



1 ANALYSIS

2 The First Amended Complaint exceeds the leave to amend granted in the first screening  
3 order. In the First Amended Complaint, Plaintiff now alleges:

4 While at KVSP detained in the “administrative segregation unit (ASU) for  
5 the false charge of threatening a peace officer, I was continually subjected to  
6 harassment and sexual assault by male correctional officers. I sent inmate request  
7 slips to the sergeant in the unit, but I never received an (sic) response nor did the  
8 harassment and assaults stop.

9 I then submitted an (sic) 602 administrative appeal, and exhausted my  
10 remedies to the third level. While housed in the ASU, I was retaliated against by  
11 CDC“R” staff for submitting and maintaining an (sic) suit against Sergeant  
12 Brannum and Officer Rios for unnecessary and excessive force and Sergeant  
13 Epperson for sexual assault, amongst other CDC“R” staff. I was subjected to  
14 sexual assault in the form of officers shining their flashlights onto my groin area  
15 while I was lying on the bunk, when they did their security checks. I was also  
16 harassed by officers shining their flashlights into my eyes while doing security  
17 checks. I was housed at KVSP for approximately, six (6) years, so I do not  
18 believe sexual assault is an (sic) custom, at least of heterosexual and  
19 nontransgendered (sic) prisoners, but I do believe retaliation and harassment of  
20 inmates who have assaults on staff in their file or who submit administrative  
21 appeals or suits, is an (sic) custom, and I was, sexually assaulted.

22 The order that screened Plaintiff’s original complaint explicitly stated that “Plaintiff may  
23 not change the nature of this suit by adding new, unrelated claims in his first amended  
24 complaint.” (Doc. 10, p. 11 (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)).) Despite  
25 this direction, Plaintiff changed both the nature of his claims and the prison employees who  
26 allegedly violated his civil rights. Accordingly, the First Amended Complaint is dismissed since  
27 it exceeded the leave to amend previously granted.

28 The document filed as a second amended complaint is not an amended complaint. Instead  
of stating factual allegations, the second amended complaint sets forth a number of arguments as  
to why Plaintiff should not be required to amend his original complaint, and additional legal  
arguments regarding Plaintiff’s belief that he should be allowed to proceed on his original  
complaint. (Doc. 14.)

Neither the First nor Second Amended Complaints comply with the order that screened  
and dismissed the original Complaint and, to the extent that they are considered pleadings, both  
are dismissed. Plaintiff is granted one last opportunity to amend his allegations based on the

1 claims raised in the original Complaint and standards stated in the screening order.

2 **ORDER**

3 For the reasons set forth above, Plaintiff's First and Second Amended Complaints are  
4 dismissed with leave to file a third amended complaint, or a notice of voluntary dismissal within  
5 **twenty-one (21) days**. Any first amended complaint shall not exceed **twenty-five (25) pages** in  
6 length, exclusive of exhibits. Plaintiff shall file a motion seeking an extension of time, if needed,  
7 to comply with this order no later than **twenty-one (21) days** from the date of service of this  
8 order.

9 Plaintiff must demonstrate in any third amended complaint how the alleged conditions  
10 have resulted in a deprivation of his constitutional rights. *See Ellis v. Cassidy*, 625 F.2d 227 (9th  
11 Cir. 1980). The third amended complaint must allege in specific terms how each named  
12 defendant is involved. There can be no liability under section 1983 unless there is some  
13 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*  
14 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*  
15 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

16 Plaintiff's third amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and  
17 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon  
18 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*  
19 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be  
20 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555  
21 (2007) (citations omitted).

22 Plaintiff is also reminded that an amended complaint supercedes the original, *Lacey v.*  
23 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at \*1 n.1 (9th Cir. Aug. 29,  
24 2012) (en banc), and must be "complete in itself without reference to the prior or superceded  
25 pleading," Local Rule 220.

26 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified  
27 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff  
28 may not change the nature of this suit by adding new, unrelated claims in his first amended

