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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ERNEST REYES PLACENCIO,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:09-cv-01483-AWI-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION

(Doc. 8)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Ernest Reyes Placencio ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California Department of Corrections and Rehabilitation ("CDCR") and is incarcerated at Pleasant Valley State Prison ("PVSP") in Coalinga, California. Plaintiff is suing under Section 1983 for the violation of his rights under the Eighth Amendment. Plaintiff names James A. Yates and Dr. F. Igbinosa as defendants ("Defendants"). For the reasons set forth below, the Court finds that Plaintiff's complaint fails to state any cognizable claims. As Plaintiff was previously informed of and failed to cure the deficiencies in his claims, the Court will recommend that Plaintiff's claims be dismissed with prejudice.

I. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

2 In determining whether a complaint fails to state a claim, the Court uses the same pleading
3 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must
4 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.
5 R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual
6 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
7 accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.
8 Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual matter,
9 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550
10 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s
11 liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id.
12 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual
13 allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true.
14 Id. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
15 statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

16 **II. Background**

17 **A. Procedural Background**

18 Plaintiff filed the original complaint in this action on August 24, 2009. (Doc. #1.) Plaintiff’s
19 original complaint was screened on January 6, 2010. (Doc. #5.) The Court found that Plaintiff’s
20 original complaint failed to state any cognizable claims. Plaintiff was given leave to file an amended
21 complaint which cured the deficiencies in his claims. Plaintiff filed his first amended complaint on
22 February 22, 2010. (Doc. #8.) This action proceeds on Plaintiff’s first amended complaint.

23 **B. Factual Background**

24 Plaintiff’s first amended complaint alleges that Defendants Yates and Igbinoza, the warden
25 and chief medical officer at PVSP, violated Plaintiff’s rights under the Eighth Amendment. Plaintiff
26 alleges that he suffers from a weakened immune system and pneumonia because of continued
27 exposure to Valley Fever. Plaintiff claims that Defendants are liable for Plaintiff’s injuries because
28 they promulgated a policy that prohibits prisoners infected with Valley Fever from being transferred

1 to another institution. Plaintiff claims that the policy constitutes “a failure to respond reasonably to
2 a systemic health or safety problem.” Plaintiff claims that he is exposed to an unhealthy environment
3 because of the presence of Valley Fever.

4 **III. Discussion**

5 Plaintiff claims that his rights under the Eighth Amendment were violated. The Eighth
6 Amendment prohibits the imposition of cruel and unusual punishments and “embodies ‘broad and
7 idealistic concepts of dignity, civilized standards, humanity and decency.’” Estelle v. Gamble, 429
8 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). A prison
9 official violates the Eighth Amendment only when two requirements are met: (1) the objective
10 requirement that the deprivation is “sufficiently serious,” and (2) the subjective requirement that the
11 prison official has a “sufficiently culpable state of mind.” Farmer v. Brennan, 511 U.S. 825, 834
12 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)).

13 The objective requirement that the deprivation be “sufficiently serious” is met where the
14 prison official’s act or omission results in the denial of “the minimal civilized measure of life’s
15 necessities.” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The subjective
16 “sufficiently culpable state of mind” requirement is met when a prison official acts with “deliberate
17 indifference” to inmate health or safety. Id. (quoting Wilson, 501 U.S. at 302-303). A prison official
18 acts with deliberate indifference when he or she “knows of and disregards an excessive risk to inmate
19 health or safety.” Id. at 837. “[T]he official must both be aware of facts from which the inference
20 could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”

21 Id.

22 “It is undisputed that the treatment a prisoner receives in prison and the conditions under
23 which [the prisoner] is confined are subject to scrutiny under the Eighth Amendment.” Helling v.
24 McKinney, 509 U.S. 25, 31 (1993). “The Eighth Amendment’s prohibition against cruel and
25 unusual punishment protects prisoners not only from inhumane methods of punishment but also from
26 inhumane conditions of confinement.” Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).
27 Prison officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and
28 personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986). “[W]hile conditions

1 of confinement may be, and often are, restrictive and harsh, they ‘must not involve the wanton and
2 unnecessary infliction of pain.’” Morgan, 465 F.3d at 1045 (quoting Rhodes v. Chapman, 452 U.S.
3 337, 347 (1981)).

4 Plaintiff claims that the policies of Defendants Yates and Igbinoza violated Plaintiff’s Eighth
5 Amendment rights by exposing Plaintiff to an unhealthy environment. However, it is unclear how
6 the alleged policy exposed Plaintiff to an unhealthy environment. Plaintiff alleges that he has already
7 contracted Valley Fever and that he is exposed to Valley Fever at PVSP. Plaintiff requested a
8 transfer, but contends that the request was denied because of the alleged unconstitutional policy.
9 However, Plaintiff fails to explain how continued exposure to Valley Fever is dangerous to someone
10 who has already contracted Valley Fever. Plaintiff further alleges that he contracted pneumonia but
11 fails to allege how the pneumonia was caused by the conditions at PVSP and fails to allege any facts
12 that suggest that Defendant Yates or Defendant Igbinoza knew of an excessive risk that Plaintiff
13 would contract pneumonia if he was not transferred to another prison.

14 The Court’s previous screening order explicitly pointed out this deficiency to Plaintiff.
15 Plaintiff was informed that his claims were not cognizable because it was unclear how the failure
16 to transfer Plaintiff was adverse to his health. The previous screening order noted that Plaintiff’s
17 original complaint alleged that the medical staff at PVSP had been actively providing treatment for
18 Plaintiff’s Valley Fever and it was unclear how Plaintiff’s overall medical treatment could be
19 characterized as deliberately indifferent. Plaintiff has attempted to cure this deficiency by simply
20 omitting any references to any treatment that he received. However, Plaintiff still has not explained
21 how the failure to transfer him away from PVSP endangered his health. Plaintiff has also failed to
22 explain how continued exposure to Valley Fever could have caused Plaintiff’s health to get worse
23 after Plaintiff already contracted the disease.

24 The Court finds that Plaintiff’s complaint fails to state any claims for relief for the same
25 reasons set forth in the Court’s previous screening order. The Court finds that the deficiencies in
26 Plaintiff’s complaint cannot be cured by further leave to amend. Accordingly, the Court will
27 recommend that Plaintiff’s complaint be dismissed with prejudice. See Lopez v. Smith, 203 F.3d
28 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule that leave to amend should be granted

1 even if no request to amend was made unless the court determines that the pleading could not
2 possibly be cured by the allegation of other facts); Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir.
3 1992)(dismissal with prejudice upheld where court had instructed plaintiff regarding deficiencies in
4 prior order dismissing claim with leave to amend); Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.
5 1987) (pro se litigant must be given leave to amend his or her complaint unless it is absolutely clear
6 that the deficiencies of the complaint could not be cured by amendment).

7 **IV. Conclusion and Recommendation**

8 Plaintiff's first amended complaint fails to state any cognizable claims for relief. Plaintiff
9 was provided with the opportunity to amend and his first amended complaint failed to remedy the
10 deficiencies in his claims. The Court finds that the deficiencies in Plaintiff's claims are not curable
11 by further amendment of his complaint. Accordingly, it is HEREBY RECOMMENDED that
12 Plaintiff's claims be dismissed, with prejudice, for failure to state a claim.

13 These Findings and Recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
15 days after being served with these Findings and Recommendations, any party may file written
16 objections with the Court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
18 shall be served and filed within ten (10) days after service of the objections. The parties are advised
19 that failure to file objections within the specified time may waive the right to appeal the District
20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 **Dated: November 10, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE