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7	UNITED STATES DISTRICT COURT	
8	EASTERN DISTRICT OF CALIFORNIA	
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10	ANTWOINE BEALER,	CASE NO. 1:16-cv-00671-LJO-MJS (PC)
11	Plaintiff,	FINDINGS AND RECOMMENDATION TO
12	V.	DENY PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF
13	SECRETARY OF CALIFORNIA	(ECF No. 6)
14	DEPARTMENT OF CORRECTIONS AND REHABILITAITON, et al.,	FOURTEEN (14) DAY OBJECTION
15	Defendants.	DEADLINE
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19 20	Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil	
20 21	rights action brought pursuant to 42 U.S.C. § 1983.	
21	Before the Court is Plaintiff's June 6, 2016 motion for injunctive relief. (ECF No.	
22	6.) The motion seeks to halt random drug tests Plaintiff views as retaliatory. The Court finds no basis for awarding the relief Plaintiff requests	
23 24	finds no basis for awarding the relief Plaintiff requests. Injunctive relief, whether temporary or permanent, is an "extraordinary remedy,	
2 4 25	never awarded as of right." <u>Winter v. Natural Res. Def. Council</u> , 555 U.S. 7, 22 (2008).	
26	"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on	
27	the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,	
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1 that the balance of equities tips in his favor, and that an injunction is in the public 2 interest." Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter, 555 U.S. at 20). 3

4 The Court screened Plaintiff's complaint and concluded that, while Plaintiff's allegations of retaliatory drug tests state a viable claim, he had not properly linked that 5 6 clam to any defendant. Plaintiff heretofore has failed to state a cognizable claim and 7 there presently is no operative pleading in this matter. Thus, the Court cannot conclude 8 that Plaintiff is likely to succeed on the merits of any claims or that he may seek injunctive relief against the named defendants. 9

10 Plaintiff also fails to suggest a real and immediate threat of irreparable injury. See 11 City of Los Angeles v. Lyons, 461 U.S. 95, 101–102 (1983) (plaintiff must show "real and immediate" threat of injury, and "[p]ast exposure to illegal conduct does not in itself show 12 13 a present case or controversy regarding injunctive relief ... if unaccompanied by any 14 continuing, present, adverse effects."). He fails to explain how he will be irreparably harmed by the continued drug testing. 15

16 Furthermore, the Court finds nothing to tip the balance of equities in Plaintiff's 17 favor. And, while the public has an interest in preventing arbitrary and retaliatory conduct by prison officials, the record before the Court does not justify the Court substituting its 18 19 judgment for that of correctional staff.

20 The relevant criteria not having been met, Plaintiff is not entitled to preliminary 21 injunctive relief. Accordingly, it is HEREBY RECOMMENDED that Plaintiff's motion for 22 injunctive relief be DENIED.

23 The findings and recommendation will be submitted to the United States District 24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with the findings and recommendation, the 25 26 parties may file written objections with the Court. The document should be captioned 27 "Objections to Magistrate Judge's Findings and Recommendation." A party may respond

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1	to another party's objections by filing a response within fourteen (14) days after being	
2	served with a copy of that party's objections. The parties are advised that failure to file	
3	objections within the specified time may result in the waiver of rights on appeal.	
4	Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing <u>Baxter v. Sullivan</u> , 923	
5	F.2d 1391, 1394 (9th Cir. 1991)).	
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7	IT IS SO ORDERED.	
8	Dated: <u>January 15, 2017</u> <u>Isl Michael J. Seng</u>	
9	UNITED STATES MAGISTRATE JUDGE	
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