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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL ADAMS, et al.,

Plaintiffs,

v.

CALIFORNIA CORRECTIONAL
INSTITUTION, et al.,

Defendants.

Case No. EDCV 16-1678-AB (KK)

ORDER DISMISSING THIRD
AMENDED COMPLAINT WITH
LEAVE TO AMEND

I.

INTRODUCTION

Plaintiffs¹ Paul Adams, Phillip L. Dorsey, and Ezequiel Monarrez (“Plaintiffs”), proceeding pro se and in forma pauperis, have filed a Third Amended Complaint (“TAC”) pursuant to 42 U.S.C. § 1983 (“Section 1983”) alleging defendants Daren Plumlee, Carlos Martinez, Trinidad Rodriguez (“Individual Defendants”), California Correctional Institution (“CCI”), and Does 1-10² (collectively “Defendants”) violated their Eighth and Fourteenth

¹ Plaintiff William J. Bryant will be dismissed in a separate order for failure to file an application to proceed in forma pauperis or to pay the necessary filing fee. ECF Docket Nos. (“Dkts.”) 11, 16, 31.
² While Plaintiffs include Does 1-10 as defendants, they fail to allege any facts or raise any claims against Does 1-10.

1 Amendment rights. As discussed below, the Court dismisses the TAC with leave
2 to amend.

3 II.

4 PROCEDURAL HISTORY

5 On July 24, 2016, Plaintiffs constructively filed³ a complaint pursuant to
6 Section 1983 against defendants Jeffrey Beard and K. Holland, in both their
7 individual and official capacities, CCI, and CDCR. Dkt. 1 at 3. The complaint
8 alleged defendant CCI and CDCR exposed inmates to dangerous levels of asbestos
9 in violation of their Eighth and Fourteenth Amendment rights. *Id.* at 3, 5, 8.

10 On August 15, 2016, Plaintiffs constructively filed a Notice of Proposal of
11 First Amended Complaint (“FAC”)⁴ against defendants Jeffrey Beard, K.
12 Holland, and Jerry Brown, in their individual and official capacities, CCI, and
13 CDCR. Dkt. 18 at 3-4. The FAC alleged (1) prisoners are being exposed to
14 airborne asbestos particles; and (2) prisoners are forced to drink and bathe in water
15 contaminated by human feces. *Id.* at 1-48. On November 1, 2016, the Court
16 dismissed the FAC with leave to amend. Dkt. 30.

17 On January 12, 2017, Plaintiffs constructively filed a Second Amended
18 Complaint (“SAC”)⁵ against defendants CDCR and CCI. Dkts. 36 and 36-1.
19 Plaintiffs alleged CCI and CDCR are subjecting Plaintiffs to an environment
20 “invested with air born asbestos particles,” thereby demonstrating a deliberate
21 indifference to inmates’ health. *Id.* On March 15, 2017, the Court dismissed the
22 SAC with leave to amend for failure to state a claim. Dkt. 37.

23
24 ³ Under the “mailbox rule,” when a *pro se* inmate gives prison authorities a
25 pleading to mail to court, the court deems the pleading constructively “filed” on
26 the date it is signed. *Roberts v. Marshall*, 627 F.3d 768, 770 n.1 (9th Cir. 2010);
Douglas v. Noëlle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating the “mailbox rule
applies to § 1983 suits filed by *pro se* prisoners”).

27 ⁴ On August 15, 2016, Plaintiffs filed a request for leave to file a FAC as well as a
28 proposed FAC. Dkt. 14. On August 24, 2016, the Court filed Plaintiffs’ FAC and
denied Plaintiffs’ request for leave as moot. Dkt. 17.

⁵ The Court refers to the pages of the SAC and TAC as they are numbered on the
Court’s online docket.

1 On April 5, 2017, Plaintiffs constructively filed the instant TAC against
2 defendant CCI and the Individual Defendants in their individual and official
3 capacities⁶. TAC at 7-8. In the TAC, Plaintiffs raise Eighth and Fourteenth
4 Amendment claims against all Defendants. Id. at 11-14.

5 III.

6 **ALLEGATIONS OF THIRD AMENDED COMPLAINT**

7 Plaintiffs claim Defendants have exposed Plaintiffs to dangerous levels of
8 asbestos and forced them to drink contaminated drinking water. Id. at 11. As a
9 result of Defendants' actions, Plaintiffs allege "mental and emotional injury," and
10 "imminent foreseeable health injuries," and "long term life threatening injury."
11 Id. at 31.

12 **A. ASBESTOS CLAIMS**

13 Plaintiffs claim defendant CCI "violated Plaintiffs rights to a reasonable safe
14 and healthy environment at CCI, on Yards I and II, by failing to prevent
15 unreasonable exposure to asbestos" and engaging in asbestos "clean up [that] were
16 illegal." Id. at 19, 28. Specifically, Plaintiffs alleged, around April or May 2016,
17 CCI staff members began construction in Willard Hall housing unit, which
18 involved "knocking out an entire wall infested with asbestos material and . . .
19 remov[ing] asbestos contaminated floor tiles, without providing warnings to the
20 inmate occupants in the building." Id. at 18. Plaintiffs allege defendant CCI failed
21 to "seal off the area of the construction" and instead used fans "which blew all of
22 the Particles into the corners of the entire housing unit[,] thus, exposing [Plaintiffs]
23 to asbestos directly." Id. at 19. Ultimately, Plaintiffs claim defendant CCI has
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26 ⁶ It is unclear whether Plaintiffs intend to sue the Individual Defendants in their
27 individual capacity only or both their official and individual capacities. While page
28 8 of the TAC appears to specify the Individual Defendants are being sued in their
individual capacity only, Plaintiffs select both individual and official capacities on
page 3 of the form-complaint. See id. at 3, 8. For purposes of this Order, the Court
will assume Plaintiffs intend to sue the Individual Defendants in both their
individual and official capacities.

1 failed to ensure that “asbestos removal and disposal is properly and legally
2 performed [and] that asbestos exposure is limited by proper testing.” Id. at 30.

3 **B. CONTAMINATED WATER CLAIMS**

4 Plaintiffs allege the water at CCI is contaminated with lead, arsenic, and
5 human feces such that “it poses a health risk to human life.” Id. at 25-27.

6 According to Plaintiffs, Inmate Dorsey informed them CCI’s water “had human
7 waste in it, among other toxic contaminants such as Arsenic and LED.” Id. at 22.

8 Plaintiffs claim Defendants are each responsible for CCI’s water
9 contamination. As to defendant CCI, Plaintiffs allege defendant CCI is aware of
10 the contaminated water because it “warns Employees and Officers to NOT
11 HANDLE OR DRINK THE CCI INSTITUTION WATER AT CCI YARDS I
12 AND II.” Id. at 25. Plaintiffs allege defendant CCI “hire[s] incompetent
13 employees who knowingly represent false reports and fabricat[e] test results” and
14 who are not “certified, qualified, and licensed to perform the job.” Id. at 29-30.
15 Specifically, Plaintiffs allege defendant CCI hired the Individual Defendants to
16 “falsify the records in order to evade the fact that the water [at CCI] is harmful for
17 any and all human use, contact, and ingestion.” Id. at 23, 27. Plaintiffs allege
18 defendant CCI “cannot afford to Place real Water treatment employees at CCI
19 water treatment Plant because the Legal Officials would declare that the water is
20 not safe[,] [a]nd that Yards I and II would have to be closed down.” Id. at 23.

21 As to the Individual Defendants, Plaintiffs allege they are “jeopardizing
22 inmate INHABITANTS health and safety on a daily basis . . . by operating a Water
23 Treatment Plant and Waste Water Plant and Plant Ops. . . . [and] performing such
24 practices without proper state certification, licenses, and qualifications . . . in
25 violation of State and Federal laws and regulations.” Id. at 9.

26 Plaintiffs allege defendant Plumlee, who is a “free staff member/employee
27 hired by CCI as a supervisor, Engineer of Plant Ops.” has a “duty to supervise the
28 employees at Water and Waste Water Treatment Facilities” for CCI. Id. at 38.

1 Plaintiffs claim defendant Plumlee “allowed his subordinates to operate without a
2 license and [state] certifications” and failed “to adequately train and supervise his
3 employees [Trinidad and Rodriguez].” Id. at 8, 35, 36. Plaintiffs further allege
4 defendant Plumlee knows “that high levels of Arsenic[,] lead[,] and human feces
5 exists in the water and that [defendant Rodriguez] pollutes the water supply,
6 tainting the water for the Plaintiffs and for all inmates on Yards I and II at CCI.”
7 Id. at 34.

8 Plaintiffs allege defendant Rodriguez, who is a “free staff member/employee
9 hired by CCI as the Waste Water Supervisor, at California Correctional
10 Institution,” is responsible for “illegally dump[ing] HSI Mobile Compressor Oil
11 into the spray fields . . . which contaminates the drinking water on yards I and II at
12 CCI.” Id. at 8, 22.

13 Lastly, Plaintiffs allege defendant Martinez, who is a “free staff
14 member/employee hired by CCI to run the Water Treatment Plant at California
15 Correctional Institution” and who is responsible for taking water samples at CCI to
16 send them out for testing, is not a certified water operator, “has failed his last two
17 water state exams,” and “falsifies water test results.” Id. at 8, 14, 22, 27, 41.

18 Plaintiffs allege defendant Martinez “know[s] the water [is] tainted on Yards I and
19 II” and that he falsifies test results by taking water samples “from Yards III and IV
20 where the water is clean.” Id. at 40. Plaintiffs allege defendants Plumlee and
21 Martinez “fabricate the records on a regular basis.” Id. at 23, 42.

22 **C. REQUESTS FOR RELIEF**

23 As a result of their alleged injuries from both the asbestos exposure and
24 water contamination, Plaintiffs seek (1) \$520,000 in compensatory damages; (2)
25 \$150,000 in punitive damages; (3) a declaratory judgment defendants violated
26 Plaintiff’s constitutional rights and falsified test results regarding air and water
27 quality at CCI; and (4) an injunction evacuating and shutting down CCI yards I and
28 II, ordering asbestos material removed, and removing the Individual Defendants

1 from their government offices. Id. at 15-16. Additionally, Plaintiffs seek to have
2 their case designated as a class action.⁷ Id. at 7.

3 IV.

4 **STANDARD OF REVIEW**

5 As Plaintiffs are proceeding in forma pauperis, the Court must screen the
6 TAC and is required to dismiss the case at any time if it concludes the action is
7 frivolous or malicious, fails to state a claim on which relief may be granted, or seeks
8 monetary relief against a defendant who is immune from such relief. 28 U.S.C. §
9 1915(e)(2)(B); 28 U.S.C. § 1915A(b); see Barren v. Harrington, 152 F.3d 1193, 1194
10 (9th Cir. 1998).

11 In determining whether a complaint fails to state a claim for screening
12 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
13 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
14 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,
15 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
16 “short and plain statement of the claim showing that the pleader is entitled to
17 relief.” Fed. R. Civ. P. 8(a)(2).

18 A complaint may be dismissed for failure to state a claim “where there is no
19 cognizable legal theory or an absence of sufficient facts alleged to support a
20 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
21 (citation omitted). In considering whether a complaint states a claim, a court must
22 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630
23 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true
24 “allegations that are merely conclusory, unwarranted deductions of fact, or

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26 ⁷ Plaintiffs, as pro se litigants, are prohibited from bringing their claims as a class
27 action. See Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962) (“A litigant
28 appearing in propria persona has no authority to represent anyone other than
himself.”); Axtle v. Cty. of Alameda, No. C 12-6404 YGR (PR), 2013 WL 5979201,
at *2 (N.D. Cal. Nov. 8, 2013) (“[P]ro se plaintiffs are not adequate class
representatives able to fairly represent and adequately protect the interests of the
class.”).

1 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th
2 Cir. 2008) (citation omitted). Although a complaint need not include detailed
3 factual allegations, it “must contain sufficient factual matter, accepted as true, to
4 ‘state a claim to relief that is plausible on its face.’” Cook v. Brewer, 637 F.3d
5 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct.
6 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows the
7 court to draw the reasonable inference that the defendant is liable for the
8 misconduct alleged.” Cook, 637 F.3d at 1004 (citation omitted).

9 “A document filed pro se is to be liberally construed, and a pro se complaint,
10 however inartfully pleaded, must be held to less stringent standards than formal
11 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
12 2008) (citation omitted). “[W]e have an obligation where the p[laintiff] is pro se,
13 particularly in civil rights cases, to construe the pleadings liberally and to afford the
14 p[laintiff] the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.
15 2012) (citation omitted).

16 If the court finds the complaint should be dismissed for failure to state a
17 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
18 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
19 if it appears possible the defects in the complaint could be corrected, especially if
20 the plaintiffs are pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
21 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
22 cannot be cured by amendment, the court may dismiss without leave to amend.
23 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
24 Cir. 2009).

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1 V.

2 **DISCUSSION**

3 **A. THE ELEVENTH AMENDMENT BARS (1) ALL CLAIMS**
4 **AGAINST DEFENDANT CCI, AND (2) ANY CLAIMS FOR**
5 **MONETARY DAMAGES AGAINST THE INDIVIDUAL**
6 **DEFENDANTS IN THEIR OFFICIAL CAPACITY**

7 **(1) APPLICABLE LAW**

8 “The Eleventh Amendment prohibits federal courts from hearing suits
9 brought against an unconsenting state.” Brooks v. Sulphur Springs Valley Elec.
10 Co-op., 951 F.2d 1050, 1053 (9th Cir. 1991) (citing Pennhurst State School & Hosp.
11 v. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)). This
12 jurisdictional bar includes “suits naming state agencies and departments as
13 defendants,” and it applies whether plaintiffs “seek damages or injunctive relief.”
14 Id.; Pennhurst State School, 465 U.S. at 102. “[A]n entity with Eleventh
15 Amendment immunity is not a “person” within the meaning of § 1983.” Howlett
16 By & Through Howlett v. Rose, 496 U.S. 356, 365, 110 S. Ct. 2430, 110 L. Ed. 2d
17 332 (1990).

18 As to state officials sued in their official capacity, the Eleventh Amendment
19 immunizes state officials sued in their official capacity from retrospective claims for
20 relief (including monetary damage claims), but does not immunize them from
21 claims for prospective relief (such as forward-looking injunctive relief). Kentucky
22 v. Graham, 473 U.S. 159, 169–70, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)
23 Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974); Ex Parte
24 Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 2d 714 (1908).

25 **(2) ANALYSIS**

26 Here, the Eleventh Amendment bars Plaintiffs from raising *any* claims
27 against defendant CCI and from seeking monetary damages against the Individual
28 Defendants in their official capacity. As to defendant CCI, because CCI is an

1 agency of the state of California, it is protected by the Eleventh Amendment and
2 cannot be sued under Section 1983. See Allison v. California Adult Auth., 419 F.2d
3 822, 822–23 (9th Cir. 1969) (holding plaintiff was not entitled to relief under
4 Section 1983 against state prison because “state agencies which are but arms of the
5 state government are not ‘persons’ for purposes of the Civil Rights Act”); Lett v.
6 Brown, No. EDCV 12-1874-JFW (SS), 2013 WL 156560, at *3 (C.D. Cal. Jan. 15,
7 2013) (holding “CCI-Tehachapi, as an agency of the State of California, cannot be
8 sued under Section 1983”). As to the claims against the Individual Defendants in
9 their official capacity, the Eleventh Amendment bars Plaintiffs from raising claims
10 that seek monetary relief. See Kentucky v. Graham, 473 U.S. at 169–70 (holding
11 the Eleventh Amendment bar “remains in effect when State officials are sued for
12 damages in their official capacity”). Thus, Plaintiffs are barred from bringing (1)
13 any claims against defendant CCI; and (2) claims for monetary damages against the
14 Individual Defendants in their official capacity.

15 **B. PLAINTIFFS FAIL TO STATE AN EIGHTH AMENDMENT**
16 **DELIBERATE INDIFFERENCE CLAIM AGAINST DEFENDANT**
17 **RODRIGUEZ IN HIS INDIVIDUAL CAPACITY**

18 **(1) APPLICABLE LAW**

19 Prison officials violate the Eighth Amendment’s prohibition against cruel
20 and unusual punishment when they deny humane conditions of confinement with
21 deliberate indifference. Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 128
22 L. Ed. 2d 811 (1994). To state a claim for such an Eighth Amendment violation, an
23 inmate must show objective and subjective components. Clement v. Gomez, 298
24 F.3d 898, 904 (9th Cir. 2002). The objective component requires an “objectively
25 insufficiently humane condition violative of the Eighth Amendment” which poses
26 a substantial risk of serious harm. Osolinski v. Kane, 92 F.3d 934, 938 (9th Cir.
27 1996). The subjective component requires prison officials acted with the culpable
28 mental state, which is “deliberate indifference” to the substantial risk of serious

1 harm. Farmer, 511 U.S. at 837-38; Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct.
2 285, 50 L. Ed. 2d 251 (1976).

3 A prison official may be found deliberately indifferent in violation of the
4 Eighth Amendment if “he knows that inmates face a substantial risk of serious
5 harm and disregards that risk by failing to take reasonable measures to abate it.”
6 Clem v. Lomeli, 566 F.3d 1177, 1182 (9th Cir. 2009) (quoting Farmer, 511 U.S. at
7 847). “[A] prison official cannot be found liable under the Eighth Amendment for
8 denying an inmate humane conditions of confinement unless the official knows of
9 and disregards an excessive risk to inmate health or safety; the official must both be
10 aware of facts from which the inference could be drawn that a substantial risk of
11 serious harm exists, and he must also draw the inference.” Farmer, 511 U.S. at
12 837-38; see May v. Baldwin, 109 F.3d 557, 566 (9th Cir. 1997) (rejecting plaintiff’s
13 claims disciplinary segregation violated the Eighth Amendment because plaintiff
14 “failed to allege facts establishing the deprivation of adequate food, drinking water,
15 sanitation, or personal hygiene items”). Deliberate indifference requires “more
16 than ‘gross negligence’ or even ‘recklessness.’” Hatter v. Dyer, 154 F. Supp. 3d
17 940, 944 (C.D. Cal. 2015) (quoting Farmer, 511 U.S. at 837).

18 (2) ANALYSIS

19 Here, Plaintiffs fail to state an Eighth Amendment deliberate indifference
20 claim against defendant Rodriguez. While Plaintiffs allege defendant Rodriguez is
21 “illegally dump[ing] HSI Mobile Compressor Oil into the spray fields . . . which
22 contaminates the drinking water on yards I and II at CCI,” they fail to allege
23 defendant Rodriguez knew that his actions placed inmates at a “substantial risk of
24 serious harm.” TAC at 8, 22; Clem, 566 F.3d at 1182. Without any facts
25 indicating defendant Rodriguez “knew of and disregarded an excessive risk to
26 inmate health or safety,” Plaintiffs’ claim against him in his individual capacity
27 necessarily fails. Farmer, 511 U.S. at 837-38.

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1 **C. PLAINTIFFS FAIL TO STATE A FOURTEENTH AMENDMENT**
2 **PROCEDURAL DUE PROCESS CLAIM AGAINST THE**
3 **INDIVIDUAL DEFENDANTS**

4 **(1) APPLICABLE LAW**

5 A procedural due process claim requires plaintiffs establish “two distinct
6 elements: (1) a deprivation of a constitutionally protected liberty or property
7 interest, and (2) a denial of adequate procedural protections.” Brewster v. Bd. of
8 Educ., 149 F.3d 971, 982 (9th Cir. 1998). The failure to follow mandatory
9 procedures does not by itself offend the constitution. See Smith v. Noonan, 992
10 F.2d 987, 989 (9th Cir. 1993) (“[W]e have held that ‘procedural requirements,
11 even if mandatory, do not raise a constitutionally cognizable liberty interest.’”
12 (citation omitted)). Rather, there must be allegations that the procedures
13 themselves were inadequate to protect a valid liberty interest. See Buckley v.
14 Gomez, 36 F. Supp. 2d 1216, 1222 (S.D. Cal. 1997), aff’d, 168 F.3d 498 (9th Cir.
15 1999).

16 **(2) ANALYSIS**

17 Here, Plaintiffs claim they have a Due Process right “to be informed, and
18 adequately noticed,” presumably of the allegedly dangerous conditions at CCI. Id.
19 at 11. However, the right to be informed or adequately noticed of prison conditions
20 is not an interest protected by the U.S. Constitution. See Wilkinson v. Austin, 545
21 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005) (holding “[a] liberty
22 interest may arise from the Constitution itself, by reason of guarantees implicit in
23 the word ‘liberty’, or it may arise from an expectation or interest created by state
24 law or policies” (internal citations omitted)). Moreover, Plaintiffs have failed to
25 identify a specific procedure that the Individual Defendants did not follow which
26 would have resulted in Plaintiffs’ loss of a valid liberty interest. Brewster, 149 F.3d
27 at 982. Further, even assuming Plaintiffs identified a procedure that created a
28 protected interest, the Individual Defendants’ failure to comply with such a

1 procedure alone does not establish a due process violation. Buckley, 36 F. Supp. 2d
2 at 1222 (“A defendant’s negligent or intentional failure to follow proper
3 procedures does not constitute a constitutional deprivation.”). Thus, Plaintiffs’
4 procedural due process claim is subject to dismissal.

5 **D. PLAINTIFFS FAIL TO STATE A FOURTEENTH AMENDMENT**
6 **SUBSTANTIVE DUE PROCESS CLAIM AGAINST THE**
7 **INDIVIDUAL DEFENDANTS**

8 **(1) APPLICABLE LAW**

9 The Due Process Clause of the Fourteenth Amendment protects individuals
10 against deprivations of life, liberty, or property in such a way that “shocks the
11 conscience” or “interferes with rights implicit in the concept of ordered liberty.”
12 United States v. Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697
13 (1987); U.S. Const. amend. XIV, § 1. “To establish a substantive due process
14 claim, a plaintiff must, as a threshold matter, show a government deprivation of
15 life, liberty, or property.” Nunez v. City of Los Angeles, 147 F.3d 867, 871 (9th
16 Cir. 1998); Jeffries v. Turkey Run Consol. Sch. Dist., 492 F.2d 1, 4 (7th Cir. 1974)
17 (“[T]he absence of any claim by the plaintiff that an interest in liberty or property
18 has been impaired is a fatal defect in her substantive due process argument.”).

19 **(2) ANALYSIS**

20 Here, Plaintiffs have failed to allege a protected liberty interest or property
21 interest of which they have been deprived. Plaintiffs claim to have a Due Process
22 right “to the Proper Function of a governmental office,” which includes the right
23 to have the Individual Defendants “perform [their] duties consistent with law, rule,
24 regulation, policy, and Constitution State and Federal.” TAC at 10. Plaintiffs,
25 however, fail to identify a valid liberty interest protected by the Due Process
26 Clause. See Wilkinson, 545 U.S. at 221; Nunez, 147 F.3d at 871. Thus, Plaintiffs’
27 substantive due process claim is subject to dismissal.

28

1 **E. PLAINTIFFS FAIL TO STATE A FOURTEENTH AMENDMENT**
2 **EQUAL PROTECTION CLAIM AGAINST THE INDIVIDUAL**
3 **DEFENDANTS**

4 **(1) APPLICABLE LAW**

5 “The Equal Protection Clause of the Fourteenth Amendment commands
6 that no State shall ‘deny to any person within its jurisdiction the equal protection of
7 the laws,’ which is essentially a direction that all persons similarly situated should
8 be treated alike.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432,
9 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (quoting Plyler v. Doe, 457 U.S. 202,
10 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)). In order to state a Section 1983
11 equal protection claim, plaintiffs must allege they were treated differently from
12 others who were similarly situated without a rational basis or discriminated against
13 based on their membership in a protected class. See Serrano v. Francis, 345 F.3d
14 1071, 1082 (9th Cir. 2003) (requirements for Section 1983 equal protection claim
15 based on membership in protected class); Gallo v. Burson, 568 F. App’x 516, 517
16 (9th Cir. 2014) (affirming district court dismissal of inmate’s equal protection
17 claim). “Similarly situated” persons are those “who are in all relevant aspects
18 alike.” Nordlinger v. Hahn, 505 U.S. 1, 10, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

19 **(2) ANALYSIS**

20 Here, Plaintiffs’ Equal Protection claim fails. Plaintiffs claim the Individual
21 Defendants’ “refusal to follow the above laws had affirmatively deprived Plaintiffs
22 and all prisoners at CCI on yard I and II of Due Process and Equal Protection of the
23 laws.” TAC at 11. Here, it is unclear from Plaintiffs’ claims how the Individual
24 Defendants are depriving them of equal protection of the laws. Even if Plaintiffs’
25 claim had identified unequal treatment, Plaintiffs’ Equal Protection claims based
26 on unequal treatment as inmates fails to state an Equal Protection claim because
27 prison inmates, in general, are not a protected class. See Webber v. Crabtree, 158
28 F.3d 460, 461 (9th Cir. 1998). In making their equal protection allegations,

1 Plaintiffs fail to present facts showing the Individual Defendants treated them any
2 differently than other “similarly situated” individuals. Therefore, Plaintiffs’ Equal
3 Protection claim is subject to dismissal.

4 **F. THE TAC FAILS TO COMPLY WITH FEDERAL RULE OF CIVIL**
5 **PROCEDURE 8**

6 **(1) APPLICABLE LAW**

7 Rule 8(a) requires that a complaint contain “a short and plain statement of
8 the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).
9 Further, Rule 8(d)(1) provides “[e]ach allegation must be simple, concise, and
10 direct.” Fed. R. Civ. P. 8(d)(1). As the Supreme Court has held, Rule 8(a)
11 “requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.”
12 See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 n.3, 127 S. Ct. 1955, 167 L. Ed.
13 2d 929 (2007). Complaints that are “argumentative, prolix, replete with
14 redundancy, and largely irrelevant” and that “consist[] largely of immaterial
15 background information” are subject to dismissal under Rule 8. See McHenry v.
16 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996).

17 **(2) ANALYSIS**

18 Here, Plaintiffs have stated the following three constitutional claims and
19 have done so with sufficient clarity in the TAC: (1) Eighth Amendment deliberate
20 indifference claim against the Individual Defendants in their official capacity for
21 prospective relief only; (2) Eighth Amendment deliberate indifference claim
22 against defendant Plumlee in his individual capacity; and (3) Eighth Amendment
23 deliberate indifference claim against defendant Martinez in his individual capacity.

24 Nevertheless, the TAC is needlessly long, rambling, and confusing and
25 includes numerous conclusory allegations and legal jargon. See Dkt. 38. Inclusion
26 of unclear facts and unnecessary legal jargon prevents the Court from clearly
27 discerning any other potential causes of action. Therefore, to the extent Plaintiffs
28

1 wish to raise additional claims other than the three the Court has identified above,
2 Plaintiffs must file an amended complaint.

3 In amending the complaint, Plaintiffs must state each claim separately and
4 identify defendants for each claim. Additionally, for each claim, Plaintiffs should
5 clearly, precisely, and briefly identify the legal basis and the facts underlying it. See
6 Bautista v. Los Angeles Cty., 216 F.3d 837, 840-41 (9th Cir. 2000). Plaintiffs
7 should only include facts necessary to state a claim and need not include additional
8 case law to support their allegations. Instead, Plaintiffs should clearly state (1) the
9 alleged harm; (2) who caused the alleged harm; (3) when the alleged harm was
10 committed; and (4) what actions were committed by each alleged wrongdoer

11 **VI.**

12 **LEAVE TO FILE A FOURTH AMENDED COMPLAINT**

13 For the foregoing reasons, the TAC is subject to dismissal. As the Court is
14 unable to determine whether amendment would be futile, leave to amend is
15 granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
16 curiam). Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of
17 the service date of this Order, Plaintiffs choose one of the following three options:

18 **1. Option One: Plaintiffs may proceed on the following claims, which**
19 **are not identified as deficient:**

20 **(a) Eighth Amendment deliberate indifference claims against the**
21 **Individual Defendants in their official capacity for prospective**
22 **injunctive relief only;**

23 **(b) Eighth Amendment deliberate indifference claim against**
24 **defendant Plumlee in his individual capacity; and**

25 **(c) Eighth Amendment deliberate indifference claim against**
26 **defendant Martinez in his individual capacity.**

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1 **If Plaintiffs intend to select this option, they must file a statement clearly**
2 **indicating they wish to proceed on these claims only and voluntarily dismiss**
3 **all other claims.**

4 2. **Option Two:** Alternatively, Plaintiffs may file a Fourth Amended
5 Complaint to attempt to cure the deficiencies discussed above. **The Clerk of**
6 **Court is directed to mail Plaintiffs a blank Central District civil rights**
7 **complaint form to use for filing the Fourth Amended Complaint.**

8 If Plaintiffs choose to file a Fourth Amended Complaint, Plaintiffs must
9 clearly designate on the face of the document that it is the “Fourth Amended
10 Complaint,” it must bear the docket number assigned to this case, and it must be
11 retyped or rewritten in its entirety, preferably on the court-approved form.
12 Plaintiffs shall not include new defendants or new allegations that are not
13 reasonably related to the claims asserted in the TAC. In addition, the Fourth
14 Amended Complaint must be complete without reference to the TAC, or any other
15 pleading, attachment, or document.

16 An amended complaint supersedes the preceding complaint. Ferdik v.
17 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
18 treat all preceding complaints as nonexistent. Id. Because the Court grants
19 Plaintiffs leave to amend as to all their claims raised here, any claim raised in a
20 preceding complaint is waived if it is not raised again in the Fourth Amended
21 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

22 The Court advises Plaintiffs that it generally will not be well-disposed toward
23 another dismissal with leave to amend if Plaintiffs file a Fourth Amended
24 Complaint that continues to allege insufficient facts to state a claim. “[A] district
25 court’s discretion over amendments is especially broad ‘where the court has
26 already given a plaintiff one or more opportunities to amend his complaint.’”
27 Ismail v. County of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012) (citations
28 omitted); see also Ferdik, 963 F.2d at 1261.

1 **Plaintiffs are explicitly cautioned that failure to timely file either the**
2 **statement permitted by Option One or a Fourth Amended Complaint will**
3 **result in this action being dismissed with prejudice for failure to state a claim,**
4 **prosecute, and/or obey Court orders pursuant to Federal Rule of Civil**
5 **Procedure 41(b).**

6 3. **Option Three:** Alternatively, Plaintiffs may voluntarily dismiss the
7 action without prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The**
8 **Clerk of Court is directed to mail Plaintiffs a blank Notice of Dismissal Form,**
9 **which the Court encourages Plaintiffs to use.**

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Dated: June 28, 2017



HONORABLE KENLY KIYA KATO
United States Magistrate Judge