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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BILLY RAE SHA'NEE MALDONADO,

12 Plaintiff,

13 vs.

14 JAMES YATES, et al.,

15 Defendants.
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1:12-cv-00496 AWI GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

19 **I. Screening Requirement**

20 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights
21 action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate
22 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

23 The Court is required to screen complaints brought by prisoners seeking relief against a
24 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
25 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
26 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
27 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
28 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been

1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
3 1915(e)(2)(B)(ii).

4 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
5 exceptions,” none of which applies to section 1983 actions. Swierkewicz v. Sorema N.A., 534
6 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
7 short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed.
8 R.Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the
9 plaintiff’s claim is and the grounds upon which it rests.” Swierkewicz, 534 U.S. at 512.
10 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”
11 Nietze v. Williams, 490 U.S. 319, 330 n. 9 (1989). “[A] liberal interpretation of a civil rights
12 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.
13 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)(quoting Ivey v.Bd. of Regents,
14 673 F.2d 266, 268 (9th Cir. 1982)).

15 **II. Plaintiff’s Claims**

16 Plaintiff, an inmate in the custody of the California Department of Corrections and
17 Rehabilitation (CDCR) at Mule Creek State Prison, brings this action against defendant
18 correctional officials employed by the CDCR at Pleasant Valley State Prison, where the
19 conduct at issue occurred. Plaintiff names as defendants the following: Warden James Yates;
20 Chief Medical Officer; CDCR. Plaintiff’s claim stems from his diagnosis and treatment for
21 Valley Fever.

22 Plaintiff levels vague allegations that medical staff in general failed to acknowledge the
23 symptoms of Valley Fever. Plaintiff alleges that he is exposed to Valley Fever, an endemic
24 disease, and that he was never warned of the dangers. Plaintiff alleges that Defendants engaged
25 in “professional negligence” in their attempts to treat his condition. However, Plaintiff fails to
26 identify any individual defendant who failed to address Plaintiff’s medical concerns.

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28 **A. Valley Fever**

Regarding Plaintiff's claim that Defendants are liable for housing him in a Valley Fever Endemic area, the courts of this district have found such claims to be insufficient. "[T]o the extent that Plaintiff is attempting to pursue an Eighth Amendment claim for the mere fact that he was confined in a location where Valley Fever spores existed which caused him to contract Valley Fever, he is advised that no courts have held that exposure to Valley Fever spores presents an excessive risk to inmate health." King v. Avenal State Prison, 2009 WL 546212, *4 (E.D. Cal., Mar 4, 2009); see also Tholmer v. Yates, 2009 WL 174162, *3 (E.D. Cal. Jan. 26, 2009)("To the extent Plaintiff seeks to raise an Eighth Amendment challenge to the general conditions of confinement at PVSP, Plaintiff fails to come forward with evidence that Yates is responsible for the conditions of which Plaintiff complains.") More recently, in addressing a claim that CDCR officials are responsible for the contraction of valley fever by knowingly housing an African American inmate with a history of asthma in an endemic area, it has been held that "unless there is something about a prisoner's conditions of confinement that raises the risk of exposure substantially above the risk experienced by the surrounding communities, it cannot be reasoned that the prisoner is involuntarily exposed to a risk that society would not tolerate." Hines v. Yousseff, 2015 WL 164215, *5 (E.D. Cal. Jan. 13, 2015).

B. Medical Care

Under the Eighth Amendment, the government has an obligation to provide medical care to those who are incarcerated. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000). "In order to violate the Eighth Amendment proscription against cruel and unusual punishment, there must be a 'deliberate indifference to serious medical needs of prisoners.'" Id. (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). Lopez takes a two-prong approach to evaluating whether medical care, or lack thereof, rises to the level of "deliberate indifference." First, a court must examine whether the plaintiff's medical needs were serious. See Id. Second, a court must determine whether "officials intentionally interfered with [the plaintiff's] medical treatment." Id. at 1132.

Regarding Plaintiff's claim that Defendants were negligent, "the indifference to his medical needs must be substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice'

1 will not support this cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th
2 Cir. 1980)(citing Estelle, 429 U.S. at 105-06). See also Toguchi v. Chung, 391 F.3d 1051,
3 1060 (9th Cir. 2004).

4 Plaintiff has not alleged facts suggesting deliberate indifference. Plaintiff must allege
5 facts indicating that each defendant was aware of a specific harm to Plaintiff, and acted with
6 deliberate indifference to that harm. Plaintiff has failed to do so here. The complaint must
7 therefore be dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

8 Plaintiff need not, however, set forth legal arguments in support of his claims. In order
9 to hold an individual defendant liable, Plaintiff must name the individual defendant, describe
10 where that defendant is employed and in what capacity, and explain how that defendant acted
11 under color of state law. Plaintiff should state clearly, in his own words, what happened.
12 Plaintiff must describe what each defendant, *by name*, did to violate the particular right
13 described by Plaintiff.

14 **C. Supervisory Liability**

15 The only two individual defendants are the Warden and Chief Medical Officer at
16 Pleasant Valley. Plaintiff is advised that government officials may not be held liable for the
17 actions of their subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S.
18 662, 673 (2009). Since a government official cannot be held liable under a theory of vicarious
19 liability for section 1983 actions, Plaintiff must plead that the official has violated the
20 Constitution through his own individual actions. Id. at 673. In other words, to state a claim for
21 relief under section 1983, Plaintiff must link each named defendant with some affirmative act
22 or omission that demonstrates a violation of Plaintiff’s federal rights. Plaintiff has failed to do
23 so here.

24 **D. CDCR**

25 “The Eleventh Amendment prohibits federal courts from hearing suits brought against
26 an unconsenting state. Though its language might suggest otherwise, the Eleventh Amendment
27 has long been construed to extend to suits brought against a state both by its own citizens, as
28 well as by citizens of other states.” Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d

1 1050, 1053 (9th Cir. 1991); see also Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996);
2 Puerto Rico Aqueduct Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993);
3 Austin v. State Indus. Ins. Sys., 939 F.2d 676, 677 (9th Cir. 1991).

4 The Eleventh Amendment bars suits against state agencies as well as those where the
5 state itself is named as a defendant. See Natural Resources Defense Council v. California
6 Department of Transportation, 96 F.3d 420, 421 (9th Cir. 1996); Brooks, 951 F.2d at 1053;
7 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of
8 Prisons was a state agency entitled to Eleventh Amendment immunity); Mitchell v. Los
9 Angeles Community College District, 861 F.2d 198, 201 (9th Cir. 1989). The CDCR, an
10 agency of the State of California, is therefore immune from suit.

11 **III. Conclusion**

12 The Court has screened Plaintiff's complaint and finds that it does not state any claims
13 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the
14 opportunity to file an amended complaint curing the deficiencies identified by the Court in this
15 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he
16 may not change the nature of this suit by adding new, unrelated claims in his amended
17 complaint.

18 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
19 each named defendant did that led to the deprivation of Plaintiff's constitutional or other
20 federal rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual
21 allegations must be [sufficient] to raise a right to relief above the speculative level" Bell
22 Atlantic v. Twombly, 550 U.S. 544, 554 (2007)(citations omitted).

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

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
5 claim;

6 2. The Clerk’s Office shall send to Plaintiff a complaint form;

7 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an
8 amended complaint;

9 4. Plaintiff may not add any new, unrelated claims to this action via his amended
10 complaint and any attempt to do so will result in an order striking the amended complaint; and

11 5. If Plaintiff fails to file an amended complaint, the Court will recommend that
12 this action be dismissed, with prejudice, for failure to state a claim.

13
14 IT IS SO ORDERED.

15 Dated: **March 17, 2015**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE