claims for relief.

12 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal  
13 constitutional or statutory right; and (2) that the violation was committed by a person acting under  
14 the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d  
15 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the  
16 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal  
17 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.  
18 See Hansen, 885 F.2d at 646; Johnson v. Duffy, 588 F.2d at 743-44. That is, plaintiff may not  
19 sue any official on the theory that the official is liable for the unconstitutional conduct of his or  
20 her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). In sum, plaintiff must identify the  
21 particular person or persons who violated his rights.

22 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a  
23 plaintiff must establish that he had a serious medical need and that the defendant’s response to  
24 that need was deliberately indifferent. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); see  
25 also Estelle v. Gamble, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to  
26 treat the condition could result in further significant injury or the unnecessary and wanton  
27 infliction of pain. Jett, 439 F.3d at 1096. Deliberate indifference may be shown by the denial,  
28 delay or intentional interference with medical treatment or by the way in which medical care is

1 provided. Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988).

2 To act with deliberate indifference, a prison official must both be aware of facts from  
3 which the inference could be drawn that a substantial risk of serious harm exists, and he must also  
4 draw the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if  
5 he knows that plaintiff faces “a substantial risk of serious harm and disregards that risk by failing  
6 to take reasonable measures to abate it.” Id. at 847. A physician need not fail to treat an inmate  
7 altogether in order to violate that inmate’s Eighth Amendment rights. Ortiz v. City of Imperial,  
8 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,  
9 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.

10 Id.

11 It is important to differentiate common law negligence claims of malpractice from claims  
12 predicated on violations of the Eighth Amendment’s prohibition of cruel and unusual punishment.  
13 In asserting the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not  
14 support this cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.  
15 1980) (citing Estelle v. Gamble, 429 U.S. 97, 105-06 (1976); see also Toguchi v. Chung, 391  
16 F.3d 1051, 1057 (9th Cir. 2004).

17 “When prison officials use excessive force against prisoners, they violate the inmates’  
18 Eighth Amendment right to be free from cruel and unusual punishment.” Clement v. Gomez, 298  
19 F.3d 898, 903 (9th Cir. 2002). In order to establish a claim for the use of excessive force in  
20 violation of the Eighth Amendment, a plaintiff must establish that prison officials applied force  
21 maliciously and sadistically to cause harm, rather than in a good-faith effort to maintain or restore  
22 discipline. Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). In making this determination, the court  
23 may evaluate (1) the need for application of force, (2) the relationship between that need and the  
24 amount of force used, (3) the threat reasonably perceived by the responsible officials, and (4) any  
25 efforts made to temper the severity of a forceful response. Id. at 7; see also id. at 9-10 (“The  
26 Eighth Amendment’s prohibition of cruel and unusual punishment necessarily excludes from  
27 constitutional recognition *de minimis* uses of physical force, provided that the use of force is not  
28 of a sort repugnant to the conscience of mankind.” (internal quotation marks and citations

1 omitted)).

2 To state a viable First Amendment retaliation claim, a prisoner must allege five elements:  
3 “(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3)  
4 that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First  
5 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.”  
6 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). Conduct protected by the First  
7 Amendment includes communications that are “part of the grievance process.” Brodheim v. Cry,  
8 584 F.3d 1262, 1271 n.4 (9th Cir. 2009). If plaintiff intends to assert a retaliation claim, he must  
9 specifically identify the protected conduct at issue, name the defendant who took adverse action  
10 against him, identify the adverse action, and plead that the allegedly adverse action was taken  
11 “because of” plaintiff’s protected conduct.

12 VI. Leave to Amend

13 Therefore, plaintiff’s complaint is dismissed. The court, however, grants leave to file an  
14 amended complaint. Plaintiff is granted leave to file an amended complaint that raises only  
15 related claims and defendants. Unrelated claims must be raised in a separate civil rights action.

16 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
17 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. Rizzo v.  
18 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each  
19 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is  
20 some affirmative link or connection between a defendant’s actions and the claimed deprivation.  
21 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743  
22 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil  
23 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 A prisoner may bring no § 1983 action until he has exhausted such administrative  
25 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. Booth v.  
26 Churner, 532 U.S. 731, 741 (2001).

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1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims.<sup>2</sup> See  
2 Fed. R. Civ. P. 20(a)(2).

3 An amended complaint must be complete in itself without reference to any prior pleading.  
4 Local Rule 220; see Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an  
5 amended complaint, the original pleading is superseded. Therefore, in an amended complaint, as  
6 in an original complaint, each claim and the involvement of each defendant must be sufficiently  
7 alleged.

8 Plaintiff is not required to append exhibits to his amended complaint.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
12 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §1915(b)(1).  
13 All fees shall be collected and paid in accordance with this court's order to the Director of the  
14 California Department of Corrections and Rehabilitation filed concurrently herewith.

15 3. Plaintiff's complaint is dismissed.

16 4. Within thirty days from the date of this order, plaintiff shall complete the attached  
17 Notice of Amendment and submit the following documents to the court:

18 a. The completed Notice of Amendment; and

19 b. An original and one copy of the Amended Complaint.

20 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
21 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must

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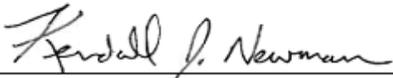
22 <sup>2</sup> A plaintiff may properly assert multiple claims against a single defendant. Fed. Rule Civ. P.  
23 18. In addition, a plaintiff may join multiple defendants in one action where "any right to relief is  
24 asserted against them jointly, severally, or in the alternative with respect to or arising out of the  
25 same transaction, occurrence, or series of transactions and occurrences" and "any question of law  
26 or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). Unrelated  
27 claims against different defendants must be pursued in separate lawsuits. See George v. Smith,  
28 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended "not only to prevent the sort of morass [a  
multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the  
required filing fees -- for the Prison Litigation Reform Act limits to 3 the number of frivolous  
suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C.  
§ 1915(g)." George, 507 F.3d at 607.

1 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

2 Failure to file an amended complaint in accordance with this order may result in the  
3 dismissal of this action.

4 5. The Clerk of the Court is directed to send plaintiff two forms for filing a civil rights  
5 complaint by a prisoner, and one application to proceed in forma pauperis by a prisoner.

6 Dated: September 6, 2017

7   
8 KENDALL J. NEWMAN  
9 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
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WAYDE HOLLIS HARRIS,  
Plaintiff,  
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S. KERNAN, et al.,  
Defendants.

No. 2:17-cv-0680 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Plaintiff