



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

6 Section 1983 “provides a cause of action for the ‘deprivation of any rights,  
7 privileges, or immunities secured by the Constitution and laws’ of the United States.”  
8 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).  
9 Section 1983 is not itself a source of substantive rights, but merely provides a method for  
10 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94  
11 (1989).

### 12 **III. SUMMARY OF COMPLAINT**

13 The Complaint identifies the following Defendants: (1) Dr. Chen Ho, M.D.; (2)  
14 Warden Brazelton; and (3) the County of Fresno Board of Supervisors. Plaintiff  
15 specifically alleges instances of inadequate medical care related to the treatment of his  
16 Valley Fever infection. More broadly, Plaintiff appears to be challenging his condition of  
17 confinement at Pleasant Valley State Prison (PVSP) where Valley Fever is endemic.

18 The Court will not address the merits of Plaintiff’s claim as pled.

19 Plaintiff’s Complaint is not “a short and plain statement of the claim showing the  
20 pleader is entitled to relief,” as required by Federal Rule of Civil Procedure 8(a)(2). The  
21 Complaint is 287 pages. The first five pages include a partial summary of the underlying  
22 facts. Attached are hundreds of pages of documents in no particular order. Among the  
23 attachments is a twenty-eight page declaration that appears to outline Plaintiff’s claim in  
24 more detail; however, this section of the Complaint is interspersed with exhibits and  
25 attachments. On August 26, 2013, Plaintiff filed a thirty-one page addendum to his  
26 complaint including additional exhibits. (ECF No. 7.)

27 Plaintiff is incarcerated and is representing himself in this action. Under such  
28 circumstances, the Court is quite tolerant of clerical errors, problems of form and other

1 non-substantive errors. However, in this case, Plaintiff has provided the Court with  
2 documents in lieu of a simple statement, in his own words, explaining the basis of his  
3 claim.

4 The Court will not wade through exhibits in search of a cognizable claim. Plaintiff  
5 will be given an opportunity to file an amended complaint plainly stating the facts  
6 underlying his claim. The Court will outline some general pleading requirements in the  
7 following sections of this order.

#### 8 **IV. ANALYSIS**

##### 9 **A. Section 1983**

10 To state a claim under Section 1983, a plaintiff must allege two essential  
11 elements: (1) that a right secured by the Constitution or laws of the United States was  
12 violated and (2) that the alleged violation was committed by a person acting under the  
13 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda  
14 Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

15 A complaint must contain “a short and plain statement of the claim showing that  
16 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
17 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
18 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.  
19 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
20 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is  
21 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility  
22 that a defendant committed misconduct and, while factual allegations are accepted as  
23 true, legal conclusions are not. Id. at 1949-50.

##### 24 **B. Exhibits**

25 Plaintiff attached hundreds of pages of exhibits to the Complaint. Exhibits, while  
26 permissible if incorporated by reference (Fed. R. Civ. P. 10(c)) are not necessary in the  
27 federal system of notice pleading, Fed. R. Civ. P. 8(a). Exhibits should not be submitted  
28 with the pleading where (1) they serve only to confuse the record and burden the Court,

1 or (2) they are intended as future evidence. If this action reaches the point at which the  
2 submission of evidence is appropriate and necessary (e.g., summary judgment or trial),  
3 Plaintiff will have the opportunity to submit evidence. It is not only unnecessary but  
4 counterproductive to submit excessive facts or exhibits at this stage. The excess  
5 distracts the Court's attention from the core elements of the claim which should be  
6 capable of being expressed in one to five neatly typed or printed double-spaced pages.

7 **C. Linkage Requirement**

8 Under § 1983, Plaintiff must demonstrate that each defendant personally  
9 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th  
10 Cir. 2002). This requires the presentation of factual allegations sufficient to state a  
11 plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572  
12 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting  
13 this plausibility standard. Id.

14 The statute requires that there be an actual connection or link between the  
15 actions of the defendants and the deprivation alleged to have been suffered by the  
16 plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978).  
17 Government officials may not be held liable for the actions of their subordinates under a  
18 theory of respondeat superior. Iqbal, 129 S.Ct. at 1948. Since a government official  
19 cannot be held liable under a theory of vicarious liability in § 1983 actions, Plaintiff must  
20 plead sufficient facts showing that the official has violated the Constitution through his  
21 own individual actions. Id. at 1948. In other words, to state a claim for relief under §  
22 1983, Plaintiff must link each named defendant with some affirmative act or omission  
23 that demonstrates a violation of Plaintiff's federal rights. Defendants may only be held  
24 liable in a supervisory capacity if they "participated in or directed the violations, or knew  
25 of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045  
26 (9th Cir. 1989).

27 **D. Eighth Amendment**

28 1. Inadequate Medical Care

1            “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an  
2 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner,  
3 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106  
4 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) “a  
5 serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could  
6 result in further significant injury or the unnecessary and wanton infliction of pain,” and  
7 (2) “the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at  
8 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on  
9 other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)  
10 (internal quotations omitted)). Deliberate indifference is shown by “a purposeful act or  
11 failure to respond to a prisoner’s pain or possible medical need, and harm caused by the  
12 indifference.” Jett, 439 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In order to  
13 state a claim for a violation of the Eighth Amendment, a plaintiff must allege sufficient  
14 facts to support a claim that the named defendants “[knew] of and disregard[ed] an  
15 excessive risk to [Plaintiff’s] health . . . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

## 16            2.     Conditions of Confinement

17            The Eighth Amendment protects prisoners from inhumane methods of  
18 punishment and from inhumane conditions of confinement. Morgan v. Morgensen, 465  
19 F.3d 1041, 1045 (9th Cir. 2006). Extreme deprivations are required to make out a  
20 conditions of confinement claim, and only those deprivations denying the minimal  
21 civilized measure of life’s necessities are sufficiently grave to form the basis of an Eighth  
22 Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9 (1992) (citations and  
23 quotations omitted). In order to state a claim for a violation of the Eighth Amendment,  
24 the plaintiff must allege facts sufficient to support a claim that prison officials knew of and  
25 disregarded a substantial risk of serious harm to the plaintiff. Farmer v. Brennan, 511  
26 U.S. 825, 847 (1994).

27            A prisoner “may state a cause of action under the Eighth Amendment by alleging  
28 that [prison officials] have, with deliberate indifference, exposed him to [environmental

1 conditions] that pose an unreasonable risk of serious damage to his future health."  
2 Helling v. McKinney, 509 U.S. 25, 35 (1993).

3 The Courts of this district have repeatedly found that confinement in a location  
4 where Valley Fever is prevalent, in and of itself, fails to satisfy the first element of an  
5 Eighth Amendment claim, i.e. that the condition poses an excessive risk of harm. See,  
6 e.g., Smith v. Yates, 2012 WL 1498891, \*2 (E.D. Cal. Apr. 27, 2012) (citing King v.  
7 Avenal State Prison, 2009 WL 546212, \*4 (E.D. Cal. Mar. 4, 2009) ("[T]o the extent that  
8 Plaintiff is attempting to pursue an Eighth Amendment claim for the mere fact that he  
9 was confined in a location where Valley Fever spores existed which caused him to  
10 contract Valley Fever, he is advised that no courts have held that exposure to Valley  
11 Fever spores presents an excessive risk to inmate health."); see also Gilbert v. Yates,  
12 2010 WL 5113116, \*3 (E.D. Cal. Dec. 9, 2010); Willis v. Yates, 2009 WL 3486674, \*3  
13 (E.D. Cal. Oct. 23, 2009).

14 Thus, Plaintiff cannot state an Eighth Amendment claim based solely upon mere  
15 exposure to, or contraction of, Valley Fever. There are circumstances however where  
16 exposure to Valley Fever could conceivably give rise to an Eighth Amendment claim.  
17 Smith v. Schwarzenegger, 393 F. App'x. 518 (9th Cir. 2010) (citing Helling, the Court  
18 held that it was not inconceivable that the Plaintiff could allege a cognizable claim based  
19 on Valley Fever exposure).

20 Courts have deemed the first prong of an Eighth Amendment claim satisfied  
21 where the plaintiff has identified a factor responsible for either increasing the risk of  
22 contraction or the severity of infection. See, e.g., Stevens v. Yates, 2012 WL 2520464,  
23 \*3 (E.D. Cal. June 28, 2012) (nearby construction disturbed soil); Owens v. Trimble,  
24 2012 WL 1910102, \*2 (E.D. Cal. May 25, 2012) (asthma); Whitney v. Walker, 2012 WL  
25 893783, \*2-4 (E.D. Cal. Mar. 15, 2012) (immune system compromised by cancer);  
26 Thurston v. Schwarzenegger, 2008 WL 2129767, \*2 (E.D. Cal. May 21, 2008) (various  
27 medical conditions, including asthma, and race); see also Plata v. Brown, 2013 WL  
28 3200587, \*7 n. 10, \*14 (N.D. Cal. June 24, 2013) (finding that the following groups are at

1 an increased risk of harm from Valley Fever infection and should therefore be excluded  
2 from Pleasant Valley State Prison and Avenal State Prison: inmates designated as  
3 medically high-risk; "[p]atients with impaired cellular immunity, such as those with solid  
4 organ transplants, those with HIV infection, and those with chronic obstructive pulmonary  
5 disease, chronic renal failure, congestive heart failure, diabetes; patients receiving TNF  
6 inhibitors (medications used in the treatment of arthritis); Filipino and African-American  
7 men; and pregnant women in the 2nd or 3rd trimester."").

8 **V. CONCLUSION AND ORDER**

9 Plaintiff's Complaint does not state a claim for relief under section 1983. The  
10 Court will grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson,  
11 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate  
12 that the alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct.  
13 at 1948-49. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is  
14 plausible on its face.'" Id. at 1949 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff  
15 must also demonstrate that each named Defendant personally participated in a  
16 deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

17 Plaintiff should note that although he has been given the opportunity to amend, it  
18 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th  
19 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on  
20 curing the deficiencies set forth above.

21 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
22 complaint be complete in itself without reference to any prior pleading. As a general  
23 rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
24 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint  
25 no longer serves any function in the case. Therefore, in an amended complaint, as in an  
26 original complaint, each claim and the involvement of each defendant must be  
27 sufficiently alleged. The amended complaint should be clearly and boldly titled "First  
28 Amended Complaint," refer to the appropriate case number, and be an original signed

1 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
2 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a  
3 right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations  
4 omitted).

5 Accordingly, it is HEREBY ORDERED that:

- 6 1. The Clerk’s Office shall send Plaintiff a blank civil rights complaint form;
- 7 2. Plaintiff’s Complaint is dismissed for failure to state a claim upon which  
8 relief may be granted;
- 9 3. Plaintiff shall file an amended complaint within thirty (30) days; and
- 10 4. If Plaintiff fails to file an amended complaint in compliance with this order,  
11 this action will be dismissed, with prejudice, for failure to state a claim and failure to  
12 comply with a court order.

13  
14 IT IS SO ORDERED.

15 Dated: October 29, 2013

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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