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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUBEN D. AYALA,

CASE NO. 1:10-cv-00050-MJS (PC)

Plaintiff,

ORDER DISMISSING PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A
COGNIZABLE CLAIM

v.

JAMES A. YATES, et al.,

(ECF No. 1)

Defendants.

CLERK SHALL CLOSE THE CASE

SCREENING ORDER

I. PROCEDURAL HISTORY

On January 11, 2010, Plaintiff Ruben D. Ayala, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff consented to Magistrate Judge jurisdiction. (ECF No. 7.) Plaintiff's Complaint is now before the Court for screening.

II. SCREENING REQUIREMENT

1 The Court is required to screen complaints brought by prisoners seeking relief
2 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
3 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
4 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which
5 relief may be granted, or that seek monetary relief from a defendant who is immune from
6 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
7 thereof, that may have been paid, the court shall dismiss the case at any time if the court
8 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
9 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

11 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges,
12 or immunities secured by the Constitution and laws’ of the United States.” Wilder v.
13 Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983
14 is not itself a source of substantive rights, but merely provides a method for vindicating
15 federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

17 **III. SUMMARY OF COMPLAINT**

18 The Complaint alleges the following named Defendants violated Plaintiff’s
19 constitutional rights: (1) James A. Yates, Warden, Pleasant Valley State Prison (“PVSP”);
20 (2) Matthew Cate, Director/Secretary, California Department of Corrections (“CDC”); (3)
21 Susan Hubbard, Assistant Director/Secretary, CDC; (4) M.E. Spearman, Associate
22 Warden, PVSP; (5) Mattingly, Assistant Warden, PVSP; and (6) Captain Walker, PVSP.

24 Plaintiff alleges the following:

25 Plaintiff entered CDC on July 20, 2005 and in his initial examination was found to
26 be in good health and not afflicted with Valley Fever. (Compl. at 10, 11.) On December
27

1 8, 2008, Plaintiff was transferred to PVSP. (Id. at 11.) PVSP has been designated as
2 hyper-endemic for Valley Fever infection and has dramatically higher rates of infection than
3 other penal institutions. (Id. at 9.) In February 2009 Plaintiff began experiencing flu-like
4 symptoms. (Id. at 11.) His condition worsened and he was prescribed Diflucan, which is
5 commonly used to treat Valley Fever. (Id. at 12, 13.) Plaintiff contracted Valley Fever and
6 the effects of the disease and treatment have ruined his health. (Id. at 19, 20.)

7
8 The Defendants were aware of the risk of contracting Valley Fever and did not act
9 to mitigate the risk. The failure to take steps to reduce the risk of infection violated
10 Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment. (Id. at
11 20, 21.)

12 **IV. ANALYSIS**

13 To state a claim under Section 1983, a plaintiff must allege two essential elements:
14 (1) that a right secured by the Constitution or laws of the United States was violated and
15 (2) that the alleged violation was committed by a person acting under the color of state law.
16 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243,
17 1245 (9th Cir. 1987).

18
19 A complaint must contain "a short and plain statement of the claim showing that the
20 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
21 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by
22 mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
23 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
24 forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its
25 face.'" Id. Facial plausibility demands more than the mere possibility that a defendant
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1 committed misconduct and, while factual allegations are accepted as true, legal
2 conclusions are not. Id. at 1949-50.

3 Plaintiff alleges the Defendants violated his Eighth Amendment rights by exposing
4 him to an area endemic with Valley Fever without safeguards against infection.

5
6 The Eighth Amendment prohibits the imposition of cruel and unusual punishment.
7 Estelle v. Gamble, 429 U.S. 97, 102 (1976). A prison official violates the Eighth
8 Amendment only when two requirements are met: (1) the objective requirement that the
9 deprivation is “sufficiently serious,” and (2) the subjective requirement that the prison
10 official has a “sufficiently culpable state of mind.” Farmer v. Brennan, 511 U.S. 825, 834
11 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)).

12
13 The objective requirement that the deprivation be “sufficiently serious” is met where
14 the prison official's act or omission results in the denial of “the minimal civilized measure
15 of life's necessities.” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The
16 subjective requirement that the prison official has a “sufficiently culpable state of mind” is
17 met where the prison official acts with “deliberate indifference” to inmate health or safety.
18 Id. (quoting Wilson, 501 U.S. at 302-303). A prison official acts with deliberate indifference
19 when he or she “knows of and disregards an excessive risk to inmate health or safety.” Id.
20 at 837. “[T]he official must both be aware of facts from which the inference could be drawn
21 that a substantial risk of serious harm exists, and he must also draw the inference.” Id.

22
23 Plaintiff alleges that Defendants were aware that PVSP was endemic to the
24 contraction of Valley Fever and did nothing to reduce the risk.

25
26 The courts of this district have found such claims to be insufficient. Claims based
27 on Valley Fever exposure and contraction fail to satisfy the first prong of the Eighth

1 Amendment analysis, i.e., that the deprivation is sufficiently serious. “[T]o the extent that
2 Plaintiff is attempting to pursue an Eighth Amendment claim for the mere fact that he was
3 confined in a location where Valley Fever spores existed which caused him to contract
4 Valley Fever, he is advised that no courts have held that exposure to Valley Fever spores
5 presents an excessive risk to inmate health.” Cooper v. Yates, 2010 WL 4924748, *2
6 (E.D. Cal. Nov. 29, 2010) (citing King v. Avenal State Prison, 2009 WL 546212, *4 (E.D.
7 Cal. Mar. 4, 2009)).

8
9 Plaintiff’s claim that the Defendants are liable because they were aware of the risk
10 and did not act to mitigate the likelihood of infection does not state an actionable claim.
11 Defendants are not alleged to be responsible for the prevalence of Valley Fever at PVSP.
12 Exposure to the disease at PVSP is not in and of itself an excessive risk to inmate health;
13 Defendants had no duty to take steps to reduce the risk. Tholmer v. Yates, 2009 WL
14 174162, *3 (E.D. Cal. Jan. 26, 2009) (“Plaintiff fails to allege facts that indicate Defendants
15 are responsible for the conditions of which Plaintiff complains,” such as “acts or omissions
16 of Defendants have caused an excessively high risk of contracting valley fever at PVSP”).
17 Thus, Counts One and Two fail to state a claim upon which relief could be granted.
18

19
20 Plaintiff cannot state a cognizable claim based on the fact that he was exposed to
21 Valley Fever at PVSP. Thus, an opportunity to amend would not be fruitful. Plaintiff’s
22 claim is dismissed with prejudice.

23 **V. CONCLUSION AND ORDER**

24 Plaintiff’s Complaint does not state a cognizable claim.

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Accordingly, it is HEREBY ORDERED that:

This action be dismissed with prejudice for failure to state a claim under Section 1983.

IT IS SO ORDERED.

Dated: September 27, 2011
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/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE