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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RANDY ALEXANDER SANDOVAL,	)	Case No.: 1:13-cv-01997-MJS
	)	
Plaintiff,	)	ORDER DISMISSING PLAINTIFF’S
	)	COMPLAINT, WITH LEAVE TO AMEND, FOR
v.	)	FAILURE TO STATE A CLAIM
	)	
NORTH KERN STATE PRISON,	)	ECF No. 1
	)	
Defendant.	)	AMENDED COMPLAINT DUE WITHIN
	)	THIRTY DAYS

On October 15, 2013, Randy Alexander Sandoval (“Plaintiff”), an individual proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff’s Complaint is currently before the Court for screening.

**I. SCREENING REQUIREMENT**

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

1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing  
5 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
6 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 556  
7 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Facial plausibility demands more than the  
8 mere possibility that a defendant committed misconduct and, while factual allegations are  
9 accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

## 10 **II. PLAINTIFF’S CLAIMS**

11 Plaintiff is currently housed in Duel Vocational Institution in Tracy, California. Plaintiff  
12 was previously housed in North Kern State Prison in Delano, California. He names North  
13 Kern State Prison as the sole defendant in this action.

14 Plaintiff does not state the statutory basis for any claims against North Kern State  
15 Prison. From the facts alleged, it appears his allegations are best characterized as an  
16 attempt to assert an Eighth Amendment failure to protect claim. The Court will analyze his  
17 allegations under the standard applicable to such a claim.

18 Plaintiff’s allegations are summarized as follows:

19 North Kern State Prison is in an area where the disease coccidioidomycosis, also  
20 known as “valley fever”, is prevalent. Plaintiff is HIV positive and his condition makes him  
21 more susceptible to valley fever. On two different days, Plaintiff had a bad fever and was  
22 refused medical care. Plaintiff is concerned for his health.<sup>1</sup>

## 23 **III. ANALYSIS**

### 24 **A. 42 U.S.C. § 1983 Claims**

25 42 U.S.C. § 1983 “provides a cause of action for the ‘deprivation of any rights,  
26 privileges, or immunities secured by the Constitution and laws’ of the United States.” Wilder  
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28 <sup>1</sup> Plaintiff has not requested any damages or other relief in his Complaint. He will be given leave to file an amended complaint. He should state therein what relief he wants the Court to provide him in this action.

1 v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). § 1983 is not  
2 itself a source of substantive rights, but merely provides a method for vindicating federal  
3 rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

4 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
5 right secured by the Constitution or laws of the United States was violated, and (2) that the  
6 alleged violation was committed by a person acting under the color of state law. See West v.  
7 Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir.  
8 1987).

### 9 **B. Linkage**

10 Under § 1983, Plaintiff must demonstrate that each named defendant personally  
11 participated in the deprivation of his rights. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009);  
12 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of  
13 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
14 2002). Liability may not be imposed on supervisory personnel under the theory of  
15 respondeat superior, as each defendant is only liable for his or her own misconduct. Iqbal,  
16 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may only be held liable if they  
17 “participated in or directed the violations, or knew of the violations and failed to act to prevent  
18 them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d  
19 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009);  
20 Preschooler II v. Clark County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir.  
21 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

22 Plaintiff has failed to link a named defendant to his Eighth Amendment claim. In order  
23 to state a claim against any party, Plaintiff must allege how the party personally participated  
24 in a deprivation of his rights. Plaintiff has failed to do this in his Complaint. He will be given  
25 leave to file an amended complaint.

### 26 **C. Eleventh Amendment Immunity**

27 The Eleventh Amendment prohibits suits against state agencies. See Natural Res.  
28 Def. Council v. California Dep't of Transp., 96 F.3d 420, 421 (9th Cir. 1996); Brooks v.  
Sulphur Springs Valley Elec. Co-op., 951 F.2d 1050, 1053 (9th Cir. 1991); Taylor v. List, 880

1 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a state  
2 agency entitled to Eleventh Amendment immunity); Mitchell v. Los Angeles Community  
3 College Dist., 861 F.2d 198, 201 (9th Cir. 1989). Because North Kern State Prison is part of  
4 the California Department of Corrections and Rehabilitation, a state agency, it is entitled to  
5 Eleventh Amendment immunity from suit. Plaintiff cannot recover from this immune  
6 Defendant. This Defendant should be dismissed from this action and Plaintiff should name  
7 new defendants who are not subject to Eleventh Amendment immunity in his amended  
8 complaint.

9 **D. Eighth Amendment – Failure to Protect Claim**

10 It appears that Plaintiff wishes to allege an Eighth Amendment failure to protect claim.  
11 However, Plaintiff has failed to directly link his only defendant to the care he received at  
12 North Kern State Prison and his only defendant is subject to Eleventh Amendment immunity.  
13 Thus, Plaintiff has failed to state an Eighth Amendment claim against North Kern State  
14 Prison. The Court will provide Plaintiff leave to amend this claim and will set out below the  
15 criteria for alleging an Eighth Amendment failure to protect claim. Plaintiff should review  
16 these requirements before filing an amended complaint.

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

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

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

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

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

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27 <sup>2</sup> Valley Fever, also known as coccidioidomycosis, is "an infectious disease caused by inhalation of a fungus  
28 (Coccidioides) that lives in the soil of dry, low rainfall areas. It is spread through spores that become airborne  
when the dirt they reside in is disturbed by digging, construction, or strong winds. There is no direct person-to-  
person transmission of infection." Plata v. Brown, 2013 WL 3200587, \*2 (N.D. Cal. June 24, 2013).

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

6 Plaintiff must also demonstrate that a defendant exhibited deliberate indifference to a  
7 substantial risk of serious harm to Plaintiff. "Deliberate indifference is a high legal standard."  
8 Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). "Under this standard, the prison  
9 official must not only 'be aware of the facts from which the inference could be drawn that a  
10 substantial risk of serious harm exists,' but that person 'must also draw the inference.'" Id. at  
11 1057 (quoting Farmer, 511 U.S. at 837). "If a prison official should have been aware of the  
12 risk, but was not, then the official has not violated the Eighth Amendment, no matter how  
13 severe the risk." Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188  
14 (9th Cir. 2002)).

#### 14 **IV. CONCLUSION AND ORDER**

15 Plaintiff's Complaint fails to state a claim upon which relief may be granted under § 1983.  
16 The Court will provide Plaintiff with an opportunity to amend to cure the deficiencies in his  
17 claim. Lopez v. Smith, 203 F.3d at 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d  
18 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new,  
19 unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.  
20 2007) (no "buckshot" complaints).

21 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
22 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal,  
23 556 U.S. 676-677. Although accepted as true, the "[f]actual allegations must be [sufficient] to  
24 raise a right to relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations  
25 omitted).

26 Finally, an amended complaint supersedes the prior complaint, Forsyth v. Humana, Inc.,  
27 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and it

1 must be "complete in itself without reference to the prior or superseded pleading," Local Rule  
2 220.

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. The Clerk's Office shall send Plaintiff a complaint form;
- 5 2. Plaintiff's Complaint, filed October 15, 2013, is dismissed for failure to state a  
6 claim upon which relief may be granted under § 1983;
- 7 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an  
8 amended complaint; and
- 9 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
10 action will be dismissed, with prejudice, for failure to state a claim.

11 IT IS SO ORDERED.

12  
13 Dated: December 23, 2013

*/s/ Michael J. Seng*  
14 UNITED STATES MAGISTRATE JUDGE