

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONEY LYNCH,

Plaintiff,

vs.

WARDEN OF PLEASANT VALLEY STATE
PRISON, et al.,

Defendants.

1:09-cv-02097-AWI-GSA-PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 40.)

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY
BE GRANTED UNDER SECTION 1983

ORDER THAT DISMISSAL IS SUBJECT
TO 28 U.S.C. § 1915(G)

ORDER FOR CLERK TO CLOSE CASE

Anthony Lynch (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 22, 2013, [findings and recommendations](#) were entered, recommending that this action be dismissed based on plaintiff’s failure to state a claim upon which relief may be granted under §1983. The findings and recommendations noted that Plaintiffs claims under the Fourteenth Amendment are cognizable under the Eighth Amendment, and that the claims alleged under the Eighth Amendment fail to state a claim upon which relief can be granted. Of

1 significance, the findings and recommendations noted that Plaintiffs Second Amended
2 Complaint (“SAC”) “is devoid of any factual allegations supporting a claim that any of the
3 individual prison officials knowingly disregarded a substantial risk of harm to his health or
4 safety.” Doc. # 40 at 5:14-16. In addition, the findings and recommendations noted that the
5 “bare fact that Plaintiff contracted Valley Fever [does not] give rise to cognizable claim.” Doc.
6 # 40 at 5:19-20 (citing Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). On July 3,
7 2014, plaintiff filed [objections](#) to the findings and recommendations. (Doc. 57.) Plaintiff’s
8 objections to the F&R’s provide an explanation of the relationship of the Defendant parties to
9 the administration of policies and procedures at Pleasant Valley State Prison where Plaintiff
10 alleges he contracted Valley Fever. However, Plaintiff’s opposition merely restates his
11 conclusory allegations that the Defendants failed to provide appropriate information or medical
12 monitoring to prevent him from acquiring the disease. As noted in the findings and
13 recommendations, the fact that Plaintiff acquired a disease that is endemic to the environment
14 in which a prison is situated does not give rise to a cognizable claim. There is no claim or
15 evidence alleged that any act by Defendants caused Plaintiff to contract the disease, nor is any
16 evidence alleged that would support the contention that Defendants’ inactions resulted in an
17 outcome that would have been otherwise avoided.

18 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
19 court has conducted a de novo review of this case. Having carefully reviewed the entire file,
20 including plaintiff’s objections, the court finds the findings and recommendations to be
21 supported by the record and proper analysis.

22 Accordingly, THE COURT HEREBY ORDERS that:

- 23 1. The Findings and Recommendations issued by the Magistrate Judge on April 22,
24 2013, are adopted in full;
- 25 2. This action is dismissed, with prejudice, based on plaintiff’s failure to state a
26 claim upon which relief may be granted under § 1983;
- 27 3. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. §
28 1915(g). See Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and

1 4. The Clerk of Court is directed to close this case.

2
3 IT IS SO ORDERED.

4 Dated: February 27, 2015



5 SENIOR DISTRICT JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28