

1 13, 2010. (ECF No. 11.) Plaintiff's February 17, 2011, First Amended Complaint is now
2 before the Court for screening. (ECF No. 16.)

3 For the reasons set forth below, the Court finds that Plaintiff has failed to state a
4 claim upon which relief may be granted.

5
6 **II. SCREENING REQUIREMENTS**

7 The Court is required to screen complaints brought by prisoners seeking relief
8 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
9 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
10 raised claims that are legally "frivolous or malicious," that fail to state a claim upon which
11 relief may be granted, or that seek monetary relief from a defendant who is immune from
12 such relief. 28 U.S.C. § 1915A(b)(1), (2). "Notwithstanding any filing fee, or any portion
13 thereof, that may have been paid, the court shall dismiss the case at any time if the court
14 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
15 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

16
17 A complaint must contain "a short and plain statement of the claim showing that the
18 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
19 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by
20 mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
21 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
22 forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its
23 face.'" Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
24 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.
25
26
27

1 **III. SUMMARY OF COMPLAINT**

2 Plaintiff alleges that Defendants' failed to protect him, subjected him to cruel and
3 unusual punishment, and provided inadequate medical care to him, all in violation of the
4 Eighth Amendment. He also alleges that he was denied access to the courts in violation
5 of the First Amendment. Plaintiff names the following individuals as Defendants: James
6 Yates, Warden of PVSP and J. Woodford, Director of Corrections.¹

8 Plaintiff alleges the following:

9 On March 3, 2003, Plaintiff was transferred to PVSP. He was not notified that the
10 prison environment exposed him to health hazards including Valley Fever. Plaintiff
11 became ill and four months later, in September 2003, was diagnosed with Valley Fever.
12 Six months later, he was confined to a wheel chair and remained so confined for two years.

14 At some point, Plaintiff was hospitalized for two weeks for pneumonia. After his
15 release, he received no further treatment for four months.² Plaintiff also suffered problems
16 with his eyesight.³

17 On June 3, 2008, Plaintiff fell ill and his heart began racing while he was being
18 transported in a prison van. Another inmate in the van also became ill after smelling gas
19 and exhaust fumes. The driver told them to "hold on" until they reached the prison a short
20 distance away. Upon arrival, Plaintiff passed out, fell, and injured himself. Plaintiff
21 reported the incident, albeit to no avail.

23
24 ¹ Plaintiff omits from this Amended Complaint several of the Defendants named in his original
Complaint.

25 ² It is unclear from the Complaint if this is the same four month period of illness described above
26 or for what condition Plaintiff sought treatment during this period.

27 ³ Plaintiff does not relate his vision problem to his other illness.

1 In his request for relief, Plaintiff seeks a declaratory judgment that his rights were
2 violated, compensatory damages, punitive damages, trial by jury, and costs.

3 **IV. ANALYSIS**

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

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

10 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
11 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
12 1997) (internal quotations omitted).

13 **A. Eighth Amendment Claims**

14 1. Cruel and Unusual Punishment/Failure to Protect Claim

15 Plaintiff alleges that prison officials subjected him to cruel and usual punishment by
16 placing him at PVSP without informing him of the risk of contracting Valley Fever and
17 without protecting him from contracting Valley Fever. Both claims allege violations of the
18 Eighth Amendment and will be analyzed simultaneously thereunder.

19 The Eighth Amendment's prohibition of cruel and unusual punishment requires that
20 prison officials take reasonable measures for the safety of inmates. See Farmer v.
21 Brennan, 511 U.S. 825, 834 (1994). "[A] prison official cannot be found liable under the
22 Eighth Amendment for denying an inmate humane conditions of confinement unless the
23 official knows of and disregards an excessive risk to inmate health or safety." Farmer v.
24 Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). A plaintiff who
25
26
27

1 claims that the conditions of his confinement fall below the constitutional standard must
2 make two showings. “First, the plaintiff must make an ‘objective’ showing that the
3 deprivation was ‘sufficiently serious’ to form the basis for an Eighth Amendment violation.”
4 Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (citation omitted). “The Constitution
5 . . . ‘does not mandate comfortable prisons, and only those deprivations denying ‘the
6 minimal civilized measure of life’s necessities’ are sufficiently grave to form the basis of an
7 Eighth Amendment violation.” Wilson v. Seiter, 501 U.S. 294, 298 (1991) (citations
8 omitted). Second, the prisoner must make a “subjective” showing that prison officials
9 “acted with the requisite culpable intent such that the infliction of pain is ‘unnecessary and
10 wanton.’ In prison conditions cases, prison officials act with the requisite culpable intent
11 when they act with deliberate indifference to the inmate’s suffering.” Anderson v. County
12 of Kern, 45 F.3d 1310, 1312 (9th Cir. 1995).

15 Plaintiff alleges that Defendants knew or should have known of the risk of his
16 contracting Valley Fever at PVSP and yet failed to protect him from that risk in violation
17 of the Eighth Amendment. As Plaintiff was informed in the Court’s prior Screening Order,
18 courts of this district have repeatedly found such claims to be insufficient. “[T]o the extent
19 that Plaintiff is attempting to pursue an Eighth Amendment claim for the mere fact that he
20 was confined in a location where Valley Fever spores existed which caused him to contract
21 Valley Fever, he is advised that no courts have held that exposure to Valley Fever spores
22 presents an excessive risk to inmate health.” King v. Avenal State Prison, 2009 WL
23 546212, *4 (E.D. Cal., Mar. 4, 2009); see also Tholmer v. Yates, 2009 WL 174162, *3 (E.D.
24 Cal., Jan. 26, 2009) (“To the extent Plaintiff seeks to raise an Eighth Amendment challenge
25 to the general conditions of confinement at PVSP, Plaintiff fails to allege facts that indicate
26
27

1 Defendants are responsible for the conditions of which Plaintiff complains,” such as “acts
2 or omissions of Defendants have caused an excessively high risk of contracting valley
3 fever at PVSP”).

4 Plaintiff’s pleading does not support a claim of deliberate indifference to his health
5 risks. As he previously was advised, his bare, conclusory statement that Defendants knew
6 or should have known of the risk posed by Valley Fever adds little. As noted above,
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements, do not suffice.” Iqbal, 129 S.Ct. At 1949.

9
10 Plaintiff was advised of these deficiencies in his Complaint and of the pleading
11 standards necessary to correct the deficiencies. He was given an opportunity to correct
12 them. He has failed to do so. Further amendment of this claim would be futile.

13
14 Similarly, with regard to the incident in the vehicle, the Court previously notified
15 Plaintiff that he needed to include additional facts to state a claim and needed to identify
16 a particular Defendant liable for the alleged wrongs. (ECF No. 11 at 6.) He has failed to
17 do either. Thus, the Court finds that amendment of this claim also would be futile.

18
19 In short, Plaintiff was notified of relevant legal standards and of the deficiencies in
20 his prior complaint. His First Amended Complaint contains nothing materially different.
21 The First Amended Complaint again fails to state a claim. Accordingly, the Court will
22 recommend that this claim be dismissed without further leave to amend.

23 2. Medical Care Claim

24 Plaintiff alleges that despite his repeated requests, Defendants failed to provide
25 adequate medical care for four months.

26 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
27

1 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439
2 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The
3 two part test for deliberate indifference requires the plaintiff to show (1) “a serious medical
4 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
5 significant injury or the unnecessary and wanton infliction of pain,” and (2) “the defendant’s
6 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
7 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,
8 WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (internal quotations
9 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
10 prisoner’s pain or possible medical need, and harm caused by the indifference.” Jett, 439
11 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In order to state a claim for violation of
12 the Eighth Amendment, a plaintiff must allege sufficient facts to support a claim that the
13 named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . .
14 . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

15
16
17 In its prior Screening Order, the Court informed Plaintiff that, to state an such a
18 medical care claim, he needed to provide additional facts about his condition and how it
19 was harmed by the four month delay in treatment. (ECF No. 11 at 8.)

20
21 Plaintiff alleges that he was treated for two weeks for pneumonia, and then did not
22 treated again until four months afterward. However, he has failed to describe any harm
23 suffered as a result of the alleged delay in treatment. He fails to allege what he sought
24 treatment for during this period. It is not clear whether he had been diagnosed with Valley
25 Fever yet. In what appears to be an aside, he states that he suffered eye problems, but
26 he does not state how or if these problems were related to his other conditions, whether
27

1 he requested treatment for his eyes, or whether he received treatment for his eyes. Again,
2 Plaintiff's First Amended Complaint does little more than assert that he was treated in a
3 way he believes inadequate. That is insufficient to state a constitutional violation. Sanches
4 v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Plaintiff again fails to set forth facts sufficient
5 to show that Defendants were deliberately indifferent to a serious medical condition.
6

7 As to the incident in the vehicle, Plaintiff was urged by the Court's Screening Order
8 to be more specific and include more facts. (ECF No. 11 at 8-9.) He failed to do so. His
9 allegations that he became sick while in a van, passed out, fell, and injured himself are
10 insufficient to state a claim for deliberate indifference. Additionally, Plaintiff fails to attribute
11 responsibility for this event to any named Defendant.
12

13 Thus, despite having been notified of the deficiencies in his prior complaint and
14 relevant legal standards relating thereto, Plaintiff's First Amended Complaint sets forth
15 allegations similar, and similarly deficient, to those contained in his previous complaint.
16 Plaintiff's First Amended Complaint again fails to state a claim. The Court recommends
17 that this claim be dismissed without further leave to amend.
18

19 **B. Denial of Access to Courts**

20 Plaintiff alleges that he is being denied access to the courts.

21 Inmates have a fundamental constitutional right of access to the courts. Lewis v.
22 Casey, 518 U.S. 343, 346 (1996). However, the right is limited to direct criminal appeals,
23 habeas petitions, and civil rights actions. Id. at 354. Claims for denial of access to the
24 courts may arise from the frustration or hindrance of "a litigating opportunity yet to be
25 gained" (forward-looking access claim) or from the loss of a meritorious suit that cannot
26 now be tried (backward-looking claim). Christopher v. Harbury, 536 U.S. 403, 412-15
27

1 (2002). Forward-looking claims allege “that systemic official action frustrates a plaintiff or
2 plaintiff class in preparing and filing suits at the present time.” Christopher, 536 U.S. at
3 413. In these cases that have yet to be litigated, “the justification for recognizing that
4 [forward-looking] claim, is to place the plaintiff in a position to pursue a separate claim for
5 relief once the frustrating condition has been removed.” Id. As part of the requirement to
6 plead an injury, a plaintiff must allege that “a nonfrivolous legal claim had been frustrated
7 or was being impeded.” Lewis, 518 U.S. at 353; see also Christopher, 536 U.S. at 415.
8 Simply stating that a claim is “nonfrivolous” due to the action of a government official will
9 not satisfy the actual injury requirement. Christopher, 536 U.S. at 415. Rather, the
10 nonfrivolous “underlying cause of action and its lost remedy must be addressed by
11 allegations in the complaint sufficient to give fair notice to a defendant.” Id. at 416. The
12 plaintiff must describe this “predicate claim . . . well enough to apply the ‘nonfrivolous’ test
13 and to show that the ‘arguable’ nature of the underlying claim is more than hope.” Id. The
14 complaint should “state the underlying claim in accordance with Federal Rule of Civil
15 Procedure 8(a) just as if it were being independently pursued, and a like plain statement
16 should describe any remedy available under the access claim and presently unique to it.”
17 Id. at 417-418; see Lewis, 518 U.S. at 353 n. 3 (“Depriving someone of an arguable
18 (though not yet established) claim inflicts actual injury because it deprives him of
19 something of value-arguable claims are settled, bought and sold. Depriving someone of
20 a frivolous claim, on the other hand, deprives him of nothing at all, except perhaps the
21 punishment of Rule 11 sanctions.”).

22 In the prior Screening Order, Plaintiff was informed that he needed to specifically
23 describe the claim he was pursuing so that the Court could determine if it was a viable
24
25
26
27

1 claim. His Amended Complaint fails to describe in any detail the claims or grievances he
2 was frustrated in pursuing and fails to attribute wrongful conduct to a named Defendant.⁴

3 Plaintiff has again failed to state a claim, and for the reasons stated above, the
4 Court will recommend that this claim be dismissed without further leave to amend.
5

6 **C. Inmate Appeals Process**

7 Again, Plaintiff appears to be alleging that Defendants failed to respond properly to
8 his inmate appeals.

9 As noted in the Screening Order, Defendants' actions in responding to Plaintiff's
10 appeals alone cannot give rise to any claims for relief under Section 1983 for violation of
11 due process. "[A prison] grievance procedure is a procedural right only, it does not confer
12 any substantive right upon the inmates." Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.
13 1993) (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez
14 v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals
15 because no entitlement to a specific grievance procedure); Massey v. Helman, 259 F.3d
16 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on
17 prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). "Hence, it does not give rise
18 to a protected liberty interest requiring the procedural protections envisioned by the
19 Fourteenth Amendment." Azeez, 568 F. Supp. at 10; Spencer v. Moore, 638 F. Supp. 315,
20 316 (E.D. Mo. 1986). Actions in reviewing a prisoner's administrative appeal cannot serve
21 as the basis for liability under a Section 1983 action. Buckley, 997 F.2d at 495.
22
23
24

25
26 ⁴ As noted above, Plaintiff has named fewer Defendants in this Complaint. The only Defendants
27 named in the Amended Complaint are Woodford and Yates. Plaintiff fails to attribute any particular
conduct to either of these Defendants.

1 Thus, since he has neither a liberty interest, nor a substantive right in inmate
2 appeals, Plaintiff fails to state a claim in this regard. The Court will recommend that this
3 claim be dismissed without further leave to amend.

4
5 **V. CONCLUSION AND ORDER**

6 The Court finds that Plaintiff's First Amended Complaint fails to state any Section
7 1983 claims upon which relief may be granted against the named Defendants. Under Rule
8 15(a) of the Federal Rules of Civil Procedure, leave to amend "shall be freely given when
9 justice so requires." In addition, "[l]eave to amend should be granted if it appears at all
10 possible that the plaintiff can correct the defect." Lopez v. Smith, 203 F.3d 1122, 1130 (9th
11 Cir. 2000) (internal citations omitted). However, in this action, Plaintiff has filed two
12 complaints and received substantial guidance from the Court in its Screening Order. (ECF
13 Nos. 1, 11, & 16.) Even after receiving the Court's guidance, Plaintiff failed to make any
14 alterations or to include additional facts to address the noted deficiencies. Because of this,
15 the Court finds that the deficiencies outlined above are not capable of being cured by
16 amendment, and therefore recommends that further leave to amend not be granted. 28
17 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
18

19
20 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that this
21 action be DISMISSED in its entirety, WITH PREJUDICE, for failure to state a claim upon
22 which relief may be granted.

23 These Findings and Recommendation will be submitted to the United State District
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l).
25 Within thirty (30) days after being served with these Findings and Recommendation,
26 Plaintiff may file written objections with the Court. The document should be captioned
27

1 "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that
2 failure to file objections within the specified time may waive the right to appeal the District
3 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
4

5
6 IT IS SO ORDERED.

7 Dated: February 23, 2011

/s/ Michael J. Seng
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27