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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RODNEY SMITH,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

CASE NO. 1:10-cv-01088 AWI GSA PC

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO FILE AMENDED COMPLAINT  
WITHIN THIRTY DAYS

(ECF No. 1)

**Screening Order**

**I. Screening Requirement**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis 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.

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 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
4 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 11 **II. Plaintiff’s Claims**

12 The events at issue in this action occurred at Pleasant Valley State Prison (PVSP) in  
13 Coalinga, where Plaintiff was housed at the time. Plaintiff is currently housed at Kern Valley State  
14 Prison in Delano. Plaintiff names as defendants the following individuals employed by the  
15 California Department of Corrections and Rehabilitation (CDCR): Matthew Cate, Secretary of  
16 Corrections and Rehabilitation; Former Secretary James Tilton; James Yates, Warden at PVSP; F.  
17 Igbiosa, Chief Medical Officer at PVSP.

18 Plaintiff was received into CDCR custody in 1986. Plaintiff was “perfectly healthy,” and was  
19 not suffering from any diseases. (Compl. ¶ 27.) In August of 2006, Plaintiff was transferred to  
20 PVSP. In November of 2007, Plaintiff suffered from flu-like symptoms such as sore throat,  
21 persistent cough, chills and night sweats. These symptoms persisted for a month, then stopped. In  
22 February of 2008, Plaintiff requested to be tested for valley fever. Plaintiff had a chest x-ray, which  
23 showed no signs of lung problems. A blood test for valley fever came back negative.

24 On June 13, 2008, Plaintiff was seen at the PVSP medical clinic. Although an x-ray did not  
25 indicate any signs of lung problems, Plaintiff was prescribed Fluconazole and Vitamin C, the  
26 standard treatment for valley fever. On August 6, 2008, and December 30, 2008, Plaintiff tested  
27 positive for valley fever. Plaintiff alleges that x-rays taken in March and November 2009 and March  
28 2010 revealed a lesion in the base of his right lung, which did not appear until after Plaintiff

1 contracted valley fever. Plaintiff alleges “that to this day, Plaintiff cannot perform any strenuous  
2 exercise without experiencing shortness of breath and occasional chest pain.” (Compl. ¶ 33.)

3 **A. Valley Fever**

4 Plaintiff alleges that he would not have contracted valley fever had he not been transferred  
5 to PVSP. “[T]o the extent that Plaintiff is attempting to pursue an Eighth Amendment claim for the  
6 mere fact that he was confined in a location where Valley Fever spores existed which caused him  
7 to contract Valley Fever, he is advised that no courts have held that exposure to Valley Fever spores  
8 presents an excessive risk to inmate health.” King v. Avenal State Prison, 2009 WL 546212, \*4  
9 (E.D. Cal., Mar 4, 2009); see also Tholmer v. Yates, 2009 WL 174162, \*3 (E.D. Cal. Jan. 26,  
10 2009). “[T]o the extent that Plaintiff is attempting to pursue an Eighth Amendment claim for the mere  
11 fact that he was confined in a location where Valley Fever spores existed which caused him to  
12 contract Valley Fever, he is advised that no courts have held that exposure to Valley Fever spores  
13 presents an excessive risk to inmate health.” King v. Avenal State Prison, 2009 WL 546212, \*4  
14 (E.D. Cal., Mar 4, 2009); see also Tholmer v. Yates, 2009 WL 174162, \*3 (E.D. Cal. Jan. 26, 2009).  
15 Defendants cannot, therefore, be held liable for subjecting Plaintiff to dangerous conditions, or for  
16 a failure to protect Plaintiff.

17 **B. Eighth Amendment Medical Care Claim**

18 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
19 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096  
20 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part  
21 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
22 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or  
23 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was  
24 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059  
25 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
26 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a  
27 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused  
28 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Where a prisoner is alleging a delay

1 in receiving medical treatment, the delay must have led to further harm in order for the prisoner to  
2 make a claim of deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely  
3 v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985)).

4 In order to hold any of the named defendants liable under the Eighth Amendment, Plaintiff  
5 must alleges some facts indicating that they knew of and disregarded a serious risk to Plaintiff's  
6 health. As noted, Defendants can not be held liable merely because Plaintiff was housed at PVSP.  
7 Plaintiff must allege some facts indicating that the medical response to his condition was deliberately  
8 indifferent as that term is defined above. Plaintiff has not alleged any such facts. This claim should  
9 therefore be dismissed.

### 10 **III. Conclusion and Order**

11 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon  
12 which relief may be granted under section 1983. The Court will provide Plaintiff with the  
13 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.  
14 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not  
15 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,  
16 507 F.3d at 607 (no "buckshot" complaints).

17 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
18 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,  
19 Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must be  
20 [sufficient] to raise a right to relief above the speculative level . . . ." Bell Atlantic Corp. v.  
21 Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

22 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
23 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
24 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded  
25 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original  
26 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing  
27 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
28 1474.

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Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an amended complaint;
- 4. Plaintiff may not add any new, unrelated claims to this action via his amended complaint and any attempt to do so will result in an order striking the amended complaint; and
- 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

**Dated: November 17, 2011**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE