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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **ANTWOINE BEALER,**

6 **Plaintiff,**

7 **v.**

8 **SEC’Y of CALIFORNIA DEP’T OF**  
9 **CORRECTIONS and WARDEN OF KERN**  
10 **VALLEY STATE PRISON,**

11 **Defendants.**

**1:16-cv-00671-LJO-MJS**

**SCREENING ORDER DISMISSING  
COMPLAINT (Doc. 1) WITH LEAVE  
TO AMEND**

12 **I. INTRODUCTION**

13 Plaintiff is a state prisoner currently incarcerated at Corcoran State Prison in Corcoran,  
14 California. Plaintiff brings this pro se civil rights complaint pursuant to 42 U.S.C. § 1983 (“§ 1983”)  
15 against the Secretary of California Department of Corrections and the Warden of Kern Valley State  
16 Prison. For the following reasons, Plaintiff’s complaint is dismissed with leave to amend.

17 **II. SCREENING REQUIREMENT AND STANDARD**

18 The Court is required to screen complaints brought by prisoners seeking relief against a  
19 government entity, or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court  
20 must dismiss a complaint or portion thereof if the prisoner has raised claims that are frivolous,  
21 malicious, fail to state a claim upon which relief may be granted, or that seek monetary relief from a  
22 defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). The § 1915A screening  
23 standard “incorporates the familiar standard applied in the context of failure to state a claim under  
24 Federal Rule of Civil Procedure 12(b)(6).” *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012).  
25 When a plaintiff is proceeding in forma pauperis but § 1915A does not apply, “the court ‘shall dismiss

1 the case at any time if the court determines' that the action 'is frivolous or malicious,' 'fails to state a  
2 claim on which relief may be granted,' or 'seeks monetary relief against a defendant who is immune  
3 from such relief.'" *Pierce v. San Francisco Exam'r*, No. 15-CV-06051-EMC, 2016 WL 2851649, at \*1  
4 (N.D. Cal. May 16, 2016) (quoting 28 U.S.C. § 1915(e)(2)). An inmate who has had three or more prior  
5 actions or appeals dismissed on one of these three bases, and has not alleged imminent danger of serious  
6 physical injury, does not qualify to proceed in forma pauperis. *See* 28 U.S.C. § 1915(g).

7 A complaint must contain "a short and plain statement of the claim showing that the pleader is  
8 entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
9 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do  
10 not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550  
11 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as true, courts are "not required to  
12 indulge unwarranted inferences." *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.2d 1049, 1064  
13 (9th Cir. 2008).

14 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally  
15 construed and to have any doubt resolved in their favor. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.  
16 2010). To survive screening, a plaintiff's claims must be facially plausible, which requires sufficient  
17 factual detail to allow the Court to reasonably infer that each named defendant is liable for the  
18 misconduct alleged. *Iqbal*, 556 U.S. at 678. The mere possibility that a defendant acted unlawfully is  
19 not sufficient. *Id.*

### 20 **III. PLAINTIFF'S ALLEGATIONS**

21 All facts are taken from Plaintiff's first amended complaint and assumed to be true only for the  
22 purpose of this screening. Plaintiff was incarcerated at Kern Valley State Prison at some point before he  
23 filed this complaint. *Id.* On an unspecified date between January and May of 2014, Plaintiff was forced  
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1 to take a drug test. Doc. 1 at 4-5.<sup>1</sup> Shortly before the drug test, an Officer Stinson entered Plaintiff's  
2 cell and turned on the light while Plaintiff was on his bunk. Doc. 1 at 5. Plaintiff stood up from his  
3 bunk "ready to defend [himself]." *Id.* After a short conversation Officer Stinson took Plaintiff to the  
4 shower where he was searched. *Id.* Plaintiff was told to bend over and spread his buttocks. *Id.* Officer  
5 Stinson commented "I like that." *Id.* Officer Stinson told Plaintiff that he had received a "kite" stating  
6 that Plaintiff possessed drugs. *Id.* No drugs were found on Plaintiff or in his cell, and the drug test  
7 performed on a subsequent date was negative. Doc. 1 at 6.

8 Plaintiff subsequently sought and exhausted the administrative remedies available to him. Doc.  
9 1 at 3.<sup>2</sup> Plaintiff alleges that the "kite" on which Officer Stinson based his search was fabricated. Doc.  
10 1 at 6. He alleges that the drug test performed between January and May of 2014 was ordered in  
11 retaliation for a lawsuit Plaintiff had previously filed. Doc. 1 at 5. Plaintiff alleges that he was illegally  
12 searched and that the seizure of his urine violated his privacy, and that the actions taken by Kern Valley  
13 State Prison constituted cruel and unusual punishment in violation of the Eighth Amendment. Doc. 1 at  
14 6. He also alleges that the random drug testing policy is unconstitutional and that he was deprived of  
15 due process of law.<sup>3</sup> Doc. 1 at 5. Plaintiff seeks nominal, punitive, and compensatory damages. Doc. 1  
16 at 1, 6.

#### 17 **IV. ANALYSIS**

18 Plaintiff's complaint, liberally construed, alleges that his constitutional rights and § 1983 were  
19 violated by two separate but related actions. First, Plaintiff alleges that he was subjected to a drug test

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21 <sup>1</sup> Plaintiff does not clarify how the drug test was performed, but he references the seizure of his urine in his complaint,  
22 suggesting that the drug test included urinalysis. *See* Doc. 1 at 6.

23 <sup>2</sup> On or around July 27, 2015, Plaintiff was transferred from Kern Valley State Prison to Corcoran State Prison Security  
24 Housing Unit, at which time the prison seized Plaintiff's copies of documents pertaining to his administrative remedies.

25 <sup>3</sup> Plaintiff cites the "IXV Amendment to the Constitution." Doc. 1 at 5. The Court understands that Plaintiff is referring to  
the Fourteenth (XIV) Amendment.

1 which was purported to be random but was in fact targeted retaliation for a lawsuit he had filed. Second,  
2 Plaintiff alleges that the search of his person and cell, which included a visual body cavity search, was  
3 prompted by a fabricated “kite” and not motivated by a legitimate penological interest.

4 Plaintiff’s complaint fails to set forth a cognizable claim for a number of reasons. Plaintiff may  
5 be able to amend his complaint so as to correct the deficiencies and state one or more cognizable claims.  
6 Therefore, the Court is providing Plaintiff with notice of the applicable standards, and leave to file an  
7 amended complaint.

8 **A. Linkage**

9 Section 1983 provides:

10 Every person who, under color of [state law] . . . subjects, or causes to be  
11 subjected, any citizen of the United States . . . to the deprivation of any  
12 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.

13 The statute explicitly requires that there be an actual connection or link between the actions of the  
14 defendants and the deprivation alleged to have been suffered by the plaintiff. *See Monell v. Dep’t of*  
15 *Soc. Services*, 436 U.S. 658, 692-95 (1978). The Ninth Circuit has held that “[a] person ‘subjects’  
16 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an  
17 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally to  
18 do that causes the deprivation.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19 In order to state a claim for relief under § 1983, Plaintiff must link each named Defendant with  
20 some affirmative act or omission that demonstrates a violation of Plaintiff’s federal rights. Plaintiff has  
21 not alleged any facts which link either the Secretary of the California Department of Corrections or the  
22 warden of Kern Valley State Prison, who are the Defendants named in the complaint’s caption, with a  
23 violation of his federal rights.<sup>4</sup> In order to set forth a valid claim, his complaint must plead specific facts

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25 <sup>4</sup> Plaintiff names Officer Stinson in his recitation of facts, but does not list him as a defendant. If Plaintiff intends to pursue

1 demonstrating how Defendants are linked to Plaintiff’s alleged deprivations of federal rights.

2 Further, the two defendants named in this action are both supervisors. Supervisory personnel are  
3 generally not liable under § 1983 for the actions of their employees under a theory of *respondeat*  
4 *superior*, and when a named defendant holds a supervisory position a causal link between him or her and  
5 the alleged misconduct must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.  
6 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for relief under § 1983  
7 based on a theory of supervisory liability, Plaintiff must allege some facts that would support a claim  
8 that the supervisory defendants personally participated in the deprivation of federal rights, knew of the  
9 violations and failed to act to prevent them, or “implemented a policy so deficient that the policy ‘itself  
10 is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’”  
11 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (quoting *Thompkins v. Belt*, 828 F.2d 298, 303-04  
12 (5th Cir. 1987)). Plaintiff has not alleged any facts indicating that either Defendant personally  
13 participated in the deprivation of any of his federal rights, knew of and failed to act to prevent any  
14 violations, or implemented a deficient policy. Plaintiff therefore has not stated any claim under § 1983.

15 **B. Fourth Amendment Claims**

16 **1. Drug Testing**

17 Compelled urinalysis is a search or seizure within the scope of the Fourth Amendment. *Skinner*  
18 *v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602, 617 (1989). The Fourth Amendment prohibits  
19 unreasonable searches. *Bell v. Wolfish*, 441 U.S. 520, 558 (1979). In correctional institutions,  
20 determining whether a search is reasonable requires “[b]alancing the significant and legitimate security  
21 interests of the institution against the privacy interests of the inmates.” *Id.* at 560. However, “prison  
22 administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies  
23 and practices that in their judgment are needed to preserve internal order and discipline and to maintain

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25 claims against Officer Stinson, he must appropriately identify him as a defendant in this action.

1 institutional security.” *Id.* at 547.

2 While Plaintiff referred to his drug test as “random,” his allegations suggest that the test was a  
3 non-random act of retaliation.<sup>5</sup> In *Thompson v. Souza*, The Ninth Circuit held that, though drug testing  
4 of prisoners for the purpose of combatting the presence of illicit drugs is reasonably related to legitimate  
5 penological interests, such testing must be reasonable in place, justification, scope, and manner. 111  
6 F.3d 694, 702 (9th Cir. 1997). Testing which is performed for the purpose of harassment or retaliation is  
7 not reasonable. *See id.* (“The requirement of random drug tests stems from a concern that correctional  
8 officials could harass particular inmates by subjecting them to repeated drug tests.”); *see also Forbes v.*  
9 *Trigg*, 976 F.2d 308, 315 (7th Cir. 1992) (noting the danger that correctional officials could harass  
10 particular inmates by repeated drug testing); *Spence v. Farrier*, 807 F.2d 753, 755 (8th Cir. 1986) (“[I]t  
11 is important to insure that when the state chooses to employ [random testing], the procedures for  
12 selecting the inmates to be tested are truly random.”). Therefore, Plaintiff’s Fourth Amendment claim  
13 for drug testing conducted for the purpose of harassment and retaliation is a viable claim, except that he  
14 has not linked the testing to any named Defendant, as explained *supra*.

## 15 **2. Visual Body Cavity Search**

16 The Fourth Amendment prohibits only unreasonable searches. *Bell*, 441 U.S. at 558. Courts  
17 regularly recognize the importance and difficulty of keeping detention facilities free from drugs,  
18 weapons, and other contraband. *See, e.g., id.*; *Way v. Cnty. Of Ventura*, 45 F.3d 1157, 1161 (9th Cir.  
19 2006). On the other hand, courts also recognize the “frightening and humiliating invasion” occasioned  
20 by a strip search “even when conducted with all due courtesy.” *Byrd v. Maricopa Cnty. Sheriff’s Dep’t*,  
21 629 F.3d 1135, 1143 (9th Cir. 2011) (internal quotation marks omitted). While some strip or visual

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23 <sup>5</sup> To the extent Plaintiff is alleging that a random drug test policy is unconstitutional, he has not pled sufficient facts to set  
24 forth a claim. Plaintiff has not alleged any particular facts regarding the existence of a random drug test policy in California  
25 prisons, the provisions of such a policy, or why the policy would be unconstitutional.

1 body cavity searches of prisoners may be reasonable, others can “be excessive, vindictive, harassing, or  
2 unrelated to any legitimate penological interest.” *Michenfelder v. Sumner*, 860 F.2d 328, 322 (9th Cir.  
3 1988). There is no *per se* rule; the validity of a search procedure “requires a balancing of the need for  
4 the particular search against the invasion of personal rights that the search entails.” *Bell*, 441 U.S. at  
5 559. The plaintiff “bears the burden of showing [prison officials] intentionally used exaggerated or  
6 excessive means to enforce security.” *Thompson*, 111 F.3d at 700 (citing *Michenfelder*, 860 F.2d at  
7 333). In *Thompson*, the Ninth Circuit found that a visual body cavity search conducted in full view of  
8 other inmates and intended to detect illicit drugs was reasonably related to a legitimate penological  
9 interest. *Thompson*, 111 F.3d 701.

10 Plaintiff’s allegations, taken as true, meet his burden of stating a claim that his strip search was  
11 unreasonable in manner and justification. While the body cavity search conducted on Plaintiff was  
12 visual only, involved no touching, and was conducted out of the view of other inmates, Officer Stinson  
13 allegedly made comments which subjected Plaintiff to degrading treatment without any relationship to a  
14 legitimate penological objective. Moreover, and more importantly, Plaintiff alleges that the purported  
15 “kite” informing prison staff that Plaintiff was in possession of contraband was manufactured pretext.  
16 Courts have found that suspicion of contraband is a valid reason to initiate a strip search. *Byrd*, 629 F.3d  
17 at 1143 (finding that the occurrence of fights and the suspicion of contraband were valid reasons to  
18 search 90 jail inmates). If the claimed suspicion is a pretext, and the true intention of the search is  
19 retaliation, however, the search is without a valid justification and is unreasonable. *See Houx v. Koll*,  
20 Case No. 15-17094, 2016 WL 6892554, at \*1 (9th Cir. Nov. 23, 2016) (unpublished) (holding that  
21 allegations that the defendant “conducted an unclothed strip search without cause” set forth a claim).  
22 Therefore, his complaint being liberally construed, Plaintiff has stated a cognizable Fourth Amendment  
23 claim stemming from the strip search by Officer Stinson, except that Plaintiff has not linked the  
24 violation to any named Defendant as explained *supra*.

1 **C. Other Claims**

2 In addition to his Fourth Amendment claims, Plaintiff alleges that the drug testing and search  
3 violated his Eighth and Fourteenth Amendment rights. Neither allegation states a viable claim.  
4 Plaintiff's allegation that his Eighth Amendment right to be free from cruel and unusual punishment was  
5 violated is conclusory, and is not supported by the facts alleged. Two requirements must be met for a  
6 prison official to have violated the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).  
7 First, the deprivation alleged must be sufficiently serious, that is, resulting in the denial of "the minimal  
8 civilized measure of life's necessities." *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)).  
9 Second, the prison official must have the sufficiently culpable state of mind, which in prison conditions  
10 cases is deliberate indifference to inmate health or safety. *Farmer*, 511 U.S. at 834.

11 Plaintiff has not alleged that either the search of his person or the seizure of his urine amounted  
12 to a denial of "the minimal civilized measure of life's necessities." The Court has not located any  
13 authority suggesting that a drug test or search necessarily rises to such a level. *See, e.g., Curtis v.*  
14 *Padua*, Case No. 1:15-cv-01682-MJS, 2015 WL 7017047, at \*3 (E.D. Cal. Nov. 12, 2015) ("Plaintiff's  
15 challenge to the urine testing as violative of the Eighth Amendment fails because there is no suggestion  
16 that the testing is, objectively, sufficiently serious to satisfy the first prong of an Eighth Amendment  
17 analysis."). Nor has Plaintiff alleged that any Defendant acted with deliberate indifference by knowing  
18 of and disregarding an excessive risk of physical or mental harm to him.

19 Plaintiff has pled that the drug testing and search were intended as retaliation and harassment,  
20 against which the Eighth Amendment does protect. *Vigliotto v. Terry*, 873 F.2d 1201, 1203 (9th Cir.  
21 1989) ("The Eighth Amendment protects prisoners from searches conducted only for calculated  
22 harassment." (internal quotation marks omitted)). He has not, however, pled any facts which establish a  
23 link between the allegedly harassing conduct and either Defendant. Even if he had, he has not pled facts  
24 which would satisfy the first prong of an Eighth Amendment claim. Therefore, Plaintiff's Eight  
25 Amendment claim has not met its pleading burden and is dismissed with leave to amend.



1 Plaintiff also has not set forth a valid Fourteenth Amendment claim. Specifically, Plaintiff has  
2 not alleged that any particular due process right protected by the Fourteenth Amendment was violated.  
3 The Due Process Clause protects prisoners from being deprived of liberty or property without due  
4 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In order to state a cause of action for  
5 deprivation of due process, a plaintiff must first establish the existence of a protected liberty interest.  
6 “States may under certain circumstances create liberty interests which are protected by the Due Process  
7 Clause.” *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). Liberty interests created by state law are  
8 generally limited to freedom from restraint which “imposes atypical and significant hardship on the  
9 inmate in relation to the ordinary incidents of prison life.” *Id.*

10 Plaintiff has not pled any facts indicating that he has been subject to a deprivation of liberty apart  
11 from the brief search of his person and the seizure of his urine for testing. He has not alleged that he  
12 was disciplined as a result of the search, for example. The bare statement that due process was not  
13 afforded to Plaintiff does not contain or reference sufficient facts to permit an inference that a violation  
14 occurred. Therefore, Plaintiff has failed to set forth a cognizable Fourteenth Amendment due process  
15 claim, and his Fourteenth Amendment claim is dismissed with leave to amend.

#### 16 **V. CONCLUSION AND ORDER**

17 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be  
18 granted. Accordingly, the Court DISMISSES the complaint with leave to amend. Any amended  
19 complaint shall be filed within thirty days of this order.

20 If Plaintiff elects to amend his complaint, he may not change the nature of this suit by alleging  
21 new, unrelated claims. *See Aul v. Allstate Life Ins. Co.*, 993 F.2d 881, 884 (9th Cir. 1993) (“A claim  
22 based on different rights and established by different transactional facts will be a different cause of  
23 action.”); *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Unrelated claims against different  
24 defendants belong in different suits.”). Plaintiff’s amended complaint should be brief, Fed. R. Civ. P.  
25 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff’s constitutional  
or other federal rights. *Iqbal*, 556 U.S. at 677. “The inquiry into causation must be individualized and

1 focus on the duties and responsibilities of each named defendant whose acts or omissions are alleged to  
2 have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). Although  
3 accepted as true, the “[f]actual allegations must be enough to raise a right to relief above the speculative  
4 level.” *Twombly*, 550 U.S. at 555. Finally, an amended complaint supersedes the original complaint,  
5 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), and must be “complete in itself without  
6 reference to the prior or superseded pleading.” Local Rule 220. “All causes of action alleged in an  
7 original complaint which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
8 F.2d 565, 567 (9th Cir. 1987) (citation omitted). Thus, any amended complaint must be written or typed  
9 so that it so that it is complete in itself without reference to any earlier filed complaint. Local Rule 220.

10 If Plaintiff fails to comply with this Order, this case will be dismissed with prejudice for failure  
11 to obey a court order and failure to prosecute. The Court also cautions Plaintiff that failure to comply  
12 with the Federal Rules of Civil Procedure, this Court’s Local Rules, or any court order may result in this  
13 action being dismissed. *See* Local Rule 110.

14 IT IS SO ORDERED.

15 Dated: December 16, 2016

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE