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**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

Michael Lenoir Smith,	)	No. CV 1-07-1547-SRB
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Arnold Schwarzenegger, et al.,	)	
Defendants.	)	

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At issue are Defendant Martinez’s Notice of Motion and Motion to Dismiss Plaintiff’s Fourth Amended Complaint (“MTD”), and Defendants’ Request for Clarification Regarding Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction (“Req. for Clarification”). (Doc. 86, MTD; Doc. 87, Req. for Clarification).

**I. BACKGROUND**

Plaintiff, proceeding pro se, is an inmate incarcerated in the custody of the California State Prison, Corcoran. Plaintiff has filed a Fourth Amended Complaint asserting a violation of civil rights under 42 U.S.C. § 1983. (Doc. 64, Civil Rights Complaint by a Prisoner, Fourth Am. Compl.) Plaintiff has asserted a single claim alleging a violation of the Eighth Amendment based on his incarceration at the Pleasant Valley State Prison Complex, a

1 California prison facility with a known valley fever epidemic. (Fourth Am. Compl. at 5.)<sup>1</sup>  
2 Plaintiff alleges that he has now contracted valley fever but cannot take the valley fever  
3 medication because he has hepatitis C. (*Id.* at 10.) Plaintiff alleges that Defendant prison  
4 officials were aware of the severe risk to his health by housing him in the facility but acted  
5 with deliberate indifference to his medical needs by failing to transfer him. (*Id.* at 10-12, 14.)

6 Named Defendants included “John Doe, Appeals Coordinator,” at the Pleasant Valley  
7 facility. (*Id.* at 3, 14.) This “John Doe” defendant has been identified as H. Martinez. (Doc.  
8 70, Order at 2.) Plaintiff alleges that he submitted a grievance complaining that he was being  
9 exposed to valley fever and requested a transfer but his grievance was “screened out” by the  
10 Appeals Coordinator for the stated reason that “you cannot grieve an issue that has not  
11 occurred.” (Fourth Am. Compl. at 5, 8.) Plaintiff alleges that Martinez, as Appeals  
12 Coordinator, violated his duty to process Plaintiff’s administrative prison grievance, causing  
13 Plaintiff to contract valley fever and foreclosing his right to a higher level of review. (*Id.* at  
14 8,14.)

## 15 **II. LEGAL STANDARDS AND ANALYSIS**

### 16 **A. Defendant Martinez’s Motion to Dismiss**

17 Defendant Martinez contends that Plaintiff’s claim against him should be dismissed  
18 for failure to state a claim for relief under Rule 12(b)(6) of the Federal Rules of Civil  
19 Procedure. (MTD at 3-4.) Defendant argues that the claim fails to assert the violation of a  
20 constitutional right. (*Id.*)

21 However, the Court has already screened Plaintiff’s Fourth Amended Complaint  
22 pursuant to 28 U.S.C. § 1915A, which uses the same standard as Rule 12(b)(6), *Resnick v.*  
23 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and found that it states a claim against the  
24 Defendant John Doe Appeals Coordinator, now identified as Defendant Martinez. (Doc. 65,  
25 Order at 6 (“Plaintiff has alleged his claim with enough specificity to require an answer with  
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27 <sup>1</sup> The referenced page numbers of the Fourth Amended Complaint are the page  
28 numbers inserted as a result of the electronic filing of the document.

1 respect to Defendant Appeals Coordinator”).) Pro se pleadings are held to a less stringent  
2 standard than pleadings prepared by an attorney. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.  
3 2010). The Court has entered an Order substituting Defendant Appeals Coordinator H.  
4 Martinez for Defendant Appeals Coordinator John Doe and requiring Defendant Martinez  
5 to answer the Fourth Amended Complaint. (Doc. 70, Order at 2.) Defendant Martinez’s  
6 Motion to Dismiss is denied.


7 **B. Defendants’ Request for Clarification**

8 Defendants Cate, Martinez and Yates request clarification on whether they are  
9 required to file an opposition to Plaintiff’s Declaration in Support of Plaintiff’s Motion for  
10 a Temporary Restraining Order and Preliminary Injunction. (Req. for Clarification at 1-2.)  
11 Defendants state that they typically are not required to oppose such motions in the Eastern  
12 District of California unless directed to do so by the Court. (*Id.*) The Court will require  
13 Defendants to respond to Plaintiff’s Declaration in Support of Plaintiff’s Motion for a  
14 Temporary Restraining Order and Preliminary Injunction filed on May 13, 2013. (Doc. 85,  
15 Pl.’s Mot. for TRO and Prelim. Inj.)

16 **IT IS ORDERED** denying Defendant Martinez’s Motion to Dismiss Plaintiff’s  
17 Fourth Amended Complaint (Doc. 86).

18 **IT IS FURTHER ORDERED** granting Defendants’ Request for Clarification  
19 Regarding Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction  
20 (Doc. 87). Defendants shall file a response to Plaintiff’s Declaration in Support of Plaintiff’s  
21 Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 85) within  
22 twenty (20) days.

23 DATED this 23<sup>rd</sup> day of July, 2013.

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27 Susan R. Bolton  
United States District Judge