

1 **A. Motion filed January 3, 2017**

2 On November 4, 2016, Plaintiff filed a supplement to his original complaint. (ECF No.
3 8.) Thereafter, on December 7, 2016, Plaintiff filed a motion to supplement his original
4 complaint. (ECF No. 9.) On January 13, 2017, the Court signed an order disregarding Plaintiff's
5 supplemental pleading, denying his motion to supplement and granting him leave to amend his
6 complaint within thirty (30) days. The order was docketed on January 17, 2017. (ECF No. 14.)

7 Before the Court's order granting leave to amend was docketed, however, Plaintiff filed a
8 second motion to supplement his original complaint. (ECF No. 13.) During pendency of the
9 motion to supplement, Plaintiff filed a first amended complaint on February 16, 2017. (ECF No.
10 15.) Because Plaintiff filed his first amended complaint, Plaintiff's request to supplement his
11 original complaint is now moot and is HEREBY DENIED. *See, e.g., Lacey v. Maricopa Cty.*,
12 693 F.3d 896, 927 (9th Cir. 2012) (en banc) (an amended complaint supersedes the original
13 complaint).

14 **B. Motion filed March 6, 2017**

15 As indicated, on March 6, 2017, Plaintiff filed a motion to supplement his first amended
16 complaint. (ECF No. 16.) By his motion, Plaintiff requests that his civil action be supplemented
17 "with recently acquired clarification that specifically delineates the reclassification was had under
18 Prop 64; and, jail credits were awarded. Indisputably and conclusively showing defendant lost
19 lawful jurisdiction of my person on 12/01/16." (*Id.* at p. 1.) Attached to his moving papers are
20 minutes from the Superior Court of the State of California, County of Orange, in Case:
21 16WF1633M A and Name: Wahl, Peter Gerard. (*Id.* at p. 2.) The minutes span the time period
22 from November 15, 2016, to January 23, 2017. (*Id.*)

23 Federal Rule of Civil Procedure 15(d) states, "[o]n motion and reasonable notice, the court
24 may, on just terms, permit a party to serve a supplemental pleading setting out any transaction,
25 occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R.
26 Civ. P. 15(d). Here, Plaintiff's motion alleges no new facts that arose subsequent to his first
27 amended complaint to support a supplemental pleading. *See* Fed. R. Civ. P. 15(d). As noted,
28 Plaintiff filed his first amended complaint in February 2017, which was after the proceedings

1 reflected in the minutes of the Orange County Superior Court took place. Accordingly, Plaintiff's
2 motion to supplement his complaint filed on March 6, 2017, is HEREBY DENIED. However,
3 the court is not precluded from taking judicial notice of court records in other cases. *See United*
4 *States v. Howard*, 381 F.3d 873, 876 n. 1 (9th Cir. 2004).

5 **III. Screening Requirement and Standard**

6 The Court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
8 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
9 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
10 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
11 § 1915(e)(2)(B)(ii).

12 A complaint must contain "a short and plain statement of the claim showing that the
13 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
14 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
16 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
17 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
18 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
19 (internal quotation marks and citation omitted).

20 To survive screening, Plaintiff's claims must be facially plausible, which requires
21 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
22 for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);
23 *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility
24 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short
25 of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks
26 omitted); *Moss*, 572 F.3d at 969.

27 **A. Plaintiff's Allegations**

28 Plaintiff, formerly confined at Wasco State Prison, brings suit against the following

1 defendants: (1) Warden John Sutton; (2) Counselor Jane/John Doe; (3) J. Albert, CCII; and (4)
2 Assistant Deputy Chief Warden Jane Doe.

3 Claim 1

4 In his first claim, Plaintiff alleges: On August 18, 2016, Plaintiff was sentenced to 16
5 months in Case No. 16WF1633. On September 7, 2016, Defendants took custody of Plaintiff.
6 However, Plaintiff sought relief in the sentencing court under Proper 47. On November 30, 2016,
7 the sentencing court reclassified Plaintiff's felony to a misdemeanor and resentenced Plaintiff to
8 180 days (deemed served). Once Plaintiff learned of the sentencing, he submitted grievances
9 "everywhere," but no grievances were answered. (ECF No. 15 at p. 3.) Instead, Plaintiff was
10 released under Prop 64 by Defendants with "summary probation." (*Id.*) Plaintiff checked Case
11 No. 16WF1633 and found no probation. Plaintiff sought emergency relief and submitted
12 grievances to Defendants J. Albert, Counselor Jane/John Doe, Assistant Deputy Chief Warden
13 Jane Doe, and Warden John Sutton, along with the Director of the California Department of
14 Corrections and Rehabilitation. Plaintiff also sought habeas relief, which was deemed moot and
15 withdrawn without prejudice.

16 Claim 2

17 In his second claim, Plaintiff alleges that his access to courts was seriously thwarted and
18 impaired by policy that prohibited unlimited access unless a court ordered deadline was capable
19 of being produced. Plaintiff contends that copies and research were severely limited, requiring
20 him to file original copies and hand draft initial complaints. Plaintiff further alleges that the
21 grievance procedure did not provide any timely form of relief, even after he requested emergency
22 relief. Plaintiff claims that 602 forms had to be completed in ink and pens sold in the canteen
23 were good only for a week.

24 Plaintiff further asserts that he obtained relief from the lower court, but "the Defendant"
25 disregarded the habeas action, 602s and other grievances to staff members. The counselor finally
26 saw Plaintiff and had him sign papers on December 28, 2016, and Plaintiff was released on
27 December 29, 2016 with alleged summary probation. Plaintiff asserts that he missed Christmas,
28 and that "the Defendant" by his policies and callous indifference to his liberty interest appeared to

1 be retaliatory in denying release for 29 days.

2 Claim 3

3 In his third claim, Plaintiff alleges that he was ordered reclassified and resentenced to a
4 misdemeanor (time served). Defendant did not release Plaintiff until 29 days later on other
5 grounds. Defendant reportedly lacked jurisdiction to implement Prop 64 after court issued order
6 at same time under Prop 47. Plaintiff did not choose to serve Defendant and his staff after
7 November 30, 2016. Defendant was served with a petition for writ of habeas corpus that sought
8 relief for classification delays and supplemented the same with this issue. Defendant allegedly
9 disregarded Plaintiff's litigation seeking relief from the unconstitutional imprisonment being
10 suffered. Plaintiff further alleges that housing C-B-3 has been scheduled for renovations due to
11 black mold and plumbing problems. Plaintiff asserts that he also was grieving cold food and
12 black mold.

13 Plaintiff asserts violations of his First Amendment, Eighth Amendment, Thirteenth
14 Amendment and Fourteenth Amendment rights. He seeks damages, along with declaratory relief.

15 **B. Discussion**

16 **1. Nature of Claim**

17 Plaintiff initiated this action on October 19, 2016, as a purported class action, complaining
18 about "classification processing" related to good time credits and transfer to mainline where
19 additional good time credits are received. (ECF No. 1 at p. 3.) Plaintiff's amended complaint,
20 which concerns events post-dating his original complaint, appears to improperly change the
21 nature of this suit. In the order granting Plaintiff leave to the amend, the court expressly warned
22 Plaintiff that he may not change the nature of this suit by adding new, unrelated claims in his first
23 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
24 complaints). Despite the apparent change in his underlying claims, the court will nonetheless
25 screen the allegations in Plaintiff's first amended complaint to determine if he states a cognizable
26 claim for relief.

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1 **2. Linkage Requirement**

2 The Civil Rights Act under which this action was filed provides:

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4 Every person who, under color of [state law]...subjects, or causes to be subjected,
5 any citizen of the United States...to the deprivation of any rights, privileges, or
6 immunities secured by the Constitution...shall be liable to the party injured in an
7 action at law, suit in equity, or other proper proceeding for redress.

8 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
9 the actions of the defendants and the deprivation alleged to have been suffered. *See Monell v.*
10 *Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed. 2d 611 (1978); *Rizzo v. Goode*, 423
11 U.S. 362, 96 S. Ct. 598, 46 L.Ed. 2d 561 (1976). The Ninth Circuit has held that “[a] person
12 ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983,
13 if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act
14 which he is legally required to do that causes the deprivation of which complaint is made.”
15 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

16 Plaintiff has failed to adequately link the defendants to any constitutional violation.
17 Plaintiff cannot simply lump all defendants together or refer vaguely to a single “Defendant” in
18 his allegations. Instead, Plaintiff must identify the individual defendants in the allegations of his
19 complaint and attribute specific conduct to each of the defendants. If Plaintiff elects to amend his
20 complaint, then he must state what each person did or did not do that caused the alleged
21 violation(s) of his constitutional rights.

22 **3. Doe Defendants**

23 Plaintiff names Counselor Jane/John Doe and Assistant Deputy Chief Warden Jane Doe.
24 “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.” *Gillespie v.*
25 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that John Doe or Jane Doe
26 defendants (i.e., unknown defendants) cannot be served by the United States Marshal until
27 Plaintiff has identified them as actual individuals and amended his complaint to substitute names
28 for John Doe or Jane Doe.

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1 **4. Access to Courts**

2 Plaintiff alleges a violation of his First Amendment right to access the courts. Although
3 inmates have a fundamental constitutional right of access to the courts, *Lewis v. Casey*, 518 U.S.
4 343, 346, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996); *Phillips v. Hust*, 588 F.3d 652, 655 (9th Cir.
5 2009), to state a viable claim for relief, Plaintiff must show that he suffered an actual injury,
6 which requires “actual prejudice with respect to contemplated or existing litigation,” *Nev. Dep't of*
7 *Corrs. v. Greene*, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing *Lewis*, 518 U.S. at 348) (internal
8 quotation marks omitted), *cert. denied*, 566 U.S. 911 (2012). Plaintiff has not alleged any injury
9 or actual prejudice with respect to any litigation. Therefore, Plaintiff has failed to state a
10 cognizable claim for denial of access to the courts.

11 **5. Grievance Process**

12 Plaintiff appears to bring suit against defendants based on the grievance process and the
13 handling of his grievances. However, the existence of an inmate grievance or appeals process
14 does not create a protected liberty interest upon which Plaintiff may base a claim that he was
15 denied a particular result or that the process was deficient. *Ramirez v. Galaza*, 334 F.3d 850, 860
16 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Therefore, Plaintiff has
17 failed to state a cognizable claim regarding the grievance process or the handling of his inmate
18 grievances.

19 **6. Conditions of Confinement**

20 Plaintiff appears to be complaining about the conditions of his confinement, including his
21 cold food and the purported presence of black mold.

22 The Eighth Amendment’s prohibition against cruel and unusual punishment protects
23 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
24 confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006) (citations omitted).
25 Although prison conditions may be restrictive and harsh, prison officials must provide prisoners
26 with food, clothing, shelter, sanitation, medical care, and personal safety. *Farmer v. Brennan*, 511
27 U.S. 825, 832–33 (1994) (quotations omitted).

1 A prisoner's claim does not rise to the level of an Eighth Amendment violation unless (1)
2 "the prison official deprived the prisoner of the "minimal civilized measure of life's necessities,"
3 and (2) "the prison official 'acted with deliberate indifference in doing so.' " *Toguchi v. Chung*,
4 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir.
5 2002) (citation omitted)). In order to find a prison official liable under the Eighth Amendment for
6 denying humane conditions of confinement within a prison, the official must know "that inmates
7 face a substantial risk of serious harm and disregard [] that risk by failing to take reasonable
8 measures to abate it." *Farmer*, 511 U.S. at 847.

9 Cold Food

10 Plaintiff has failed to state a cognizable claim regarding cold food. "The Eighth
11 Amendment requires only that prisoners receive food that is adequate to maintain health; it need
12 not be tasty or aesthetically pleasing." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir.1993)
13 (citation omitted). "The fact that the food ... sometimes is served cold, while unpleasant, does not
14 amount to a constitutional deprivation." *Id.*

15 Black Mold

16 Plaintiff has failed to state a cognizable claim regarding alleged exposure to black mold.
17 At a basic level, Plaintiff does not allege any ill effects from mere exposure to black mold.
18 Instead, Plaintiff alleges that "[t]he physical damage is questionable due to exposure to Black
19 Mold!" (ECF No. 15 at p. 5). Further, Plaintiff does not allege that any defendant knew of the
20 black mold and failed to take measures to abate it. Plaintiff's own allegations indicate that the
21 facility is scheduled for renovations to address the mold (and plumbing problems). (*Id.*)

22 **7. Excessive Custody**

23 The crux of Plaintiff's first amended complaint appears to be that he was held 29 days
24 past his release date.

25 Eighth Amendment

26 A prisoner's claim for damages resulting from excessive custody may support a legitimate
27 section 1983 claim. *See Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985). "Detention
28 beyond the termination of a sentence could constitute cruel and unusual punishment [in violation

1 of the Eighth Amendment] if it is the result of ‘deliberate indifference’ to the prisoner’s liberty
2 interest; otherwise, such detention can be held to be unconstitutional only if it violates due
3 process.” *Id.* at 1354 (internal citations omitted).

4 Here, Plaintiff alleges indifference to his liberty interests. However, Plaintiff has failed to
5 link such indifference to the individual defendants. For instance, he has failed to allege what the
6 individuals knew regarding his release and what each defendant did or did not do in response to
7 that knowledge.

8 Due Process

9 “The due process clause of the Fourteenth Amendment protects individuals from unlawful
10 state deprivation.” *Ward v. Brown*, 891 F.Supp.2d 1149, 1163 (E.D. Cal. 2012). In assessing a
11 due process violation related to excessive custody, the “court’s first task is to determine whether
12 *Paratt* (random act) or *Logan* (official practice and procedure) controls.” *Haygood*, 769 F.2d at
13 1359. Random and unauthorized deprivations by state prison officers cannot be prevented by due
14 process hearings,” and “a remedial hearing after the injury can provide due process in a narrowly
15 limited class of cases.” *Id.* at 1357. However, “where the injury is the product of the operation of
16 state law, regulation or institutionalized practice, it is neither random nor unauthorized.” *Id.*

17 Thus,

18 [i]f the wrongful taking of liberty results from either affirmatively enacted or de
19 facto policies, practices or customs, the court must determine when the
20 responsible state officers received notice of a claim that a wrong was being done.
21 When an official with the authority to rectify an erroneous practice receives notice
22 of the wrongful practice and its harmful consequences, due process requires the
state to provide a hearing before a further denial of liberty can be said to be free
from § 1983 liability.

23 *Id.* at 1359. Here, it is unclear from Plaintiff’s allegations if the assertions of excessive custody
24 arise from a random act of prison officials or from policies, practices or customs. Plaintiff will be
25 given leave to clarify his claims and cure this deficiency.

26 **IV. Conclusion and Order**

27 For the reasons stated, Plaintiff has failed to state a cognizable claim for relief. The Court
28 will grant Plaintiff an opportunity to cure the identified deficiencies to the extent he is able to do

1 so in good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

2 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
3 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556
4 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must
5 be [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. at 555
6 (citations omitted).

7 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
8 claims in his first amended complaint. *George*, 507 F.3d at 607.

9 Finally, Plaintiff is reminded that an amended complaint supersedes the original
10 complaint. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's
11 amended complaint must be "complete in itself without reference to the prior or superseded
12 pleading." Local Rule 220.

13 Based on the foregoing, it is HEREBY ORDERED that:

14 1. Plaintiff's motions to supplement filed on January 13, 2017, and March 6, 2017,
15 are DENIED;

16 2. The Clerk's Office shall send Plaintiff a complaint form;

17 3. Plaintiff's first amended complaint is dismissed with leave to amend;

18 4. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
19 file a second amended complaint; and

20 **5. If Plaintiff fails to file an amended complaint in compliance with this order,**
21 **this action will be dismissed for failure to obey a court order and for failure to state a claim.**

22
23 IT IS SO ORDERED.

24 Dated: July 24, 2017

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE