



1 *Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

2 Plaintiff asserts that defendant Carpenter “colluded and conspired” with defendant  
3 Olivas “to use disciplinary action to perpetuate retaliation.” (ECF No. 12 at 2-3). The  
4 addendum to Plaintiff’s complaint details how defendant Carpenter weighed evidence at  
5 Plaintiff’s hearing and gave more weight to the defendants’ testimony than to Plaintiff’s  
6 witnesses. (See ECF 1-2 at 12). As stated in the Court’s screening order, defendant  
7 Carpenter was dismissed because he was only alleged to have fulfilled his routine duties in  
8 the disciplinary process after the allegations were filed for allegedly retaliatory purposes. (ECF  
9 No. 9 at 4-5). Plaintiff is attempting to re-litigate the same issues and arguments upon which  
10 the Court has already ruled. The sufficiency of the process Plaintiff received was the subject  
11 of his Count II. (See ECF No. 10 at 8). The Court re-affirms the dismissal of defendant  
12 Carpenter from Plaintiff’s Count I First Amendment retaliation claim.

13 Plaintiff next asserts that he must be afforded full and fair due process before suffering  
14 the consequences of a disciplinary action. (ECF No. 12 at 4). Plaintiff asserts that he was not  
15 given fair notice or an opportunity for witnesses to give full testimony. (*Id.* at 5). No *Wolff*-type  
16 due process protections apply, however, unless the result of the hearing is a punishment that  
17 impairs a constitutionally cognizable liberty interest as defined in *Sandin v. Connor*, 515 U.S.  
18 472 (1995). Plaintiff alleges that he suffered disciplinary action, negative classification, “harsh”  
19 custody, transfer, etc. (ECF No. 12 at 4).

20 As stated in the Court’s screening order, Plaintiff has no state-created liberty interest  
21 in avoiding transfer or disciplinary segregation, for the court concludes that these punitive  
22 sanctions were not atypical hardships under *Sandin*. (See ECF No. 9 at 5:13-15 (citation  
23 omitted)). As Plaintiff fails to identify a liberty interest which would trigger *Wolff*-type due  
24 process protections, his allegations concerning the deficiencies of the disciplinary proceedings  
25 are not enough to state a colorable due process claim. The Court re-affirms the dismissal of  
26 Plaintiff’s Count II due process claim.

27 As such, Plaintiff’s motion for reconsideration is denied.

28 **II. MOTION TO FILE AND MOTION TO EXTEND TIME**

1 Plaintiff's motion to file the complaint (ECF No. 6) is denied as moot: Plaintiff's  
2 complaint was filed on August 19, 2016. (See ECF No. 10). Plaintiff's motion to extend time  
3 to effect service of complaint (ECF No. 7) is denied as Plaintiff's complaint was filed on August  
4 19, 2016 and no extension for service is needed as of yet.

5 **III. LEAVE TO AMEND**

6 As Plaintiff filed this motion for reconsideration, the Court will grant him an additional  
7 fifteen days from the date of the entry of this order to file any amended complaint. Plaintiff is  
8 granted leave to file an amended complaint to cure the deficiencies of the complaint. If  
9 Plaintiff chooses to file an amended complaint he is advised that an amended complaint  
10 supersedes the original complaint and, thus, the amended complaint must be complete in  
11 itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir.  
12 1989) (holding that "[t]he fact that a party was named in the original complaint is irrelevant; an  
13 amended pleading supersedes the original"); see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896,  
14 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required  
15 to reallege such claims in a subsequent amended complaint to preserve them for appeal).  
16 Plaintiff's amended complaint must contain all claims, defendants, and factual allegations that  
17 Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file the amended complaint  
18 on this Court's approved prisoner civil rights form and it must be entitled "First Amended  
19 Complaint."

20 The Court notes that if Plaintiff chooses to file an amended complaint curing the  
21 deficiencies of the complaint, as outlined in this order, Plaintiff shall file the amended  
22 complaint within fifteen (15) days from the date of entry of this order. If Plaintiff chooses not  
23 to file an amended complaint curing the stated deficiencies, this action shall proceed on Count  
24 I against defendants Mosely, V. Olivas, R. Olivas, and Byrne only.

25 **III. CONCLUSION**

26 For the foregoing reasons, IT IS ORDERED that Plaintiff's motion for reconsideration  
27 (ECF No. 12) is DENIED.

28 IT IS FURTHER ORDERED that Plaintiff's motion to file complaint (ECF No. 6) is

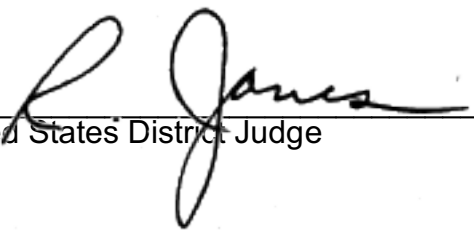
1 DENIED as moot.

2 IT IS FURTHER ORDERED that Plaintiff's ex parte motion to extend time to effect  
3 service of complaint (ECF No. 7) is DENIED.

4 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint curing  
5 the deficiencies of his complaint, as outlined in the original screening order, Plaintiff shall file  
6 the amended complaint within fifteen (15) days from the date of entry of this order.

7 IT IS FURTHER ORDERED that if Plaintiff chooses not to file an amended complaint  
8 curing the stated deficiencies of the complaint, this action shall proceed on Count I against  
9 defendants Mosely, V. Olivas, R. Olivas, and Byrne only.

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11 DATED: This 18<sup>th</sup> day of October, 2016.

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14 United States District Judge

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