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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLIFFORD SMITH
Plaintiff,
vs.
JERRY BROWN, et al.,
Defendants.

Case No. 1:12-cv-0238-AWI-JLT (PC)
**FINDINGS AND RECOMMENDATIONS
TO DISMISS PLAINTIFF’S FOURTH
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM**
(Doc. 14).

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On May 30, 2012, Plaintiff filed a document entitled “Fourth Amended Complaint.” (Doc. 14).¹ For the reasons described below, this Court recommends Plaintiff’s action be dismissed.

I. Procedural History

Plaintiff filed this action on February 21, 2012 (Doc. 1). On February 29, 2012, the Court dismissed the complaint with leave to amend. (Doc. 4). On March 28, 2012, Plaintiff requested an additional 30 days to file an amended complaint. (Doc. 8). The Court granted Plaintiff’s request. (Doc. 9). On April 30, 2012, this Court issued an Order to Show Cause to Plaintiff

¹ The caption of Plaintiff’s pleading is titled “Fourth Amended Complaint;” however, a review of the docket demonstrates that the complaint is actually Plaintiff’s second amended complaint. Because Plaintiff mistakenly labeled his prior complaint as the “Third Amended Complaint,” the Court will refer to the current pleading as the Fourth Amended Complaint.

1 because the Court had not yet received his First Amended Complaint. (Doc. 12). Later that day,
2 but after the Order had been sent for processing, the Court received Plaintiff's first amended
3 complaint, though Plaintiff has titled it as a "Third Amended Complaint." (Doc. 11). The Court
4 discharged the Order to Show Cause issued on April 30, 2012 (Doc. 12) and proceeded to screen
5 Plaintiff's amended complaint filed April 30, 2012. (Doc. 11). The Court dismissed the "Third
6 Amended Complaint" with leave to amend. (Doc. 13). Plaintiff timely filed his Fourth Amended
7 Complaint. (Doc. 14).

8 **II. Screening Requirement**

9 Because Plaintiff is seeking redress from governmental employees in a civil action, the
10 Court is required to screen his complaint in order to identify cognizable claims. 28 U.S.C. §
11 1915A(a)-(b). The Court shall "dismiss the complaint, or any portion of the complaint, if the
12 complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
13 (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. §
14 1915A(b); 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

15 **III. Pleading Standards**

16 **A. Rule 8(a)**

17 "Pro se documents are to be liberally construed" and "must be held to 'less stringent
18 standards than formal pleadings drafted by lawyers.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976)
19 (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). "[They] can only be dismissed for
20 failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in
21 support of his claim which would entitle him to relief.'" Id.

22 Under Federal Rule of Civil Procedure 8(a), "[a] pleading that states a claim for relief
23 must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, . . . ; (2) a
24 short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a
25 demand for the relief sought." Fed. R. Civ. P. 8(a). Each allegation must be simple, concise, and
26 direct. Fed. R. Civ. P. 8(d)(1). While a complaint "does not need detailed factual allegations, a
27 plaintiff's obligation to provide the 'grounds' of his entitlement to relief requires more than labels
28 and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell

1 Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007) (internal quotation marks and citations
2 omitted).

3 In analyzing a pleading, the Court should set conclusory factual allegations aside, accept
4 all non-conclusory factual allegations as true, and determine whether those non-conclusory
5 factual allegations accepted as true state a claim for relief that is plausible on its face. Ashcroft v.
6 Iqbal, 129 S. Ct. 1937, 1949-52 (2009). “The plausibility standard is not akin to a probability
7 requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.”
8 Id. at 1949 (internal quotation marks and citation omitted). In determining plausibility, the Court
9 is permitted “to draw on its judicial experience and common sense.” Id. at 1950.

10 **B. Rule 18(a)**

11 Under the Federal Rules of Civil Procedure, “[a] party asserting a claim, counterclaim,
12 cross-claim, or third-party claim may join, as independent or alternative claims, as many claims
13 as it has against an opposing party.” Fed. R. Civ. P. 18(a). “Thus, multiple claims against a
14 single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim
15 B against Defendant 2.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). The purpose of
16 splitting such claims into different actions is to avoid the morass that a multiple claim, multiple
17 defendant suit will cause and to ensure prisoners pay the required filing fees pursuant to the
18 Prison Litigation Reform Act. (Id.)

19 **IV. 42 U.S.C. § 1983 Claims**

20 Title 42, § 1983 of the United States Code provides a cause of action against
21 [e]very person who, under color of any statute, ordinance, regulation, custom, or
22 usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of
the United States or other person within the jurisdiction thereof to the deprivation of
any rights, privileges, or immunities secured by the Constitution and laws . . .

23 42 U.S.C. § 1983.

24 “The purpose of § 1983 is to deter state actors from using the badge of their authority to
25 deprive individuals of their federally guaranteed rights and to provide relief to victims if such
26 deterrence fails.” Wyatt v. Cole, 504 U.S. 158, 161 (1992) (citing Carey v. Phipus, 435 U.S. 247,
27 254-57 (1978)). It does not provide any substantive rights, but rather “authorizes a cause of
28 action based on the deprivation of civil rights guaranteed by other Acts of Congress.” Chapman

1 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979).

2 A plaintiff stating a claim under § 1983 must allege facts showing he was deprived of a
3 federal right by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988);
4 Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Long v. County of Los Angeles, 442 F.3d
5 1178, 1185 (9th Cir. 2006). For a defendant to be liable under § 1983, a plaintiff must prove
6 there is an affirmative link between the alleged deprivation and the resulting injury. See Rizzo v.
7 Goode, 423 U.S. 362, 371-72, 377 (1976). An affirmative link exists when a defendant “does an
8 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is
9 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
10 588 F.2d 740, 743 (9th Cir. 1978).

11 Under § 1983, Plaintiff is required to show that (1) each defendant acted color of state law
12 and (2) each defendant deprived him of rights secured by the Constitution or federal law.
13 Humphrey v. Yates, 2009 U.S. Dist. LEXIS 100252, 8-9 (E.D. Cal. Oct. 27, 2009) (citing Long v.
14 County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

15 **V. Plaintiff’s Factual Allegations and Contentions**

16 Before October 9, 2009, Plaintiff was housed at the Sierra Conservation Center in
17 Jamestown, California. (Doc. 14 at 3). Plaintiff contends he had well-documented medical
18 problems such as high blood pressure, asthma, kidney disease, and a recent stroke. (Id.)

19 On October 9, 2009, Plaintiff was transferred to Pleasant Valley State Prison (“PVSP”) in
20 Coalinga, California. (Id.) Plaintiff contends that inmates with certain medical conditions were to
21 be excluded from areas institutions at high risk for Valley Fever, like PVSP. (Id.) Plaintiff
22 contends that his asthma qualified him for exclusion under clinical criteria E – Chronic
23 Obstructive Pulmonary Disease. (Id.) Plaintiff contends that Defendants “neglected to review”
24 the fact that he was susceptible to Valley Fever prior to transfer.

25 Sometime after his transfer, Plaintiff contracted Valley Fever. (Id. at 4). Plaintiff
26 contends that while at PVSP he received inadequate medical care due to overcrowding. (Id.)
27 Plaintiff further contends that the doctors and nurses at PVSP failed to tell him he was infected
28 for 10 months and refused to treat him for Valley Fever. (Id.) As a result, Plaintiff states he was

1 hospitalized and nearly died. (Id.)

2 Plaintiff alleges he filed a grievance concerning all of the facts listed in the FAC which
3 was “partially granted” at the “formal level” on July 21, 2011. (Id. at 2). Plaintiff names Warden
4 James Yates (PVSP) and “Does I-IV” (medical staff, personal care doctors and personal care
5 nurses at PVSP) as defendants. (Doc. 14 at 3). Plaintiff claims Defendants’ actions and failures
6 to act violated the Eighth Amendment. (Id. at 5.)

7 **VI. Discussion**

8 **A. Plaintiff’s Eighth Amendment Claim for Exposure to Valley Fever**

9 The Eighth Amendment’s prohibition against cruel and unusual punishment protects
10 prisoners from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045
11 (9th Cir. 2006). Extreme deprivations are required to make out a conditions of confinement
12 claim, and only those deprivations denying the minimal civilized measure of life’s necessities are
13 sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian, 503
14 U.S. 1, 9, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992). Prison officials therefore have a “duty to
15 ensure that prisoners are provided with adequate shelter, food, clothing, sanitation, medical care,
16 and personal safety.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (citations omitted).

17 A prison official is liable under the Eighth Amendment only if he “knows of and
18 disregards an excessive risk to inmate health and safety; the official must both be aware of facts
19 from which the inference could be drawn that a substantial risk of serious harm exists, and he
20 must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837; 114 S. Ct. 1970, 128 L.
21 Ed. 2d 811 (1994). Mere negligence on the part of the prison official is not sufficient to establish
22 liability, but rather, the official’s conduct must have been deliberate. Farmer, 511 U.S. at 835;
23 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

24 Here, Plaintiff seems to claim that officials at PVSP “neglected to review” his medical
25 records and recognize that he should not have been housed at PVSP. (Doc. 14 at 4). Given its
26 extensive experience in cases of this type, the Court is aware of the clinical criteria to which
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1 Plaintiff refers.² The criteria are as follows:

2 Criteria a. All identified HIV infected inmate-patients

3 Criteria b. History of lymphoma

4 Criteria c. Status post solid organ transplant

5 Criteria d. Chronic immunosuppressive therapy (e.g. severe rheumatoid arthritis)

6 Criteria e. Moderate to severe Chronic Obstructive Pulmonary Disease (COPD) requiring
7 ongoing intermittent or continuous oxygen therapy

8 Criteria f. Inmate-patients with cancer on chemotherapy.

9 Although Criteria E only relates to inmates with “moderate to severe COPD who require
10 oxygen therapy,” Plaintiff alleges that because asthma is a respiratory illness, he falls within
11 Criteria E.³ (Doc. 14 at 3). Such allegations are not sufficient to demonstrate “Defendants knew
12 *Plaintiff* would contract valley fever.” Humphrey v. Yates, 2009 U.S. Dist. LEXIS 100252, 10-
13 11 (E.D. Cal. Oct. 27, 2009). “Even assuming Plaintiff is more susceptible to contracting Valley
14 Fever, exposure in this instance is not sufficient by itself to establish a deliberate indifference
15 claim.” Clark v. Igbinsa, 2011 WL 1043686, 5-6 (E.D. Cal. Mar. 18, 2011). In Clark, the
16 plaintiff—just as Plaintiff here—complained that he contracted Valley Fever after having been
17 placed at PVSP. *Id.* at 2. However, because this was insufficient to demonstrate an Eighth
18 Amendment violation, the Court dismissed the matter without leave to amend.

19 Moreover, in this case, this Court has informed Plaintiff previously that other courts have
20 found also that claims like Plaintiff’s which allege Eighth Amendment violations for contracting
21 Valley Fever are insufficient to establish an Eighth Amendment violation. *See e.g.*, King v.
22 Avenal State Prison, 1:07-cv-01283-AWI-GSA (PC), 2009 U.S. Dist. LEXIS 20182 (E.D. Cal.

23 ² The Court takes judicial notice of the November 20, 2007 CDCR memorandum listing
24 medical conditions of inmates who may not be housed in the endemic area according to Fed. R.
Evid. 20(b)(1).

25 ³ Notably, however, Criteria E *does not* exclude all sufferers of COPD but only those who
26 require intermittent or continuous oxygen therapy. Similarly, asthma is a separate and distinct
27 disease from COPD though they share common symptoms. The Court has no information why
28 the CDCR did not include asthma as a disease that is a basis for exclusion from the endemic area
and Plaintiff fails to allege any facts to explain this. Presumably, people with asthma are not at
greater risk. In any event, Criteria E did not place Defendants on notice that he was of any
greater susceptibility than any other inmate.

1 Mar. 4, 2009).⁴ Nevertheless, Plaintiff asserts that, “government immunity from prosecution in
2 [Valley Fever] cases does not extend to matters where it knows someone is in danger and does
3 nothing about it.” The Court has no quarrel with the gist of this statement and, indeed, has
4 indicated nearly the same thing above when it quoted the United States Supreme Court when it
5 held that liability may be imposed only when the official “knows of and disregards an excessive
6 risk to inmate health and safety; the official must both be aware of facts from which the inference
7 could be drawn that a substantial risk of serious harm exists, and he must also draw the
8 inference.” Farmer, 511 U.S. at 837. However, Plaintiff has alleged no facts that would support
9 that any prison official acted with deliberate indifference when he was transferred to PVSP.

10 Indeed, even if exposure to Valley Fever was sufficient to establish an objectively serious
11 deprivation within the meaning of the Eighth Amendment, Plaintiff’s amended complaint alleges
12 no facts to demonstrate that any of the defendants acted with deliberate indifference with regard
13 to his initial placement at PVSP. Though the Court assumes as true that Plaintiff has asthma, that
14 all of the CDCR-employed Defendants knew that PVSP was within the Valley Fever endemic
15 area, and that they failed to determine Plaintiff fell within Criteria E, such factual assumptions are
16 insufficient to demonstrate defendants knowingly disregarded a substantial risk to Plaintiff’s
17 health. For all these reasons, the Court concludes that Plaintiff fails to state a cognizable Eighth
18 Amendment claim due to his exposure to Valley Fever.

19 **B. Plaintiff’s Eighth Amendment Claim for Inadequate Medical Care**

20 Plaintiff’s Fourth Amended Complaint contends that while at PVSP he received
21 inadequate medical care due to overcrowding. (Id.) Plaintiff further contends that the doctors and
22 nurses at PVSP failed to tell him he was infected for 10 months and refused to treat him for

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24 ⁴ Though Plaintiff relies upon a case involving an inmate named Arjang Panah who filed a complaint related
25 to his contracting Valley Fever and decided by a Judge Gary Feess, the Court has not been able to locate any such
26 decision. The only decision that the Court could locate issued by Judge Feess in which Valley Fever is referenced, is
27 Walker v. Sanders, 2009 WL 2448023 at *3 (C.D. Cal. Aug. 10, 2009) (9th Cir. 2010). In this habeas corpus case,
28 the petitioner was afflicted by this condition and asserted that the Bureau of Prisons categorically denied inmates
placement in an RRC. Id. at 4. Moreover, the Court cannot locate any opinion issued by any federal court on August
25, 2011, which mentions Valley Fever except Valencia v. Hedgepeth, 2011 WL 3794903 at *5, n. 4 (E.D. Cal. Aug.
25, 2011), which rejects that the petitioner had demonstrated that the fact that he had the disease was sufficient to
justify the extension of equitable tolling in this habeas matter.

1 Valley Fever. (Id.) Plaintiff states he was hospitalized and nearly died as a result. (Id.)
2 However, the allegations in Plaintiff’s original complaint (Doc. 1) and his Third Amended
3 Complaint (Doc.11) related to the decision to transfer him to PVSP and the decision by PVSP to
4 accept him as a prisoner. Plaintiff made no allegations of medical neglect. In its May 3, 2012
5 order the Court advised Plaintiff that if he elected to file an amended complaint, “he may not
6 change the nature of this suit by adding new, unrelated claims to his complaint.” (Doc. 13 at 7
7 (citing George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints)).

8 Plaintiff’s Fourth Amended Complaint now raises two unrelated events: one for
9 improperly housing him at PVSP where he was exposed to Valley Fever and one for medical
10 neglect in the treatment of his Valley Fever. Since Plaintiff is not permitted to join unrelated
11 claims in the same action, the Court recommends Plaintiff’s claims against Does I-IV for medical
12 neglect be dismissed without prejudice for violation of Rule 18(a).

13 However, even if such claims were related, Plaintiff has failed to plead sufficient facts to
14 demonstrate deliberate indifference on the part of the PVSP medical staff. See Jett v. Penner, 439
15 F.3d 1091, 1096 (9th Cir. 2006) (In the Ninth Circuit, the test for deliberate indifference consists
16 of two parts:” plaintiff must show a serious medical need and that defendant’s response to the
17 need was deliberately indifferent.) A prison official is “deliberately indifferent” if he actually
18 knows that a prisoner faces a substantial risk of serious harm and disregards that risk. Farmer, 511
19 U.S. at 837. “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
20 1060 (9th Cir. 2004).

21 Although Plaintiff can show a serious medical need, his generalized factual allegations
22 that all his treating doctors and nurses failed to treat his Valley Fever prior to his hospitalization is
23 not sufficient to establish that such persons knew of and disregarded a substantial risk of harm to
24 Plaintiff. For example, Plaintiff alleges that for 10 months, medical professionals did not tell him
25 he had Valley Fever but there is no indication when he contracted the disease or when the Doe
26 Defendants became aware of this fact. Moreover, though Plaintiff asserts that the medical staff
27 “clearly refused to treat Plaintiff for his sickness and illness due to Valley Fever” and that they
28 were “motivated by evil motive and intent,” he does not state any factual support for these

1 conclusions. Because the Court is required to disregard conclusions and considered only well-
2 pleaded facts, it is apparent that Plaintiff has not stated a claim for inadequate medical care under
3 the Eighth Amendment. Iqbal, 129 S. Ct. at 1949-52.

4 **C. Plaintiff's Eighth Amendment Claim for Inadequate Medical Care**
5 **Due to Overcrowding.**

6 Plaintiff seems to allege that there is a problem with overcrowding at California prisons
7 and that such overcrowding led to the medical neglect he suffered. (Doc. 14 at 4). As set forth in
8 Part B above, Plaintiff did not allege this claim in his Third Amended Complaint and therefore
9 cannot allege it now. (Doc. 13 at 7 (citing George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)
10 (no "buckshot" complaints)).

11 Even if Plaintiff could properly allege this claim here, Plaintiff failed to plead facts to
12 demonstrate that Defendant Yates was responsible for the conditions of which Plaintiff
13 complains. See Tholmer v. Yates, 2009 U.S. Dist. LEXIS 8204, 2009 WL 174162, *3 (E.D. Cal.
14 Jan. 26, 2009) ("To the extent Plaintiff seeks to raise an Eighth Amendment challenge to the
15 general conditions of confinement at PVSP, Plaintiff fails to come forward with evidence that
16 Yates is responsible for the conditions of which Plaintiff complains.") Defendant Yates cannot,
17 therefore, be held liable for the any inadequate medical care Plaintiff allegedly suffered at PVSP.

18 **VII. Conclusion**

19 Based upon the record and the facts set forth in the amended complaint, it does not appear
20 the deficiencies related to the claim that Plaintiff contracted Valley Fever can be cured by
21 amendment. Moreover, the newly added claim that Plaintiff suffered medical inadequacies
22 violates Fed. R. Civ. P. 18(a). Thus, the Court finds that granting Plaintiff further leave to amend
23 would be futile. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (requiring
24 leave to be granted to the extent deficiencies can be cured by amendment).

25 For the reasons set forth above, the Court **HEREBY RECOMMENDS** Plaintiff's Fourth
26 Amended Complaint be **DISMISSED**.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the

1 Local Rules of Practice for the United States District Court, Eastern District of California. Within
2 21 days after being served with these findings and recommendations, Plaintiff may file written
3 objections with the Court. Such a document should be captioned “Objections to Magistrate
4 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
5 the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
6 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: June 4, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE