

1 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
2 *Twombly*, 550 U.S. 544, 554, 562-63 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

3 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
4 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
5 U.S. 662, 679 (2009).

6 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
7 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
8 action.” *Twombly*, 550 U.S. at 555-57. In other words, “[t]hreadbare recitals of the elements of a
9 cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

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

17 II. Analysis

18 Plaintiff’s second amended complaint is lengthy and impermissibly incorporates multiple
19 unrelated claims against more than one defendant.

20 First, he alleges that, in July of 2018, he refused to be escorted by a correctional officer
21 named Reilly, with whom he had a negative history. ECF No. 27 at 5. In light of his refusal,
22 Reilly and defendant Cota forcibly removed him from a holding cell in what plaintiff describes as
23 an assault. *Id.* As he was being transported, plaintiff called out to another officer—defendant
24 McCarvel—and requested an “unnecessary and excessive force video interview.” *Id.* at 6.
25 Plaintiff alleges that McCarvel ignored him in order to shield Cota and Reilly from any potential
26 liability or discipline. *Id.* Plaintiff advised the officers that he required medical attention and was
27 suicidal (and thus in need of evaluation). Reilly and Cota allegedly refused his requests for
28 medical attention. *Id.* After being transported, plaintiff refused to return the handcuffs used to

1 transport him and, based thereon, defendant Cota issued plaintiff an “illegal” rules violation
2 report (“RVR”). *Id.* at 8. Thereafter, he attended the rules violation hearing and was found not
3 guilty by defendant Heise. *Id.* at 11. Plaintiff claims, however, that Heise declined to record that
4 his decision was based on a memorandum that plaintiff presented which, if acknowledged, would
5 establish that the RVR was retaliatory. *Id.*

6 Next, plaintiff alleges that, on some separate date, defendant Salcedo approached his cell
7 and asked if he would accept a cellmate. *Id.* at 12. Plaintiff responded by stating that he had not
8 been before the classification committee yet and, thus, could not accept a cellmate. *Id.* Based on
9 this exchange, Salcedo allegedly issued plaintiff an RVR which falsely recounted their exchange.
10 *Id.* at 12-13. Defendant Burnes signed off on the RVR drafted by Salcedo, and plaintiff alleges
11 that his reason for doing so was retaliatory; plaintiff notes that he had recently had an argument
12 with Burnes regarding the provision of legal files and a television.¹ *Id.* at 13-14. At the RVR
13 hearing, plaintiff alleges that defendant Tumacder—like Heise before him—manipulated the
14 proceedings to shield Burnes and Salcedo from any culpability for retaliation.² *Id.* at 16-17.

15 Finally, plaintiff alleges that, on a separate date and occasion, defendant Hubbard refused
16 to allow him to be psychiatrically evaluated and, in order to cover up this failure to render
17 medical attention, authored another false RVR. *Id.* at 19.

18 These claims cannot proceed together. Each of the retaliatory incidents involves separate
19 defendants and factual circumstances. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)
20 (“[M]ultiple claims against a single party are fine, but . . . [u]nrelated claims against different
21 defendants belong in different suits . . .”). Litigating them jointly would be logistically
22 impossible. The court will afford plaintiff one final opportunity to amend his complaint. If the
23 next complaint contains multiple, unrelated claims against more than one defendant, the court will

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25 ¹ Plaintiff alleges that the television was to be used to view televangelist services and,
26 thus, by refusing to provide it, Burnes interfered with his religious practice as well. ECF No. 27
at 15.

27 ² Plaintiff also alleges that defendants Rodriguez and Garza violated his rights by
28 authoring a supplemental report for the RVR hearing which was false and falsely recording that
plaintiff had not requested any witnesses for the hearing. ECF No. 27 at 17-18.

1 add or drop parties as justice requires.

2 III. Leave to Amend

3 Plaintiff will be given leave to amend to address the deficiencies identified above. He is
4 cautioned that any amended complaint must identify as a defendant only persons who personally
5 participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*,
6 588 F.2d 740, 743 (9th Cir. 1978) (explaining that a person subjects another to a deprivation of a
7 constitutional right if he does an act, participates in another's act, or fails to perform an act that he
8 is legally required to do that causes the alleged deprivation). Plaintiff may also include any
9 allegations based on state law that are so closely related to his federal allegations that "they form
10 the same case or controversy." *See* 28 U.S.C. § 1367(a). The amended complaint must also
11 contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a). Plaintiff may not
12 change the nature of this suit by alleging new, unrelated claims. *See George*, 507 F.3d 605 at
13 607.

14 Any amended complaint must be written or typed so that it so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) ("[The] 'amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.'") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 Any amended complaint should be as concise as possible in fulfilling the above
22 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
23 background that has no bearing on his legal claims. He should also take pains to ensure that his
24 amended complaint is as legible as possible, considering not only to penmanship, but also spacing
25 and organization. Plaintiff should consider whether each of the defendants whom he names
26 actually had involvement in the constitutional violations he alleges. A "scattershot" approach in
27 which plaintiff names dozens of defendants will not be looked upon favorably.

28 Accordingly, it is ORDERED that

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1. Plaintiff's second amended complaint (ECF No. 27) is dismissed with leave to amend within 30 days of service of this order; and

2. Failure to file an amended complaint that complies with this order may result in the dismissal of this action for the reasons stated herein.

DATED: October 5, 2020


UNITED STATES MAGISTRATE JUDGE