

Original

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In propria Persona

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY MILES,
PLAINTIFF,
V.
MATTHEW CATE, SECRETARY OF THE
California Department of
Corrections and Rehabilitation;
JAMES YATES, Warden of
Pleasant Valley State Prison;
FELIX IGBINOSA, Chief Medical
Officer; MARIA KOZIOŁ, Nurse Practitioner;
CHRIS YUN, SUPERVISOR of Pharmacy.
DEFENDANTS.

Case No.#1: 10-cv-02055-MJS (PC)
Amended Complaint, Declaratory
Relief And Monetary Damages
(42 U.S.C. § 1983 Civil Rights
Action)

DEMAND FOR JURY TRIAL

(PC) Miles v. Cates et al

Doc. 9 Att. 2

I. INTRODUCTION

1. This action concerns and brought under 42 U.S.C. § 1983 to redress the conditions of confinement at pleasant valley state prison alleging, inter alia, violations of plaintiff's right to be free from cruel and unusual punishment protected by the Eighth Amendment of the U.S. Constitution; and

under the California Constitution.

2. Plaintiff have included Tort State Law claims of negligence and premises liability, pursuant to the mandatory duties of Cal.Gov.Code, §815.6, which gives rise to Title 15 of the California Code of Regulation, that establishes minimum conditions of confinement. Specifically, prison officials (defendants' in this action) are knowingly operating, and have facilitated conditions at the prison posing an excessive risk to inmates (including plaintiff) health and safety.

3. While aware of the extraordinarily high rate amongst PVSP inmates, prison officials failed to provide the plaintiff with environmental safeguards and controls, as well as other adequate protections recommended by leading health experts, the Department of Health Services, including the Grand Jury of Fresno County, on the subject of valley fever.

4. Defendants' have been, and continue to, maintain an environment that poses an unreasonable high risk of danger to the health and safety of inmates housed at PVSP; and, as a proximate cause, plaintiff has suffered an injury—(disease).

II. JURISDICTION & VENUE

5. This court has Federal question Jurisdiction pursuant to 28 U.S.C. §1331 and 1343. Pursuant to 28 U.S.C. §1367, the plaintiff also invokes this court's supplemental jurisdiction over the state law claims presented herein.

6. The claims for declaratory and injunctive relief are authorized by 28 U.S.C. §2201 and 2202.

7. Because a substantial portion of the events giving rise to this action that occurred in the City of Coalinga, located in Fresno County, of California; this action is properly brought in the Fresno Division, in accordance with Rule 3-120(d) of the Local Rules of the Eastern District of California.

III. PARTIES

8. Plaintiff ANTHONY MILES is a state prisoner of California, currently incarcerated by the California Department of Corrections (CDCR) at pleasant valley prison in Fresno, California. At all times mentioned in this complaint, was a prisoner within the CDCR system.

9. Defendant MATTHEW CATE is Secretary of the CDCR. The Secretary of CDCR is the Chief Administrative Officer of CDCR, and is legally responsible for the supervision, lawful promulgation of all CDCR regulations, management and control of PVSP and all other state prisons, as well as for the care, custody, treatment, training, discipline and employment of persons confined at PVSP and all other state prisons. He is ultimately responsible for not intervening into the conditions posing an excessive risk to plaintiff's health and safety, at pleasant valley state prison. He is sued in his individual supervisory capacity, in the alternative, official capacity.

10. Defendant JAMES YATES was at all times mentioned herein the Warden of PVSP. Defendant Yates had the duty and responsibility for the supervision of subordinate personnel, discipline and policy of PVSP, to enforce all orders and regulations by CDCR, as well as for the safety and protection of all inmates at that institution, including any and all medical treatments, testing, and emergencies. He directly participated in the events giving rise to this action. He is sued in his individual capacity.

11. Defendant FELIX IGBINOSA is at all times mentioned, the Health Care Manager here at PVSP. Defendant Igbinosa is administered with the duty and responsibility of supervising, directing, and/or training of the medical staff at PVSP. This included, but not limited to, the delivery of health care services and the management of health care programs, involving the determination of

proper medical care for inmates, including, but not limited to, having authority to order and approve medical tests and treatments to be done; and, having authority to assure that inmates who are transferred to other institutions receive continuing proper medical care. He directly participated in the events giving rise to this action. He is sued in his individual capacity.

12. Defendant MARIA KOZIOL is, and at all times relevant herein was employed by the CDCR as a Nurse Practitioner(NP) at PVSP. Defendant KOZIOL is a properly trained and licensed nurse practitioner who is and been responsible for the medical care of all inmates at PVSP. This includes, but is not limited to supervision, direction, and/or proper training of medical staff at PVSP in the delivery of health care services and the management of health care programs. She is sued in her individual capacity.

13. Defendant CHRIS YUN is, and at all times relevant herein was employed by the CDCR as a pharmacist at PVSP. This defendant was responsible for the timely administration and delivery of prescribed medication to the Alpha facility medical clinic at PVSP. he is the supervisor responsible for delivery. He is sued in his individual capacity.

14. At all times relevant to the events described herein, all the defendants' have acted **under color of state law**. Defendants' Matthew Cate, James Yates, Felix Igbinosa, Chris Yun, and Maria Koziol continue to act under color of state law.

IV. FACTUAL ALLEGATIONS

EXPOSURE TO DANGEROUS AND HAZARDOUS CONDITIONS OF CONFINEMENT

15. Plaintiff was transferred to pleasant valley state prison on January 15, 2009, from pelican bay state prison.

16. Between the months of March and April of 09, plaintiff began learning via the inmate population and prison officials, that many inmates (including correctional staff) at the prison had contracted a disease medically known as **Coccidioidomycosis** (valley fever).

17. After learning that PVSP constituted an hyperendemic area (primary area where the contaminated soil is concentrated), plaintiff contacted private and public disease control organizations to learn more about the deadly disease, as well as its long and short term effects once infected.

18. In October, 2009, after suffering from severe chest pains, chills, night sweats, joint pains, weight loss, and fatigue, plaintiff was given a chest X-ray examination that revealed he had contracted **Cocci-Pneumonia**, and was taken to Coalinga's Regional Medical Center for treatment.

A Brief History of Valley Fever Exposure at PVSP

19. Documents obtained by plaintiff revealed that in 2002, 47 cases of valley fever infection were diagnosed at PVSP.

The number of diagnosed cases for the following years preceded plaintiff's exposure; and in 2004 there were 70 cases; 2005, 150 cases; 2006, 520 cases. this substantial risk to inmates health and safety has several causes.

20. *Coccidioides Immitis* has a complex life cycle once infected. Existing in the soil throughout the San Joaquin Valley, it grows as a mold with long filaments that break off into airborne "spores" when the soil is disturbed. Once inside the lungs, the spores reproduce, perpetuating the cycle of the disease.

21. Reports indicate that construction work near and around the prison is a contributing cause in airborne spores affecting inmates in the prison.

22. A major contributing factor in inmates contracting the disease, are

internal conditions inside the prison. Such as, loose dirt disturbed by inmate high activity-yard and recreation activity, without any such governing policy, regulation, rule, or operational procedures to minimize exposure.

23. According to the Department of Health Services, outside doctors, and the Center of Disease Control on valley fever, inmates most at risk of contracting the disease with serious consequences are African-Americans, and Asians; especially African-Americans who're not indigenous and entering the area for the first time.

24. Upon information and belief, in 2006 California reported approximately 3,000 cases of valley fever infection in the general populations. And of those cases, 520 were inmates housed at PVSP. Since that time, over 1,000 PVSP inmates have contracted the disease, some developing chronic and/or the disseminated forms, requiring multiple hospitalizations.

25. There is no cure or vaccine for valley fever, though the disease is treatable and can be contained with anti-fungal medications. However, these medicines are extremely toxic and are known to cause serious life-threatening side-effects.

26. Due to the lack of initiating an adequate policy on the part of defendants' excluding inmates with asthema and diabetes, while not minimizing excessive risk factors threatening inmates not indigenous to the area—African-Americans in particular—cases of valley fever continue to proliferate at the prison—with some cases (like plaintiff's) resulting in serious and deadly debilitation.

Plaintiff's valley fever infection, injuries, and treatment

27. Prior to transferring to PVSP, plaintiff did not have any symptoms of, nor diagnosed with, valley fever or any other known disease.

28. On October 21, 2009, after falling ill exhibiting symptoms of valley fever, I was taken to CTC (Central Treatment Center) for a chest X-ray, revealing that Pneumonia (possible Cocci) was present in the right lungs.

29. Plaintiff was rushed via ambulance to "Coaling Regional Medical Center" in Coalinga, California; where it was determined that plaintiff's lungs were infected with Cocci-Pneumonia (a fungal lung infection disease) known as valley fever.

30. After being treated at the hospital with liquid anti-fungal and bacterial medications through IV, for chills, weight loss, night sweats, high fever, chest pains, headaches, fatigue, hypertension, cough, and shortness of breath, plaintiff was subsequently discharged on 10/27/09 and sent back to the prison, with instructions for follow-up recommended treatment.

31. Due to the disease and the toxicity of daily medication treatments of four(4) 200mg of Fluconazole and one(1) 500mg of vitamin C, from 11/11/09 to 2/19/10, plaintiff began experiencing on-going weight loss, abdominal and stomach pain, as well contracted a urinary tract infection; which was reported to medical staff on numerous occasions.

32. On June 1, 2010, plaintiff submitted a medical slip, complaining about having respiratory complications due to the valley fever disease. After being seen by Dr. R. Das (PA), he prescribed a Ventolin HFA 90 MCG inhaler, and ordered for a chest X-ray to be conducted to determine if there were any new changes in plaintiff's health status.

33. On June 10, 2010, doctors at CTC determined after viewing plaintiff's previous chest X-rays, along with one taken that day, that the disease had progressed while becoming resistant to the Diflucan medications, and was subsequently taken to Bakersfield Mercy Hospital for immediate treatment.

34. While at mercy Hospital in Bakersfield, plaintiff was treated with a highly toxic medication drug, known as **Amphoterician B** through an IV, to retract the spread of the disease.

35. On June 10, 2010, while at Mercy Hospital plaintiff was given a CT scan, which not only revealed pulmonary Cocci infiltration in the right middle lobe lung, but also showed extensive permanent scarring to the lungs.

36. On August 2, 2010, after nearly two months of being treated with Amphoterician B (an anti-fungal medication), I was sent to Corcoran Hospital for a follow-up Amphoterician B treatment, and while there, plaintiff fell severely ill with headaches, nausea, vomiting (occurring 4 or 5 times a day), as well as stomach and abdominal pains.

37. On August 7, 2010, plaintiff was then transferred to San Joaquin Medical Center in Bakersfield, to be treated for abdominal and kidney failure infection, along with other serious illnesses.

38. While at San Joaquin Medical Center, on August 9, 2010 I was diagnosed as having and suffering from acute renal failure, Hypokalemia, Pulmonary Coccidioides, persistent right middle infiltration, Hypertension, and Anemia.

39. On August 11, 2010, plaintiff returned to the prison permanently subjected to a walking cane, and on Fluconzole, Lisinopril 20mg tablets, and Klor-Con 10 MEQ tablets medications...in addition to suffering from respiratory complications.

Denial/Delay of Medical Care

40. On 11/11/09, plaintiff filled out a "health care slip" (7362), complaining about being weak after losing over 25 pounds as a result of contracting valley fever, and requested to see a doctor for immediate treatment, to renew a nutritional drink that was cancelled after four days of consumption;

however, my request for treatment went unattended.

41. Days later, plaintiff not only began experiencing bowel movement abnormalities (with small amounts of blood in stool), but abdominal and stomach pains as well, at which times I submitted another health care slip dated 11/17//09, requesting to see immediately a doctor to treat existing serious medical conditions—resulting in no response from medical personnel.

42. After no response from medical, plaintiff filled out another health care slip dated 11/22/09, requesting that I see a doctor to treat the existing serious medical needs complained of before, and again, no response.

43. After plaintiff regained enough strength after contracting the disease and suffering from inadequate treatment, on 11/24/09 I filed an administrative appeal(602) alleging that defendants' **JAMES YATES**, **MATTHEW CATE**, and **FELIX IGBINOSA** subjected him to dangerous and hazardous conditions, resulting in plaintiff contracting a disease.

44. As a result of submitting numerous health care request slips (7362), on 12/9/09 (nearly one month later) plaintiff was seen by Maria Koziol(NP), who was responding to plaintiff's health care request slip submitted on 11/11/09.

45. Not only had the request slip she was responding to (11/11/09)explained my existing medical problems, but plaintiff also informed M. Koziol that I had been experiencing abdominal and stomach pain, peeling skin, weight deterioration, and diarrhea (with spots of blood in stool); all of which affected my daily activities as a result of contracting the disease, and requested immediate treatment.

46. During our interview, Maria Koziol (NP) explained that she couldn't administer the necessary pain medication treatment without being in possession of plaintiff's medical file,which she should have had prior to calling me in

her office.

47. After plaintiff explained that he was afraid that if his serious medical needs went unattended, his health could worsen; and she stated that: "as much as I could do under the circumstances, is recommend a urine, stool, and diagnostic testing." In addition, she recommended a three week follow-up to see another doctor to administer the needed pain medication—oppose to ordering the pain medication herself, or, in the alternative re-ducate plaintiff within a reasonable time to address his serious medical needs.

48. On 12/15/09, plaintiff filed an emergency medical administrative appeal (602) not only requesting immediate medical treatment complained of since 11/11/09, but against M. Koziol for "deliberate indifference" to plaintiff's serious medical needs.

49. After plaintiff's health care slip(s) continued to produce no results, including appeals, he wrote (12/22/09) the Chief Medical Officer (Felix Igbinosa) informing him that plaintiff was being denied medical treatment—by his subordinates—of serious medical needs, and requested that he exercise his supervisory authority to have plaintiff treated for existing pain complained of—"the letter was never responded to."

50. Beliving that the cause of my abdominal and stomach pain was linked to the valley fever and high blood pressure medication(s), Dr. David Rohrdanz (MD) cancelled those medications and ordered an alternative medication treatment he belived would prevent further pain and suffering.

51. On 1/12/10, plaintiff went to medical and completed a Lab blood draw responding to one of two medical ducats received on 1/11/10. And while awaiting, plaintiff's other ducat to see a doctor to address the denial/delay of medical treatment ordered 1/4/10, was cancelled and never renewed by medical personnel.

52. As a result of plaintiff not being treated (close to two months) for serious medical needs, on 1/15/10 he forwarded another letter to the Chief Medical Officer explaining the on-going problem with receiving medical treatment, and asked that he intervene—again, no response!

53. When plaintiff never received treatment ordered by Dr. David Rohrdanz dated 1/4/10, he submitted another health care slip (1/18/10) complaining about not being treated for existing abdominal and stomach pain, nor has he received any of Dr. D. Rohrdanz's ordered medications (valley fever, pain and Hypertension medications).

54. Responding to plaintiff's health care slip of 1/18/10, was the clinic's head Registered Nurse H. Ryan (RN) dated 1/27/10. And while acknowledging that the doctor's orders of 1/4/10 had not been administered, he assure plaintiff that he would again fax the orders.

55. After not receiving treatment medication assured on 1/27/10 by H. Ryan (RN), I filed an appeal against H. Ryan (believing at the time that he was responsible) and against Felix Igbinosa (CMO), alleging that they as well as other health care personnel staff (not excluding Maria Koziol or the supervisor of pharmacy) were being deliberate indifferent to plaintiff's serious medical needs.

56. On 2/18/10, plaintiff was seen (after complaining of blood in urine) by Doctor V. Jorbutr, who conducted a urinary stick test, and determined that plaintiff suffered possibly from a urinary track infection. Following her assessment, she advised plaintiff that he would be seeing another doctor within a few days.

57. On 2/19/10, plaintiff was seen by Maria Koziol, and further complained about experiencing excruciating pain, and not being treated for abdominal and

stomach pain complained of for close to three months; in addition to other physical ailments complained of since 11/11/09.

And while believing that plaintiff's abdominal and stomach pain derived from his urinary track infection, she ordered treatment medication and other diagnostic testing.

58. On 2/19/10, (the same day M. Koziol treated plaintiff's serious medical needs) I was interviewed by M. Koziol regarding plaintiff's grience (602) alleging the denial/delay of medical treatment, and while acknowledging that plaintiff did suffer from a urinary track infection, along with other physical illnesses, she responded at the formal level by acknowledging prior existing medical problems.

59. On 2/22/10, plaintiff received the medication to treat his valley fever disease, hypertension, urinary track infection, and the abdominal and stomach pain—which took nearly three months to treat.

Defendants' deliberate Indifference

60. As far back as 2002, defendants' **Matthew Cate, James Yates, and Felix Igbinosa** were aware of (whether directly or indirectly) the dangerous conditions, posing a substantial risk of serious damage to inmates present and future health at the prison.

61. Defendants' subjected plaintiff to cruel and unusual punishment and gross negligence, when they deprived plaintiff the right to be free from the exposure to hazardous and toxic environmental conditions facilitating the spread of the disease described herein the complaint.

This risk was longstanding, pervasive, well documented, and apparent to any knowledgeable observer.

62. The defendants' deliberate indifference to plaintiff being exposed to

asubstantial risk to his health and safety, was in one sense reflected by their concern for excluding "only" inmates documented as having serious underlying medical conditions likely to cause morbidity, facilitating the conditions likely to contract the disease at the disseminated stage or cause death; while failing to protect inmates (such as plaintiff) who health experts and officials deemed at high risk—inmates with weakened immune systems, those with asthma, and inmates not indigenous to the area (in particular African-Americans).

63. These illnesses were observed and/or reported to defendants' M. Cate, J. Yates, and Igbinoso through public reports, legislatures, State and County health Agencies, and administrative appeals and lawsuits.

64. Upon information and belief, on August 3, 2006, defendants' were aware that a CDCR memorandum was sent to all affected facilities entitled: "inmates patients at high risk of valley fever excluded from specific valley area institutions."

65. This memorandum stated, inter alia, that in "calender year 2005, two San Joaquin valley institutions identified significant increases in number of inmate-patients, with illnesses caused by Coccidioidomycosis (valley fever) organism with four inmate-patient deaths attributed to this disease."

66. Despite the Department of Health Service (DHS), Fresno County's Health Department Agency, and other health expert agencies analysis and recommendations, regarding inmates most affected by valley fever, defendant Matthew Cate as Secretary of CDCR inheriting the "clinical exclusion criteria" policies of 2006 and 2007 from his predecessors, not only ignored their analysis since office, but failed to reasonably act by not expanding the criteria to include inmates health officials deemed to be at greater risk at pleasant valley prison—potentially minimizing the threat or amount of people being infected.

67. Defendant Matthew Cate failed to exercise his supervisor authority over PVSP, to assure health experts recommended infectious disease control measures be put in place to minimize valley fever exposure at the prison. And since taking over as secretary of CDCR, M. Cate (after becoming aware of an on-going lack of environmental controls at the prison) have instead perpetuated a custom of inaction, in failing to assure that PVSP implement valley fever spores control measures/policies to minimize excessive exposure to spores.

68. Defendant James Yates as the Warden at pleasant valley state prison, were deliberate indifferent to recommendations provided by the Department of Health services(DHS) and Fresno's Grand Jury report of 2007-2008, that reported that the disease (valley fever) continue to be an on-going threat to inmates health; and recommended that the prison's administrative authority take not only practicable but inexpensive actions, to protect the inmate population against an excessive risk of exposure to an infectious disease (valley fever) on prison grounds.

69. It is further alleged that defendant James Yates participated directly in the on-going violations of plaintiff's right to be free from exposure to conditions posing an excessive risk to plaintiff's present and future health; and, not only were he given actual notice since taking office of conditions posing a substantial risk to inmates health, but failed to implement recommended institutional safeguards to minimize exposure to excessive spores. And instead, "made a deliberate choice to follow a course of inaction...from among various alternatives," and as a result, plaintiff suffered an injury.

70. These failures include, inter alia, (i) the failure to provide adequate notice to plaintiff, that he was residing in an hyperendemic area and infection was likely; (ii) the failure to provide adequate notice of

precautionary measures that could be taken to minimize the risk of exposure; (iii) the failure to use well-established dust abatement procedures to prevent or reduce the release of subsurface spores including ground cover; (iv) the failure to create and implement a policy to inform plaintiff and other prisoners of wind conditions prior to releasing for recreation yard and/or work; (v) the failure to water uncovered loose dirt prior to excavation work and/or prior to inmates recreational activities on uncovered loose dirt areas; (vi) the failure to provide plaintiff and others with a dust mask that would minimize inhalation of fine particulates.

71. Defendant Doctor Felix Igbiosa as Chief Medical Officer at pleasant valley prison, not only denied plaintiff's request for a transfer, and failed to overturn his subordinates denials, but failed to take reasonable measures to exclude at risk inmates (as myself) health experts deemed also at high risk.

72. Defendant acted with deliberate indifference, inter alia, to plaintiff's health and safety in his omission of creating a policy to pass out dust masks, and used the screen-out criteria from the November 20, 2007 memorandum to exclude plaintiff and denied his transfer, perpetuating a custom, or practice of subjecting plaintiff to unsafe and hazardous living conditions.

73. **Felix Igbiosa** (CMO) as the head supervisor of all medical personnel and treatment of inmates here at pleasant valley prison, was deliberate indifferent to plaintiff's serious medical needs, when he failed to intervene—after plaintiff forwarded two letters to him—while plaintiff was being denied/delayed medical treatment for a chronic disease contracted while at the prison.

74. Defendant Maria Koziol (FNP) was deliberate indifferent to plaintiff's serious medical needs, when she denied (using the excuse of not being in possession of his medical file) him treatment for an abdominal and stomach pain, suffered

as a result of contracting the valley fever disease.

75. Despite plaintiff's pleas for treatment, and after fully briefing Ms. Maria Koziol on my short history of inadequate treatment after contracting valley fever, she continued to advise plaintiff that it was nothing she could do under the circumstances—oppose to ordering diagnostic testing.

76. Upon information and belief, defendant Chris Yun was deliberate indifferent to plaintiff's serious medical needs, when he failed to fill plaintiff's prescription of valley fever, inter alia, and pain medication(s); in addition to other medications prescribed for his valley fever infection by Dr. David Rohrdanz on 1/4/10.

77. On 10/18/09, in fear of contracting the disease, plaintiff filed an administrative(602) appeal requesting an immediate transfer away from endemic areas where plaintiff would be exposed to the disease. The appeal was denied at the highest level of administrative review...including the prison.

78. Defendants' M. Cate, J. Yates, and F. Igbinosa not only involuntarily subjected plaintiff to hazardous conditions posing an excessive risk to his health, but failed to take reasonable measures to protect inmates (including plaintiff) not added to the "clinic exclusionary criteria" of 2006 and 2007, on prison grounds with infectious disease (valley fever) control measures to minimize exposure. And, as a result of defendants' deliberate indifference to plaintiff's health and safety needs, he contracted the disease and was subsequently hospitalized.

79. Upon information and belief, dozens of inmates filed administrative grievances and appeals going back as far as 2002, complaining about being exposed to the valley fever disease at the prison. Defendants's Cate, Yates, and igbinosa personally reviewed (or knew of them) these grievances and appeals.

Also, many inmates have filed state and federal lawsuits since 2002 seeking monetary and injunctive relief.

80. As a result of the substantial risk to inmates health and safety at the prison, numerous inmates had suffered (and continue to suffer) from contracting the disease.

These dangerous conditions were observed and/or reported to defendants' Yates, Cate, and Igbinosa. Upon information and belief, Yates, Cate, and Igbinosa knew that inmates were involuntarily exposed to excessive spores, and contracted the disease—many resulting in hospitalization.

Previous Lawsuits

81. Plaintiff have not filed any previous lawsuits.

Exhaustion of Administrative Remedies

82. Plaintiff has exhausted all available administrative remedies regarding the matters described in this complaint, and a timely filed claim with the California Victim Compensation and Government Claims board; including compliance with the California Tort Claims Act (Gov. Code §810 et seq).

V. Cause of Action

83. Plaintiff restate and incorporate by reference the foregoing paragraphs as if each paragraph was full set forth herein.

Count I

The dangerous and hazardous conditions posing an involuntarily excessive risk to plaintiff's health known to defendants', Matthew Cate, James Yates, and Felix Igbinosa constituted a custom or usage so widespread, long-standing, and deeply embedded so so as to have the force of law, amounted to cruel and unusual punishment in violation of the Eighth Amendment

Count II

85. Defendants' Matthew Cate, James Yates, and Felix Igbinsosa were deliberate indifferent to plaintiff's health and safety, in their awareness of the hazardous conditions at PVSP, and of the environmental controls/protective measures not taken that would have prevented or minimized exposure to contracting valley fever, in violation of the eighth amendment against cruel and unusual punishment.

Count III

86. The failure of defendant Felix Igbinsosa to intervene to prevent on-going denial/delay of medical treatment personnel after he was brought aware on two different occasions, constitutes deliberate indifference to plaintiff's serious medical needs, in violation of the Eighth Amendment to the U.S. Constitution.

87. The failure of defendants Maria Koziol and Chris Yun to provide treatment to plaintiff with known serious medical needs, constituted deliberate indifference to plaintiff's serious needs in violation of the eighth Amendment to the U.S. Constitution.

Count IV

Premises Liability

(Gov. Code §815.6, 835.2, 840.2, 845.6)

88. Plaintiff realleges and incorporates by reference paragraphs 1-26, though the same were fully set out at this point.

89. The danger of valley fever infection on the premises of PVSP was not readily apparent to plaintiff, as the spores are invisible to the naked eye, and no visual or verbal warnings of the risk were given prior to plaintiff's valley fever infection.

90. Prior to plaintiff's valley fever infection, defendants' Matthew Cate, James Yates, and Felix Igbinsosa had actual knowledge that infection was a highly probable result of the dangerous conditions of PVSP. Notice came from, inter alia, the high rate of infection reported by employees and inmates at PVSP, as well

as lawsuits and complaints.

91. The individual defendants' negligently failed to adopt or enforce reasonable policies and procedures to insure that plaintiff was free from an on-going substantial risk of serious harm to his health.

92. Defendants' negligently maintained, managed and operated PVSP. Their negligent acts and omissions were the legal proximate cause of damages to plaintiff.

93. Defendants' owed plaintiff a duty of reasonable care to assure that his health and safety, wouldn't be subjected to hazardous and dangerous conditions likely to cause serious injury.

94. Defendants' breached that duty by failing to take reasonable measures to protect plaintiff from a substantial risk of contracting the deadly disease.

95. The breach of duty resulted in plaintiff contracting a deadly incurable disease, causing injury to his health, strength, and daily activity.

96. The breach of duty proximately caused those damages. As a result of such injuries plaintiff has sustained general damages.

Count V
Negligence

(Cal. Gov. Code §845.6)

97. Plaintiff realleges and incorporates by reference paragraphs 1-59, though the same were fully set out at this point.

98. Defendant Maria Koziol(PA) were negligent in her treatment of plaintiff, even after responding to plaintiff's health care request slip, requesting immediate treatment for stomach and abdominal pain, caused by the disease (valley fever) and diflucan medications, to alleviate plaintiff's pain and suffering.

99. Defendant M. Koziol owed plaintiff a duty of care to treat his injuries, and the failure to do so resulted in a delay of nearly three months, causing unnecessary emotional and physical pain and suffering.

100. Defendant breached that duty by failing to exercise the proper degree of knowledge and skill in examining, diagnosing, treating, and caring for plaintiff.

101. The breach of duty proximately caused those damages. As a result of such injuries plaintiff has sustained general damages.

102. Defendant Chris Yun (supervisor of pharmacy) owed plaintiff a duty of care to treat his injuries, but was negligent when he failed to fill plaintiff's prescription for alternative diflucan, Antibiotics, pain medication, and other medications prescribed for his valley fever infection, abdominal and stomach pain in a reasonable amount of time.

103. Defendant breached that duty by failing to fill his prescription medication, in a reasonable time, which took nearly three months.

104. The breach of duty resulted in damages, in that, plaintiff developed a urinary tract infection, further exacerbating his abdominal and stomach pain, causing injury to his health, strength, and daily activity.

105. The breach of duty proximately caused those damages. And, as a result of such injuries plaintiff has sustained general damages.

106. Defendant Felix Igbiosa owed plaintiff a duty of care (as the Chief Medical Officer) to assure his medical treatment, but were negligent when he failed to intervene after plaintiff sent him two letters, explaining the denial/delay of medical treatment by his subordinates.

107. Defendant breached that duty by failing to exercise his supervisory authority to abate further negligence, exercised by subordinates in denying and/or delaying medical treatment.

108. The breach of duty proximately caused those damages, resulting in plaintiff contracting a urinary tract infection, and prolonged pain and suffering, effecting his health, strength, and daily activity. And, as a result of such injuries plaintiff has sustained general damages.

Count VI

(Cal. Const. Art. I, §§15,17)

109. The conduct complained of herein was undertaken pursuant to the policies, practices, and customs of M. Cate, J. Yates, and F. Igbiosa, and was proximately caused, sanctioned, ratified and/or approved by each of the individual defendants'.

110. Plaintiff was subjected to improper conditions of confinement, defendants', and each of them, deprived plaintiff of his California Constitutional rights to be free from cruel and unusual punishment, in violation of Article I, §17, and due process of law, in violation of article I, §15, thus entitling plaintiff to obtain compensatory damages from all defendants' directly under the California Constitution.

111. Any violation of a California Constitution provision is mandatory and prohibitory under Article I, §26, and trumps any state law immunity.

112. As a direct and proximate cause of the aforementioned acts of defendants', plaintiff were damaged as set forth above.

Count VII

(Violation of Statutory Duties)

113. By engaging in, causing, sanctioning and approving the conduct complained of herein, the individual defendants' violated plaintiff's state-law protected rights, including but not limited to violation of California penal code §§2600, 2650, 2652, 2653, and Title 15, Cal. Code. of Regulations, 3350 and 3354; Cal. Gov. Code §815.6, 835.2, 840.2, 845.6; in addition to penal code §5054 and 5058.

114. As a direct and proximate cause of the aforementioned acts of defendants', plaintiff were damaged.

Count VIII
(Violation of Mandatory Duties)

115. By engaging in, causing, sanctioning, and approving the conduct complained of herein, the individual defendants' conduct fell below those minimum standards established under Cal.Pen.Code §§2600-2653, 5054 and 5058; Title 15, Cal.Code of Regulations, 3350 and 3354; Cal.Gov.Code §§815.6, 835.2, 840.2, and 845.6.

116. By engaging in, causing, sanctioning and approving the conduct complained of herein, the defendants' violated the cruel and unusual punishment clause of the California Constitution, Article I, §17, and due process of law in violation of California Constitution, Article I, §15.

117. Any violation of California Constitutional provision is mandatory and prohibitory under Article I, §26.

VI. DEMAND FOR JURY TRIAL

118. Pursuant to rule 38(a) of the federal rules of civil procedures, plaintiff demands a jury trial as to all triable issues.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this court enter judgment granting the following relief:

A. Issue a declaratory and injunctive judgment stating that:

1. A declaration that the acts and omissions of defendants' have violated, and continues to violate, the eighth Amendment to the U.S. Constitution, and/or negligence under state tort laws of California.

2. An order compelling defendants' to: (a) plant ground cover or grass on all areas of open loose dirt that surround PVSP within a 2.5 mile radius; (b) provide all PVSP inmates with protective masks; and (c) feed all PVSP inmates in their housing units during times of high winds; or relocate all inmates from PVSP to other CDCR facilities as an alternative.

B. 1. Nominal damages in the amount of \$1 against each defendant jointly and severally.

C. Award compensatory damages in the following amounts:

1. \$500,000 jointly and severally against each defendant, except for Maria Koziol and Chris Yun.

2. \$50,000 in damages against Felix Igbinosa individually.

3. \$10,000 in damages against each defendant Maria Koziol Chris Yun, Jointly and severally.

D. Award punitive damages in the following amounts:

1. \$800,000 in damages jointly and severally against each defendant, Matthew Cate, James Yates, and Felix Igbinosa, except for M. Koziol and Chris Yun.

2. \$100,000 in damages against Felix Igbinosa individually.

3. \$20,000 in damages against each defendant Maria Koziol and Chris Yun, jointly severally.

4. Grant plaintiff's cost and fees.

E. Grant such other relief as it may be deemed appropriate and just.

date: 4/10, 2011

VERIFICATION

I, Anthony Miles, hereby declare under the penalty of perjury pursuant to 28 U.S.C. §1746, that I am the plaintiff in the above entitled action, and have read the foregoing documents. I know the contents thereof and declare the same to be true of my own knowledge, except as to matters stated therein upon information and belief, and as to those matters I believe them to be true and provable upon discovery.

EXECUTED THIS 4 DAY OF 10, 2011, AT PLEASANT VALLEY STATE PRISON, COALINGA,
CALIFORNIA 93210


DECLARANT/PLAINTIFF

VERIFICATION

STATE OF CALIFORNIA
COUNTY OF FRESNO

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1740)

I, Anthony Miles declare under the penalty of perjury that: I am the Plaintiff
in the above entitled action, I have read the foregoing documents and know the
contents thereof and the same is true of my own knowledge, except therein upon information
and belief and as to those matters, I believe them to be true.

EXECUTED THIS 4 DAY OF 10, 2011, AT PLEASANT VALLEY STATE PRISON COALINGA,
CA 93210.

(SIGNATURE) Miles, Anthony
(DECLARANT/ PRISONER)

PROOF OF SERVICE BY MAIL

(by state prisoner)

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Chris Roberts am a resident of PLEASANT VALLEY STATE PRISON, IN THE COUNTY
OF FRESNO, STATE OF CALIFORNIA. I am over the age of eighteen (18) years of age and I am **NOT**
the party of the above-entitled action. My address is : P.O. BOX-8501, COALINGA, CA 93210.

ON 4/10, 2011, I served the foregoing: (2) copies of an Amended
Complaint; (1) self-addressed envelop for a conformed copy; one Proof
of service ~~(original)~~ (original)

(set forth exact title of documents served)

On the party (s) herein by placing a true copy(s) thereof, in a sealed envelope, with the
first class postage fully paid, in the UNITED STATES MAIL DEPOSIT BOX so provided at
PLEASANT VALLEY STATE PRISON, IN COALINGA CALIFORNIA, 93210, signed by a correctional
officer.

I SERVED THE FOLLOWING PERSON(S) ADDRESSED BELOW:

united states District Court
Eastern District of California
office of the Clerk
2500 Tulare Street, Room 1-505
Fresno, California 93721-2201

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: 4/10, 2011: [Signature]
(DECLARANT/ PERSON)