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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOEL HOLLEY,

Plaintiff,

v.

M. SCOTT, et al.,

Defendants.

CASE NO. 1:12-cv-01090-MJS (PC)

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

(ECF No. 13)

CLERK SHALL CLOSE THE CASE

_____ /

SCREENING ORDER

I. PROCEDURAL HISTORY

On May 4, 2012, Plaintiff Joel Holley, 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 has consented to Magistrate Judge jurisdiction. (ECF No. 5.)

Plaintiff's Complaint (ECF No. 1) and First Amended Complaint (ECF No. 11) were screened and dismissed, with leave to amend, on October 31, 2012 and January 29, 2013, respectively, for failure to state cognizable claims. (ECF Nos. 10, 12.) Plaintiff's Second Amended Complaint (ECF No. 13) is now before the Court for screening.

1 **II. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
10 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).
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13 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges,
14 or immunities secured by the Constitution and laws’ of the United States.” Wilder v.
15 Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983
16 is not itself a source of substantive rights, but merely provides a method for vindicating
17 federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).
18

19 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

20 The Second Amended Complaint identifies the following prison officials as
21 Defendants: (1) M. Scott, CSR Board Member, California State Prison, Solano (Solano);
22 (2) T. Felton, RN, Pleasant Valley State Prison (PVSP); (3) J. Randle, Correctional
23 Counselor, PVSP; (4) J. Chokatos, M.D., PVSP; (5) A. Lonigro, CEO, Health Care Service,
24 PVSP; and (6) M. Dotson, Classification Committee Member, PVSP.
25

26 Plaintiff alleges the following:
27

1 Plaintiff is an African American inmate designated as medically high risk for
2 contracting Valley Fever¹ because of his race and health status. On February 24, 2011,
3 Defendant Scott approved Plaintiff's transfer from Solano to PVSP where Valley Fever is
4 endemic. The transfer order, signed by Scott, noted that Plaintiff required a Clinical Care
5 Case Management System (CCCMS)² level of medical care and that PVSP was closed to
6 such inmates.³ (Compl. at 3.) Nevertheless, on April 6, 2011, Plaintiff was transferred to
7 PVSP pursuant to Scott's order.
8

9 Defendant Felton conducted an initial medical screening and determined that
10 Plaintiff was not fit to be housed at PVSP. The Chief Medical Officer had issued
11 memorandums on August 3, 2006 and November 20, 2007, informing PVSP medical staff
12 that medically high risk inmates were to be sent before a classification committee and
13 considered for transfer.⁴ Felton told Plaintiff that he would draft a chrono advising the Chief
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17 ¹ Valley Fever, also known as coccidioidomycosis, is a serious infectious disease contracted by
18 inhalation of an airborne fungus. See Definition of Coccidioidomycosis (Valley Fever)
19 <http://www.cdc.gov/fungal/coccidioidomycosis/definition.html> (last updated March 15, 2012).

20 ² CCCMS is the first level of mental health care provided by the California Department of
21 Corrections and Rehabilitation. "The CCCMS level of care is for inmates whose symptoms are under
22 control or in partial remission and can function in the general prison population, administrative
23 segregation, or segregated housing units." Coleman v. Schwarzenegger, 2009 WL 2430820, at *15 n. 24
24 (E.D. Cal. Aug.4, 2009).

25 ³ The transfer order signed by Defendant Scott endorses Plaintiff for PVSP while at the same
26 time "noting PVSP-III is closed to CCCMS intake." (Compl. at 15.) Nevertheless, Plaintiff's action does
27 not seek relief based on being transferred to PVSP when it was closed to CCCMS patients. Moreover,
there is no reason to believe Plaintiff's mental or other medical status had any affect on his susceptibility
to, or contraction of, Valley Fever.

⁴ The amended complaint does not clearly define the criteria for "medically high risk" as used in
the memorandums issued in 2006 and 2007. However, as noted below, the Defendants determined that
Plaintiff's conditions, coronary artery disease and epilepsy, did not qualify for a medical transfer with
regard to Valley Fever susceptibility. (Compl. at 44, 45.)

1 Medical Officer that a medical transfer was necessary. Plaintiff requested a copy of
2 Felton's report on February 7, 2012, and was informed that no such report was found. (Id.
3 at 5, 6.)

4
5 Plaintiff filed an inmate appeal on April 6, 2011, stating that he was medically high
6 risk and therefore more susceptible to Valley Fever. On April 20, 2011, Plaintiff appeared
7 before an initial classification hearing. Chairperson Dotson and committee member Randle
8 "failed to recognize that Plaintiff was classified as a medical high risk inmate who was more
9 susceptible to the Valley Fever diseases if he remain housed at PVSP." (Id. at 6.) This
10 information was reflected in Plaintiff's central file for consideration.⁵ (Id.) However,
11 Defendant Randle failed to "maintain" the information pertaining to Plaintiff's high risk
12 medical status for subsequent review by the classification committee. (Id. at 7.) Dotson
13 and Randle noted Plaintiff's physical impairments and ordered accommodations such as
14 a lower bunk and no stairs. (Id. at 26.)

15
16 On June 16, 2011, Defendant Chokatos interviewed Plaintiff regarding his inmate
17 appeal. Chokatos determined that Plaintiff's various medical conditions were under control
18 and therefore no medical transfer was necessary. (Id. at 8, 44.) The following month
19 Plaintiff was diagnosed with Valley Fever. (Id. at 9.)

20
21 Plaintiff pursued his inmate appeal to the next administrative level, where it was
22 reviewed by Defendant Lonigro on August 22, 2011. He reported that Plaintiff did "not
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25 ⁵ Again, as far as the Court can tell, Plaintiff is referring generally to the fact that he has multiple
26 medical complications and not the more specific criteria for increased susceptibility to Valley Fever as
27 defined by the Defendants in their response to Plaintiff's inmate appeal. (Compl. at 44, 45.)

1 meet the transfer criteria for Valley Fever.” (Id. at 45.) The appeal response identified the
2 various criteria for determining Valley Fever susceptibility and invited Plaintiff to file a
3 health care services request if he believed he had a qualifying medical condition. Plaintiff
4 was also informed that individuals who had already contracted Valley Fever did not qualify
5 as medically susceptible. (Id. at 8, 45.)
6

7 On October 19, 2011, another classification committee was convened and
8 concluded that Plaintiff’s medical high risk status warranted an institution transfer. Plaintiff
9 was transferred from PVSP to Deuel Vocational Institution on December 1, 2011. (Id. at
10 9.)

11 **IV. LEGAL STANDARDS**

12 **A. Section 1983**

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
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1 face.” Id. Facial plausibility demands more than the mere possibility that a defendant
2 committed misconduct and, while factual allegations are accepted as true, legal
3 conclusions are not. Id. at 1949-50.

4
5 **B. Eighth Amendment**

6 The Eighth Amendment protects prisoners from inhumane methods of punishment
7 and from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041,
8 1045 (9th Cir. 2006). Extreme deprivations are required to make out a conditions of
9 confinement claim, and only those deprivations denying the minimal civilized measure of
10 life’s necessities are sufficiently grave to form the basis of an Eighth Amendment violation.
11 Hudson v. McMillian, 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to
12 state a claim for a violation of the Eighth Amendment, the plaintiff must allege facts
13 sufficient to support a claim that prison officials knew of and disregarded a substantial risk
14 of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511 U.S. 825, 847 (1994);
15 Thomas v. Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554 F.3d
16 807, 812-14 (9th Cir. 2009); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

17
18 A prisoner “may state a cause of action under the Eighth Amendment by alleging
19 that [prison officials] have, with deliberate indifference, exposed him to [environmental
20 conditions] that pose an unreasonable risk of serious damage to his future health.” Helling
21 v. McKinney, 509 U.S. 25, 35 (1993).

22
23 1. Substantial Risk of Harm

24 The Courts of this district have repeatedly found that confinement in a location
25 where Valley Fever is prevalent, in and of itself, fails to satisfy the first element of an Eighth
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1 Amendment claim, i.e. that the condition poses an excessive risk of harm. See, e.g. Smith
2 v. Yates, 2012 WL 1498891, *2 (E.D. Cal. Apr. 27, 2012) (citing King v. Avenal State
3 Prison, 2009 WL 546212, *4 (E.D. Cal. Mar. 4, 2009) (“[T]o the extent that Plaintiff is
4 attempting to pursue an Eighth Amendment claim for the mere fact that he was confined
5 in a location where Valley Fever spores existed which caused him to contract Valley Fever,
6 he is advised that no courts have held that exposure to Valley Fever spores presents an
7 excessive risk to inmate health.”); see also Gilbert v. Yates, 2010 WL 5113116, *3 (E.D.
8 Cal. Dec. 9, 2010); Willis v. Yates, 2009 WL 3486674, *3 (E.D. Cal. Oct. 23, 2009).

10 Thus, Plaintiff can not state an Eighth Amendment claim based solely upon mere
11 exposure to, or contraction of, Valley Fever. There are circumstances however where
12 exposure to Valley Fever could conceivably give rise to an Eighth Amendment claim.
13 Smith v. Schwarzenegger, 393 F. App’x. 518 (9th Cir. 2010) (citing Helling, the Court held
14 that it was not inconceivable that the Plaintiff could allege a cognizable claim based on
15 Valley Fever exposure). Courts have deemed the first prong of an Eighth Amendment
16 claim satisfied where the plaintiff has identified a factor responsible for either increasing
17 the risk of contraction or the severity of infection. See, e.g., Stevens v. Yates, 2012 WL
18 2520464, *3 (E.D.Cal. June 28, 2012) (nearby construction disturbed soil); Owens v.
19 Trimble, 2012 WL 1910102, *2 (E.D. Cal. May 25, 2012) (asthma); Whitney v. Walker,
20 2012 WL 893783, *2-4 (E.D. Cal. Mar. 15, 2012) (immune system compromised by
21 cancer); Thurston v. Schwarzenegger, 2008 WL 2129767, *2 (E.D. Cal. May 21, 2008)
22 (various medical conditions, including asthma, and race).

25 Plaintiff alleges that he was designated as a medically high risk inmate and
26 therefore particularly susceptible to Valley Fever. The term “medically high risk” as used
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1 by Plaintiff is not clearly defined. The inmate appeal responses filed by Defendants
2 Lonigro and Chokatos acknowledge that Plaintiff suffers from coronary artery disease and
3 epilepsy but explain that neither affliction “meet[s] the transfer criteria for Valley Fever.”
4 (Compl. at 8, 44, 45.) Plaintiff also fails to explain how enrollment in CCCMS, a program
5 that treats mental disorders, *James v. Murphy*, 2012 WL 487040, *11 (C.D. Cal. Jan. 24,
6 2012), impacts his vulnerability to Valley Fever. Nothing before the court suggests that
7 such conditions exposed Plaintiff to a greater likelihood of catching Valley Fever. The
8 Court’s original screening order notified Plaintiff that his allegations did not satisfy the first
9 element of his Eighth Amendment claim.
10

11 Plaintiff also alleges that as an African American he is more susceptible to Valley
12 Fever. The vulnerability of particular races, including African American, has been held to
13 be sufficiently serious to satisfy the first element of an Eighth Amendment claim based on
14 Valley Fever exposure. See Thurston, 2008 WL at *2 (various medical conditions and
15 race). Plaintiff has thereby met the first criteria for asserting such a claim.
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17 2. Deliberate Indifference

18 However, the facts alleged do not establish that any of the Defendants knowingly
19 disregarded any risk that Plaintiff, because of his medical conditions or race, was more
20 vulnerable to Valley Fever.
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22 Plaintiff stresses that Defendants were aware of his medical status and that he
23 might be harmed because of his classification as a medical high risk. However, as
24 discussed above and in the original screening order, Plaintiff’s psychological status and
25 high risk medical status attributable to epilepsy and coronary artery disease do not create
26 a risk of the harm Plaintiff complains about (Valley Fever). Defendants can not be sued
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1 for disregarding a non-existent risk.

2 While, on the other hand, Plaintiff's race did expose him to a serious risk of Valley
3 Fever, Plaintiff alleges no facts suggesting that any of the Defendants were actually aware
4 of this risk. Plaintiff does not allege that he raised the issue of his race and his resulting
5 susceptibility to Valley Fever with any of the Defendants. He present nothing to indicate
6 they otherwise knew of it. He does allege that the higher risk to African Americans is
7 known throughout the California Department of Corrections and Rehabilitation, but offers
8 nothing to support this conclusion or anything to suggest it is based on more than
9 supposition or speculation. Such conjecture, even if based on reasonable belief that
10 Defendants should have known, is inadequate to state a cognizable claim.

11
12 "Deliberate indifference is a high legal standard." Toguchi v. Chung, 391 F.3d 1051,
13 1060 (9th Cir. 2004). "Under this standard, the prison official must not only 'be aware of
14 the facts from which the inference could be drawn that a substantial risk of serious harm
15 exists,' but that person 'must also draw the inference.'" Id. at 1057 (quoting Farmer, 511
16 U.S. at 837). "If a prison official should have been aware of the risk, but was not, then the
17 official has not violated the Eighth Amendment, no matter how severe the risk." Id.
18 (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir. 2002)).
19 Alleging that the information was available to the Defendants and they should have been
20 aware of the risk is not sufficient to state a claim. Id.

21
22 Plaintiff has failed to establish that Defendants acted with deliberate indifference.
23 The Court has twice previously instructed Plaintiff on the legal standard and given him
24 opportunity to allege facts which meet it. No useful purpose would be served in yet again
25 advising him of those same standards and giving him yet another opportunity to try to meet
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1 them. Further leave to amend would be futile and will not be given.

2 **C. Fourteenth Amendment**

3 Plaintiff asserts that the aforementioned conduct also violated his Fourteenth
4 Amendment rights, but he provides no basis for this allegation. As pled, Plaintiff has failed
5 to state a claim. Iqbal, 129 S.Ct. at 1949. To the extent Plaintiff intended to pursue a
6 substantive due process claim, where a constitutional claim is covered by a specific
7 constitutional provision, the claim must be analyzed under the standard appropriate to that
8 specific provision, not under the rubric of substantive due process. County of Sacramento
9 v. Lewis, 523 U.S. 833, 843 (1998) (quotation marks and citation omitted). In this case,
10 the Eighth Amendment “provides [the] explicit textual source of constitutional protection .
11 . . .” Patel v. Penman, 103 F.3d 868, 874 (9th Cir. 1996) (overruled on other grounds by
12 Nitco Holding Corp., v. Boujikian, 491 F.3d 1086, 1089 (9th Cir. 2007). Therefore, the
13 Eighth Amendment, discussed above, rather than the Due Process Clause of the
14 Fourteenth Amendment governs Plaintiff's claims.
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17 **D. State Law Claims**

18 Plaintiff also alleges violations of rights secured by the California Constitution. The
19 Court does not reach the viability of Plaintiff’s state law claims because Plaintiff has failed
20 to state a cognizable federal claim. 28 U.S.C. § 1367(c)(3); Herman Family Revocable
21 Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001). The Supreme Court has cautioned
22 that “if the federal claims are dismissed before trial, . . . the state claims should be
23 dismissed as well.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).
24

25 **V. CONCLUSION AND ORDER**

26 For the reasons stated above, the Court finds that Plaintiff's Second Amended
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1 Complaint fails to state a claim upon which relief may be granted and that leave to amend
2 would be futile. See Noll v. Carson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Accordingly,
3 Plaintiff's Second Amended Complaint is DISMISSED WITH PREJUDICE for failure to
4 state a claim. The Clerk shall close the case.

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7 IT IS SO ORDERED.

8 Dated: July 31, 2013

Isl. Michael J. Song
9 UNITED STATES MAGISTRATE JUDGE

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