

FILED

JAN 06 2014

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
DEPUTY CLERK

Plaintiff's Name HUGO LUA  
Inmate No. P-48040X  
Address Kern Valley State Prison  
P.O. BOX 5103 Delano CA 93216

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

HUGO LUA P-48040X  
(Name of Plaintiff)

1:14CV0019 MJS(PC)  
(Case Number)

vs.  
Committee members

COMPLAINT

Civil Rights Act, 42 U.S.C. § 1983

Chair Person O. Smith, fac C, Capt.  
H. Haro, C.C.I (A) counselor  
A. Haddock LCSW mental health  
R. SHEPHERD, C.C.I counselor  
(Names of all Defendants)

RECEIVED

JAN 06 2014

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form) CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
DEPUTY CLERK

- A. Have you brought any other lawsuits while a prisoner? Yes  No
- B. If your answer to A is yes, how many? 2  
Describe previous or pending lawsuits in the space below.  
(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff HUGO LUA P-48040

Defendants PAULINE FINANDER M.D., ANNISE ADAMS M.D.

2. Court (if Federal Court, give name of District; if State Court, give name of County)

U.S. Central District

3. Docket Number CV-10-3545 DOO(JC6) 4. Assigned Judge Jay C. Gandhi, magistrate judge

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

DISMISSED

6. Filing date (approx.) July 14, 2010

7. Disposition date (approx.) MARCH 23, 2011

see Back page ↘

U.S. Court Northern District of California

Case 3:12-cv-01793-CRB

Assigned Judge: Charles R. Breyer

United States District Judge

Granted summary of judgment in favor of defendant

Filing Date: July 13, 2012

Disposition Date: July 19, 2013

Name of case: Hubo Lua P-480110 Plaintiff-Appellant v/s. Nancy Adams MD, Defendant-Appellee

Case still pending in 9th circuit appellate court

Case No: 13-16670

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes  No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes  No

If your answer is no, explain why not  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Is the process completed? The process is completed (exhausted) if: (1) your appeal was granted at one of the levels of review, or (2) you pursued your appeal to the final level of review available.

Yes  If your answer is yes, briefly explain what happened at each level.

~~ON 8/13/13 I filled out and completed a 602 appeal form requesting for transfer due to I have been exposed to (valley fever cocci) in the past and by being here in (K.V.S.P.) places my life in danger due to a risk of causing the (valley fever cocci) to reactivate I mailed this appeal out to the institution appeal coordinator who by passed and rejected my appeal. so I bypassed first level and resubmitted to 2nd level, due to appeal coordinators give inmates a hard time and try to make inmates stall and give up their appeal process.~~  
No  If your answer is no, explain why not.

Second level Denied MY appeal, I then mailed it to third level and they rejected it, I tried exhausting MY administrative remedies and institution coordinators play stalling tactics, while MY LIFE IS IN danger, so I completed all exhausting all ADMINISTRATIVE Remedies L06X K.V.S.P. -13-02311, - transfer

NOTICE:

Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. *Booth v. Churner*, 121 S. Ct. 1819, 1825 (2001). Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. *Id.* at 1821.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant H. Haro is employed as Correctional Counselor II at Kern Valley State Prison P.O. Box 5103 Delano CA, 93216

B. Additional defendants R. Sherrill, Correctional Counselor I, Kern Valley State Prison  
A. Haddock - LCSW Social Worker Mental Health, Kern Valley State Prison  
O. Smith, Facility C, Captain and Chairperson, Kern Valley State Prison

IV. Statement of Claim 1 of 3

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.) (1 of 3)

ON DATE 7-18-13, I ARRIVED HERE TO KERN VALLEY STATE PRISON FROM PELICAN BAY STATE PRISON, ON DATE 7/31/13 I ATTENDED THE (V.C.C.) UNIT CLASSIFICATION UNIT, AFTER THE COMMITTEE MEMBERS FINISHED REVIEWING MY CENTRAL FILE, I WAS ALLOWED TO MAKE A COMMENT, I STATED AND ADDRESSED EACH COMMITTEE MEMBER, I ADVISED THEM THAT I HAVE BEEN DIAGNOSED POSITIVE FOR (COCCI) ALSO KNOWN AS (VALLEY FEVER) A FUNGUS I CAUGHT IN 2005, AT PELEANT VALLEY STATE PRISON, I TOLD THE MEMBERS THAT I HAVE RECEIVED INFORMATION STATING THAT ~~IT~~ EVEN THOUGH I HAVE ALREADY CAUGHT (COCCI) VALLEY FEVER, THERE IS A CHANCE IT CAN BE REACTIVATED, IF I WAS TO BE PLACED AT A PRISON ~~IN~~ AREA IN THE (COCCI) VALLEY FEVER GEOGRAPHICAL AREA, WHICH PLACES MY LIFE IN DANGER OF DEATH, I TOLD MEMBERS THAT MY HEALTH WAS CURRENTLY STABLE, AND THIS PRISON KERN VALLEY STATE PRISON IS LOCATED IN THE (COCCI) VALLEY FEVER GEOGRAPHICAL AREA, AND I REQUESTED TO BE TRANSFERRED TO ANOTHER PRISON THATS NOT IN THE (COCCI) VALLEY FEVER GEOGRAPHICAL AREA, AND THE CLASSIFICATION COMMITTEE MEMBERS DENIED MY TRANSFER REQUEST, AND BY DOING SO THEY PLACED LIFE IN DANGER OF FURTHER INJURY OR DEATH

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.) (1 of 2)

PLAINTIFF IS REQUESTING FOR THIS COURT TO ORDER A EMERGENCY (T.R.O.) TEMPORARY RESTRAINING ORDER RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE. PLAINTIFF HAS ALREADY PROVIDED SUFFICIENT MATERIAL FACTS TO PROVE TO THIS COURT THAT BY BEING IN THIS PRISON HIS LIFE AND HEALTH ARE IN EXTREME DANGER OF FURTHER INJURY OR DEATH, ~~AS~~ EVEN THOUGH PLAINTIFF IS RECEIVING TREATMENT FOR HIS INFECTION OF (COCCI) AND VALLEY FEVER, THE TREATMENT WILL BE OF NO BENEFIT TO HIS HEALTH IF HE REMAINS TO BE HOUSED IN A PRISON THATS IN THE VALLEY FEVER GEOGRAPHICAL AREA, THEREFOR PLAINTIFF PRAYS FOR THIS COURT TO ISSUE A (T.R.O.) AND HAVE PRISON OFFICIALS TRANSFER PLAINTIFF OUT OF THIS PRISON AND TO

I declare under penalty of perjury that the foregoing is true and correct.

Date 1/1/14  
[Signature]

Signature of Plaintiff [Signature]

Continuation from: IV. Statement of Claim. (state here as briefly as possible the facts of your case. Describe how each defendant is involved, including date and place's. Do not give any legal arguments or cite any cases or statutes, attach extra sheets if necessary.)

at the time I arrived my health was stable, but my health deteriorated as the days passed and I was incarcerated here at (K.V.S.P.) Kern valley state prison, then I requested a lab test and I complained to health care that my health condition is getting worst, on 9/5/13 my lab results returned and I was transferred to a outside hospital called mercy in Bakersfield my lab results came back as positive for (cocci) valley fever but was real high the hospital did several tests and advised me I have what is called disseminated (cocci) valley fever which is the worst kind, they inserted a pick line in my arm and started treating me with Abact a strong anti fungus and infection treatment I was discharged from the hospital a week later and was then transferred to (C.S.P.) California state prison, Corcoran Hospital where I was admitted to that hospital and kept receiving the treatment through the IV pick line for the a month and a half, because of this treatment I lose 7 pounds was in pain, I now have night chills and night sweats every night, even though I been discharged from Corcoran Hospital 10/15/13, I still continue to receive treatment orally, I been advised by the infection specialist that I now have to take this anti infection treatment for the rest of my life, Here I am attaching supporting documentation supporting my claim of lab results, committee members denial and refusal of transferring me to a safe prison and location, supporting medical form from the outside hospital where I was admitted due to my health condition deteriorated cause of committee members deliberate indifference

Supporting documents attached as exhibits,

Exhibit A, pages 6, 7, dated 3-17-06, and 9-16-05 lab results state inmate is positive for (cocci) valley fever, exhibit page 7, state inmate was positive for pneumonia that is caused by valley fever, inmate was treated for his (cocci) valley fever for about a year and a half till his condition was stable, exhibit B, page , which is under line states, most people who get valley fever have a life-long immunity from getting another valley fever infection- However, the disease can be reactivated or if your immune system is significantly weakened you be reinfected,

Exhibit page B-8,9, states (C.D.C.R) prisoner and valley fever including pleasant valley and Arvenal) eight (C.D.C.R.) prisons - Arvenal, CCI, Corcoran, (K.V.S.P.) Kern valley state prison, N.K.S.P., Pleasant Valley, (S.A.F.), and Wasco, are located in the geographical area where valley fever is most common, (C.M.C. is also located in an area where valley fever infections are reported.)

continuation from V. Relief

(State briefly exactly what you want the court to do for you. make no legal arguments. cite no cases or statutes.)

(money damages & trial by jury)

1 I am asking and requesting for a jury trial  
2 for this court to order each and every named defendant in this complaint  
3 to pay for money damages.

4 Plaintiff has suffered internal physical harm to his health of pain and suffering  
5 (see exhibit E, page 15, 16,) which cannot be replaced or restored

6 (Compensatory damages)

7 Each defendant to pay 25,000<sup>00</sup> \$ to the plaintiff

8 (Punitive damages)

9 Defendants were reckless and callous indifference to ~~plaintiff's~~  
10 Plaintiff's rights, Defendants <sup>exposed</sup> ~~exposed~~ plaintiff to serious and physical  
11 harm, Each defendant to pay plaintiff 10,000<sup>00</sup> for each month  
12 starting from July 18 2013 the date plaintiff arrived here and his  
13 injury started

14 Plaintiff is <sup>suing</sup> ~~suing~~ each defendant in his or her individual and official  
15 capacities each defendant acted under color of state law.

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Continuation from: IV Statement of Claim! State here as briefly as possible the facts of your case. Describe how each defendant is involved, including date and places. Do not ~~provide~~ give any legal arguments or cite any cases or statutes

1 Now on Date 7-3-13, see exhibit Page 10, 11 states that Inmate Lua,  
 2 advised and warned the defendants who have the power over his liberty and location  
 3 of incarceration, Inmate Lua stated he has had (valley fever) in the past, and  
 4 (K.V.S.P.) is in the list of prisons known to be in the geographic area for valley  
 5 fever, (cocci) Inmate stated that he should not be here in this prison, and  
 6 requested to be transferred, which committee members stated that since Inmate  
 7 Lua is not in the (cocci) restricted area (per 128-c3) then he will not be  
 8 transferred, so on Date 8-13-13, see exhibit, Page 0-12, 13  
 9 Inmate Lua started to exhaust his Administrative remedies, which were all denied  
 10 his request for transfer was denied, Inmate Lua requested for his health care  
 11 provider to order a lab and test his blood cause Inmate started complaining  
 12 his health condition started getting worst since his arrival to (K.V.S.P.)  
 13 Then on Date 9-5-13, see exhibit 6-14, 15, 16 Inmate Lua was send to mercy  
 14 Hospital for Direct Admit, on Date 9-5-13 see exhibit Page  
 15 Inmate was recieved by mercy Hospital reason for Admission, (disseminated-  
 16 - cocci). Then on Date 9-12-13, see exhibit Page Inmate was  
 17 discharged from mercy Hospital and send to (C.S.P) corecoran Hospital as  
 18 a admit where it states: reason for Admission: The patient is here for long  
 19 term ~~para~~ Abert treatment for his established diagnosed of (dissiminated cocci)  
 20 see exhibit B Page 8 states some ~~people~~ Develop what  
 21 is called disseminated valley fever, which means the Infection travels  
 22 from the lungs to other places in the body including the skin, joints, bones,  
 23 and brain. Generally, those who get very sick from valley fever have  
 24 major health problems that can last for years, and some die from  
 25 The disease.

Coccidioidomycosis Serology Laboratory

UCD School of Medicine

PO Box 1440

Davis, California 95617

(530) 752-1757

AS 1084  
PKVP

COCCIDIOIDAL SEROLOGY REPORT

PATIENT NAME: LUA, HUGO  
NUMBER: 950539

DATE: 03/17/06

PHYSICIAN: Ferro

CDC#-P48040

Foundation Laboratories Inc.  
Attn: SEND OUT DEPT.  
1716 West Holt Ave  
Pomona, CA 91768-0000

COCCIDIOIDAL SEROLOGY RESULTS

TEST(S)	CURRENT	IMMUNODIFFUSION (ID) TEST
SPEC#	SOURCE * RECVD ORDERED	[qualitative for PPTN(IgM) & CF(IgG)]
r7647	BLD 03-15 CF, ID	POSITIVE for Comp Fix (IgG) antibody

COMPLEMENT FIXATION TEST (quantitative)

\*BLD=Serum incubated for two hours at 37 degrees C.  
Spinal Fluid incubated overnight at 5 degrees C.

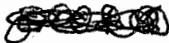
				1: 1: 1: 1: 1: 1: 1: 1: 1: 1:	Anticomplement Control
SPEC #	SOURCE	DRAWN	TESTED	2 4 8 16 32 64 128 256 512 1024	1:2 1:4 1:8
r2246	BLD	01-05		QUANTITY NOT SUFFICIENT	
r7647	BLD	03-09	03-16	4 4 3 0 0 0 0 0	

INTERPRETATION:

No change in the coccidioidal complement fixation titer of his serum since 5 Jan 06.

*Reviewed pt  
4/13/06*

*D. Pappagianis, MD*



# James Carter Thomas, M.D. APC Medical Imaging

**THANK YOU DOCTOR: NICHOLE'S (PVSP - COALINGA)**  
**FOR REFERRING: LUA A5-208**  
**CDC NUMBER: P48040**

**DATE: 16 September, 2005**

## CHEST

PA and lateral films of the chest reveal consolidation in the superior segment of the right lower lobe. A right lower lobe pneumonia is suggested. Valley Fever should be considered because of the location. The left chest shows no acute infiltrates. Both costophrenic angles are sharp. The heart and the great vessels appear within normal limits.

## IMPRESSION

Right lower lobe pneumonia, rule out Valley Fever.

*MO Lewis  
Ducart ASAP  
9/21/05*

*James Carter Thomas*  
James Carter Thomas, M.D.

Date dictated/Date signed 21 September, 2005  
JCT/ph

CORRELATION WITH THE CLINICAL FINDINGS IS ESSENTIAL. THE REPORT OF THIS CONSULTATION IS BASED SOLELY ON THE RADIOLOGICAL EXAMINATION.

*LWD Lambert  
JWC/call  
9/23/05 1000  
CP*

EXhibit A

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## Basic Information about Valley Fever

Valley Fever is a disease caused by a fungus that lives in the soil in certain parts of the world, including the southern part of California's central valley. The fungus takes the form of tiny spores (so tiny they cannot be seen) in the dirt.

Valley Fever is caught when dirt and dust get disturbed and/or are blown into the air, and people then breathe in the fungus spores, and an infection starts in the lungs. The medical name for Valley Fever is coccidioidomycosis or cocci.

Valley Fever is not contagious from person to person. You cannot catch it from another person. To repeat, a person becomes infected by breathing tiny spores of fungus that live in the dirt and that gets into the air, including when the wind blows. There is no vaccine that will protect people from getting Valley Fever.

Most people who live, work, travel in, or are in prison in the southern part of California's central valley do not get infected with Valley Fever. It is not known why some people get infected and some do not.

In addition, most people who get infected with Valley Fever do not get sick at all, or get only mildly sick. These people will have no symptoms at all or simply feel like they have a cold or a few days of flu (cough, fever, aches, tiredness), and may not require any treatment at all. If you have symptoms, put in a sick call request and ask to see a doctor.

However, approximately ten percent of people infected with Valley Fever get very sick. Among this ten percent, some develop what is called disseminated Valley Fever, which means the infection travels from the lungs to other places in the body including the skin, joints, bones, and brain. Generally, those who get very sick from Valley Fever have major health problems that can last for years, and some die from the disease.

Some people who get infected with Valley Fever have a higher risk of getting very sick from it. These include people with weakened immune systems. There is also a higher risk of getting very sick if you are of African or Filipino descent, or a woman in the last months of pregnancy.

Treatment for Valley Fever depends on many factors. As stated above, some people need no treatment because the infection does not cause any problems or only mild symptoms that go away on their own. In other cases, anti-fungal medication is prescribed and controls the disease. In the most serious cases, surgery and hospitalization is necessary, and the disease can cause death.

Most people who get Valley Fever have a life-long immunity from getting another Valley Fever infection. However, the disease can be reactivated or if your immune system is significantly weakened you can be reinfected.

[please see next page for more information]



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Alison Hardy  
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Kelly Knapp  
Millard Murphy  
Lynn Wu

## Valley Fever Information for Prisoners (July 2013)

### Introduction

Valley Fever is an infection caused by a fungus in the soil that can get into the air and then inhaled when people breathe. Valley Fever occurs naturally in the lower (southern) part of California's central valley. However, most people in that area do not get infected. Also, most people who get infected with Valley Fever do not get sick or very sick. However, a small percentage of people who get Valley Fever get very sick, and some die. (See information on page 2 – the other side of this page.)

Prisoners with certain medical conditions have a very high risk of getting very sick or dying from Valley Fever. These prisoners cannot be housed at any of the eight prisons where Valley Fever is common. **See page 3 for a list of the eight Valley Fever area prisons and the medical conditions that prohibit being housed in those prisons.**

Also, certain other kinds of prisoners – those with certain other medical conditions or other identifiable characteristics who do not already have Valley Fever – cannot be housed at Pleasant Valley State Prison or Avenal State Prison, because of the especially high rate of Valley Fever at those two prisons and the increased risk faced by those particular prisoners if they get the disease. **See page 3 for a list of the kinds of prisoners who cannot be housed at Pleasant Valley State Prison or Avenal State Prison.** These prisoners cannot be housed at those prisons based on a June 2013 order by the federal court in the *Plata* case. Under that Court order, CDCR must transfer those prisoners from those two prisons by September 25, 2013, and cannot transfer any prisoner with those conditions or characteristics into either of those two prisons.

New information may be received in the future about what types of prisoners should be prohibited from being housed at Pleasant Valley or Avenal because of the risk from Valley Fever. The Receiver appointed by the *Plata* court, who is in charge of CDCR medical care, can change the list of prohibited prisoners if new information is received. If you believe you face serious risk of harm from Valley Fever, file a Form 22 and then an administrative appeal (602) asking for a transfer (pursue the 602 to the Third Level).

If you have symptoms that might be caused by Valley Fever (see other side of this page), submit a medical sick call slip (CDCR Form 7362) describing the symptoms. If you do not receive adequate treatment file a medical appeal (602-HC), and pursue it to the Third Level.

Board of Directors  
Penelope Cooper, President • Michele WalkinHawk, Vice President  
Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns  
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

+++++

## CDCR Prisoners and Valley Fever (including Pleasant Valley and Avenal)

Eight CDCR prisons – Avenal, CCI, Corcoran, KVSP NKSP, Pleasant Valley, SATF, and Wasco – are located in the geographic area where Valley Fever is most common (CMC is also located in an area where Valley Fever infections are reported). CDCR policy has prohibited housing prisoners with certain medical conditions in any of these eight prisons, if these prisoners do not already have Valley Fever, because these prisoners face a serious risk of getting very sick or dying if they catch Valley Fever. **The medical conditions which require a prisoner to be transferred from all Valley Fever area prisons are: (1) HIV, (2) history of lymphoma, (3) a transplanted organ, (4) chronic immuno-suppressive therapy (for example, medication received for severe rheumatoid arthritis), (5) moderate to severe Chronic Obstructive Pulmonary Disease (COPD) requiring ongoing oxygen therapy, and (6) cancer with chemotherapy.**

Prisoners get Valley Fever much more often at Pleasant Valley and Avenal than at the other prisons. Prisoners at those two prisons, including in recent years and months, have continued to become very sick or die from Valley Fever. Evidence also shows that certain types of prisoners are more likely to get sick or very sick from the disease. When Prison Law Office learned that Valley Fever continues to be a very serious problem at Pleasant Valley and Avenal, and that certain kinds of prisoners are especially at risk, we asked the federal court-appointed Receiver in charge of prisoner medical care, and CDCR officials, to take action to protect prisoners.

In April 2013, the Receiver issued a policy that prohibits certain types of prisoners, in addition to those listed above, from being housed at Pleasant Valley and Avenal. However, CDCR refused to follow the Receiver's policy. Prison Law Office then asked the federal court in the *Plata* case to require CDCR to follow that policy.

In June 2013, the federal court ordered CDCR to follow a modified policy regarding the prisoners who cannot be housed at Pleasant Valley and Avenal because of the risk from Valley Fever. **The prisoners who are prohibited at Pleasant Valley and Avenal are those who do not already have Valley Fever and are: (1) classified on a 128-C3 chrono as medical "high risk," (2) diabetic; (3) African-American; (4) Filipino; (5) pregnant; or (6) have one of the medical conditions listed above.** This policy only applies Pleasant Valley and Avenal. Under the Court order, CDCR has until September 25, 2013 to transfer these prisoners from those two prisons. Of course, those types of prisoners cannot be transferred into those two prisons.

The Receiver and California officials have also asked federal government health officials to study Valley Fever at Pleasant Valley and Avenal and recommend what should be done to protect prisoners. Among the things that may be reported on is whether other types of prisoners are especially at risk from Valley Fever and should not be housed at those two prisons. Other new information may also be received regarding the risk from Valley Fever. The Receiver appointed by the *Plata* court, who is in charge of CDCR medical care, can change the list of prohibited prisoners if new information is received. We do not know when new information, including from federal government officials, will be received. We also do not know if changes will be made regarding who is prohibited from being housed at Pleasant Valley and Avenal.

– please see other side for additional information –

Page 9

**Valley Fever Information | Prison Law Office – May 2013 – page 4**

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**Valley Fever and CDCR Prisoners – Summary and Advice**

Valley Fever is a medical condition, caused by a fungus in the dirt that gets into the air and then is breathed into the lungs. Most people do not catch Valley Fever but some people get very sick or even die from the disease. **See page 2 for more information.**

CDCR policy prohibits prisoners with certain specific medical conditions from being housed in any of the eight lower Central Valley CDCR prisons, because of the serious risk of getting very sick if Valley Fever is caught. **See page 3 for more information.**

In addition, certain other types of prisoners are prohibited from being housed in Pleasant Valley and Avenal, based on the especially large numbers of Valley Fever cases at those two prisons and the especially serious risk from Valley Fever to those particular prisoners at those two prisons. This policy, which the federal court in the *Plata* case has ordered CDCR to follow, applies only to Pleasant Valley and Avenal, not to any other prison. **See page 3 for more information.**

New information may be received in the future about what types of prisoners should be prohibited from being housed at Pleasant Valley or Avenal because of the risk from Valley Fever. The Receiver appointed by the *Plata* court, who is in charge of CDCR medical care, can change the list of prohibited prisoners if new information is received. **See page 3 above for more information.**

+++

If you have symptoms that might be Valley Fever, you should **submit a sick call request** that describes the symptoms, so that medical staff can evaluate you. If you do not receive timely and adequate care you should file a medical appeal (602-HC). You can send the Prison Law Office any third level response to a medical appeal, or write to us immediately if there is an urgent medical care problem, and we will consider whether we can help under the *Plata* case.

If you are housed in a prison at which Valley Fever can be caught – including especially Pleasant Valley or Avenal – and believe you face a serious risk of harm from Valley Fever, you can and should **request a transfer in a Form 22 to your counselor and by filing an administrative appeal 602** requesting a transfer. If denied, re-file the appeal until a Third Level response is received.

+++ end +++

exhibit B

## CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

NAME: LUA

CDCR #: P48040

BED: C-8-121L

**COMMITTEE ACTION SUMMARY**

**RELEASE TO FACILITY "C" EOP/SNY, ESTABLISH CLO AS CUSTODY WG/PG A1A EFFECTIVE 7/18/13, PLACE ON CYSS WAITING LIST, NO GATE PASS (EOP), SINGLE CELL STATUS PENDING ICC REVIEW, DNM, RLD/NOT FH CLEAR, EOP LEVEL OF CARE**

**COMMITTEE'S COMMENTS**

Inmate LUA appeared before Facility C's Unit Classification Committee (UCC) on 7/31/2013 for his Initial EOP. Review. LUA stated that his health was good and was willing to proceed. LUA received his 72-hour notice for the purpose of this review. Prior to committee reviewing and discussing this case, LUA was introduced to the committee members.

**Committee Notes:** LUA is a 35 year old 2nd term, received CDCR on 7/8/2008 from San Bernardino, for the commitment offense charges of : PC215 Carjacking (2 counts), with enhancements PC 667(A), PC667.5 (B) PPT-NV. He received a term of 28 years 4 months and arrived at KVSP-IV on 7/18/2013 from PBSP-A Non-Adverse. Note: **DNM: Mobility Impairment (Lower extremities) Healthcare Appliance: Cane. Housing Restrictions: Ground Floor Lower/Bottom Bunk. Physical Limitations: No prolonged standing, or walking.** Per memorandum 9/26/12 Modification of Level-IV 270/180 design housing Placement Screening Criteria **Group A1** Determinate SHU Term in the last 3 years for a Division B disciplinary offense involving assaultive behavior or weapon possession (*9 month SHU Term for Assault on a Peace Officer likely to cause serious injury*) 180-design for 3 years from MERD 4/13/13. **Close A** custody per Close Custody Regulations effective 7/1/12 **Disciplinary History** Division A-1 RVR for "*Battery on a inmate with a weapon*" must serve 1 year Close A/ 2 years Close B upon SNY/GP yard placement (7/18/13). **CSRA: 5 High Violent, PC2933 – Ineligible, PC2933.05 – Ineligible.** COMPAS assessment not required – EOP Level of Care

**Committee Action:** Based upon a review of LUA'S Central File, case factors, and through discussion with him, committee elects to: **Release to Facility "C" EOP/SNY, Establish CLO AS custody WG/PG A1A effective 7/18/13, Place on CYSS Waiting List, No Gate Pass (EOP), Single Cell Status pending ICC Review, DNM, RLD/not FH clear, EOP Level of Care**

**Cell Status Review:** UCC conducted a review of LUA'S central file, regarding aggressive behavior towards cellmates. LUA has no significant history of in-cell predatory/assaultive behavior. PBSP/ASU-ICC on 6/12/13 place him on Single Cell Status based on SNY Status. KVSP Interdisciplinary Treatment Team Housing/Program Recommendation; Double Cell Housing Based on these factors, LUA will remain on Single Cell Status pending an ICC Cell Review

**Effective Communication:** LUA is a participant in the Mental Health Services Delivery System identified as Enhanced Outpatient Program (EOP) Level of Care with a TABE Score above 4.0. Effective communication was achieved by using simple English spoken slowly and clearly. To determine that effective communication was achieved LUA was asked questions about this committee actions, he was able to respond correctly repeating back in his own words what was happening to him.

**Clinician Review:** Mental Health Staff (A. Haddock, LCSW) indicated that LUA would be able to comprehend the issues under review during this committee

**Inmate Comments and Participation:** LUA actively participated in today's committee. He stated that he cannot be housed at KVSP since he has had Valley Fever and this institution is on that list of places not to be housed. It was explained to him that he was endorsed to KVSP at Low Risk Medical and *not* Restricted – COCCI Area (per 128-C3 dated 2/7/13) At the conclusion of this review, LUA was informed of his Appeal Rights and was given the Use of Force instructions.

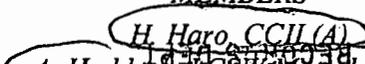
**Additional Information:** Confidential information is noted and reviewed. The CDC 1882 was reviewed by UCC. All pertinent forms have been reviewed and were updated.

**Staff Assistant:** C/O Nichols Inmate LUA is a participant in the MHSDS at EOP Level of Care

**INMATE'S CASE FACTORS**

CUSTODY	PS/LEVEL	WG/PG & EFF. DATE	RELEASE DATE	GPL	RECLASS	AGE	ETHNIC	TERMER	NEXT BPT & DATE
CLOAS	305/1V	A1A - 7/18/2013	EPRD 6/27/2034	5.3 (R)	7/8/2014	35	MEX	2nd	N/A
RECEIVED KVSP	RECEIVED FROM & TYPE OF TX		RECEIVED CDCR	COUNTY OF COMMITMENT		SENTENCE		RESTITUTION	
7/18/2013	PBSP-A - Non-Adverse		7/8/2008	San Bernardino		28 years 4 months		\$1800.00	
COMMITMENT OFFENSE									
Controlling: PC215 Carjacking (2 counts), with enhancements PC667(A), PC667.5 (B) PPT-NV									
PRIOR ARREST HISTORY					DISCIPLINARY HISTORY				
Possession of a Concealed Weapon, False ID to Peace Officer,, ADW (Not Firearm), Theft, Battery, H&S Violations, Vandalism, Carjacking, Robbery, Trespassing, Use/Under Influence of a Controlled Substance					5/12 Willfully Delaying a P/O (SHU/Div D), Destruction of State Property 2x, Willfully Delaying a P/O, Contraband, Mail Violation w/Security Threat 11/11, Assault on Staff (9 month SHU/Div B), Violation of Cell standards 8/11, Willfully Delaying or Obstructing Peace Officer (Refusing Assigned Housing) (6 month SHU/Div D), Willfully Delaying or Obstructing Peace Officer (Refusing Assigned Housng) 1/11, Battery on an Inmate with a Weapon (15 month SHU/Div A-1), Fighting x2, Possession of Dangerous Contraband				
SEX OFFENSES			ARSON OFFENSES			ESCAPES			
Clear as of 7/29/2013			Clear as of 7/29/2013			Escape without violence - BPH Good Cause Finding - escape from patrol car			
ENEMIES		GANG/TIP				CONFIDENTIAL			
Noted on CDC 812 & CDC 812C		Two-Five (2-5) (D/O)				Noted & Reviewed			
MEDICAL		TB - DATE	DENTAL	DPP		SUBSTANCE ABUSE			
Restricted Duty		22 - 4/29/2013	4	DNM		methamphetamine, alcohol			
PSYCH		MDO				DDP			
EOP		Meets MDO Criteria				NCF			
HOUSING	CELL STATUS	CAMP, MSF, CCF, MCCF, SAP, REST. CENTER, & COCF ELIGIBILITY / VIO Review							
180 Design (A1) MERD 4/13/13 INTEGRATION RO	Single Cell PBSP/ASU-ICC 6/12/2013 SNY Status	Camp Eligible: No CLS MSF Eligible: No CLS CCF Eligible: Closed	MCCF Eligible: No CLS SAP Eligible: No TIM Rest. Center Eligible: Closed	COCF Eligible: No CLS VIO Review Date: 11/10/2009					
FPTTP		HWD				JOB ASSIGNMENT			
US Citizen		None				Unassigned			
COUNTY OF LAST LEGAL RESEIDENCE		NOTICES AND REGISTRATIONS				ARCHIVE REVIEW			
San Bernardino		PC 296, PC 30586				No Archive File			
COMMITTEE MEMBERS									

**CHAIRPERSON**  
  
 O. Smith, Fac C Capt. (A)

**MEMBERS**  
  
 H. Haro, CCIL (A)  
  
 A. Haddock, LCSW-Mental Health

**RECORDER**  
  
 R. Sherrill, CCI

Committee Date:  
 (7/31/2013)

KERN VALLEY  
 INITIAL EOP REVIEW  
 TH 7 11 22 004 8307

Committee: UCC

Typed By: SLC - Distribution: C-File & Inmate

KERN VALLEY STATE PRISON

Classification Chrono CDCR 128G (Rev: 11/07)

EXHIBIT C

~~13000000~~

STATE OF CALIFORNIA  
INMATE/PAROLEE APPEAL  
CDCR 602 (REV. 08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

	IAB USE ONLY		Institution/Parole Region: Log #: <u>KVST-0-13-02311</u>	Category: <u>15 HEALTH CARE</u>
	FOR STAFF USE ONLY			

You may appeal a CDCR decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations, Title 15, Section (CCR) 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that lead to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): <u>HUBO LUA</u>	CDC Number: <u>P-48040</u>	Unit/Cell Number: <u>C-8/121</u>	Assignment:
--	-------------------------------	-------------------------------------	-------------

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

Transfer

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

Inmate Arrived here to Kern Valley State Prison on 7/18/13, from Pelican Bay State Prison, then Inmate appeared before ILL. Institution Classification Committee on 8/1/13, Inmate Lua, advised the committee

B. Action requested (If you need more space, use Section B of the CDCR 602-A):

to be transferred to a prison NOT IN the geographical area of valley fever as soon as possible, to be placed on the LOCCI Restriction

Supporting Documents: Refer to CCR 3084.3.

LIS

Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):

Inmate is attaching supporting lab reports from his medical file showing he is positive for valley fever

No, I have not attached any supporting documents. Reason: \_\_\_\_\_

Inmate/Parolee Signature: [Signature] Date Submitted: 8/13/13

By placing my initials in this box, I waive my right to receive an interview.

AUG 19 2013  
AUG 26 2013

INMATE APPEALS BRANCH

OCT-9 2013

Remove the points the Author writes on white lined paper (Const. Dir.)

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached?  Yes  No

This appeal has been:

- Bypassed at the First Level of Review. Go to Section E
- Rejected (See attached letter for instruction) Date: 8-19-13 Date: \_\_\_\_\_ Date: \_\_\_\_\_
- Cancelled (See attached letter) Date: \_\_\_\_\_
- Accepted at the First Level of Review.

Assigned to: \_\_\_\_\_ Title: \_\_\_\_\_ Date Assigned: \_\_\_\_\_ Date Due: \_\_\_\_\_

First Level Responder: Complete a First Level response. Include interviewer's name, title, interview date, location, and complete the section below.

Date of Interview: \_\_\_\_\_ Interview Location: \_\_\_\_\_

Your appeal issue is:  Granted  Granted in Part  Denied  Other: \_\_\_\_\_

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_ Date completed: \_\_\_\_\_  
(Print Name)

Reviewer: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Print Name)

Date received by AC: \_\_\_\_\_

AC Use Only  
Date mailed/delivered to appellant \_\_\_\_/\_\_\_\_/\_\_\_\_

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

Inmate LIA, IS DISSATISFIED WITH FIRST LEVEL RESPONSE, Inmate already attached supporting medical lab documents. That proves he's already been exposed and diagnosed with the infection of (Valley fever or COCCI) see Pages 4, through 8, ) Now on Page 3 and 4, IS a informational introduction about (Valley fever) which the Attorneys from the Prison Law office provided to prisoner it explains that (K.V.S.P.) Kern Valley State Prison IS one of many other prisons located at the geographical area where Valley fever IS most common and been reported

Inmate/Parolee Signature: Hugo Ju

Date Submitted: 8/22/13

**E. Second Level - Staff Use Only** Staff - Check One: Is CDCR 602-A Attached?  Yes  No

This appeal has been:

By-passed at Second Level of Review. Go to Section G.  
 Rejected (See attached letter for instruction) Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_  
 Cancelled (See attached letter)  
 Accepted at the Second Level of Review

Assigned to: APPCALS Title: CCII Date Assigned: 8-26-13 Date Due: 10-8-13

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: 9/18/13 Interview Location: Telephonically AT COR

Your appeal issue is:  Granted  Granted in Part  Denied  Other: \_\_\_\_\_

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: M. Sparr Title: CCII Signature: \_\_\_\_\_ Date completed: 9/18/13  
(Print Name)

Reviewer: D. Davoz Title: com Signature: \_\_\_\_\_  
(Print Name)

Date received by AC: 9-20-13

**AC Use Only**  
Date mailed/delivered to appellant 9/20/13

F. If you are dissatisfied with the Second Level response, explain reason below; attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

The (I.C.C.) Institutional Classification Committee, still Refuses to have me transferred out of (K.V.S.P.) Kern Valley State Prison Valley fever Area, the (I.C.C.) has the Authority to place me on the COCCI Restriction List, and the Refuse to do so, MY EIGHTH Amendment U.S. Constitutional Rights, IN health and Safty over rides ANY (C.D.C.R.) POLICIES and Procedures, THIS USE SUPPORTS MY CLAIM (Farmer V. Brennan U.S. JWS) 1994 114 S.Ct 1970 511 U.S. 825)

Inmate/Parolee Signature: Hugo Ju

Date Submitted: 10/4/13

**G. Third Level - Staff Use Only**

This appeal has been:

Rejected (See attached letter for instruction) Date: OCT 29 2013 Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_  
 Cancelled (See attached letter) Date: \_\_\_\_\_  
 Accepted at the Third Level of Review. Your appeal issue is  Granted  Granted in Part  Denied  Other: \_\_\_\_\_

See attached Third Level response.

**Third Level Use Only**  
Date mailed/delivered to appellant 1/1/13

Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason. (If withdrawal is conditional, list conditions.)

Inmate/Parolee Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Staff Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF CALIFORNIA  
 INMATE/PAROLEE APPEAL FORM ATTACHMENT  
 CDCR 602-A (08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY	Institution/Parole Region: <u>KVSP</u>	Log #: <u>13-02311</u>	Category: <u>15</u> <u>HE</u>
FOR STAFF USE ONLY			

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): <u>HUGO LINA</u>	CDC Number: <u>P-48040</u>	Unit/Cell Number: <u>C-8/121</u>	Assignment:
---	-------------------------------	-------------------------------------	-------------

A. Continuation of CDCR 602, Section A only (Explain your issue): There present that day

That he has been exposed to valley fever or cocci. Back in 2005  
at Pleasant Valley State Prison, he was treated then was told he  
was fine, then 2010 again one of the physicians from (LAC)  
advised inmate that his valley fever cocci level has risen and  
spreading in his body, he was treated again with medication  
called Olfucan, then was taken off after his leg swelled up  
now since then inmate while at Pelican Bay State Prison he  
started having sever head aches, dizziness, stiff neck abscesses  
coming out his skin and very weak and tired, these symptoms  
are consistent with the valley fever called disseminated  
type which can result in death, now inmate has been  
throwing up feeling ~~the~~ very weak, and inmate has told  
the ICC members that according to the information  
given to him, this prison (K.V.S.P.) is located in the  
geographic area where valley fever is most common, now  
according to this information even if you been already exposed  
to valley fever, it can still be reactivated if your immune  
system is significantly weakened you can be reinfected

Inmate/Parolee Signature: [Signature] Date Submitted: 8/15/13

RECEIVED  
 OCT -9 2013  
 INMATE APPEALS BRANCH  
 AUG 19 2013  
 AUG 26 2013

B. Continuation of CDCR 602, Section B only (Action requested): Inmate advised committee members he

wishes to be transferred to another prison that is not infected with valley  
fever, which they refused to do inmates 180 custody level, but  
a prisoners constitutional rights to health and safety override any prison  
policy, and if inmate does happen to get severely sick and  
his valley fever reactivated, he is holding (ICC) members  
liable for deliberate indifference, to inmates health and  
safety, inmate does not need to show he was injured to  
prove (ICC) are deliberate indifference and liable, mere  
knowledge that they know they exposing inmate to danger is enough to  
prevail on an eighth amendment claim, inmate requests to be transferred  
immediately, to be placed on the cocci restriction list

Inmate/Parolee Signature: [Signature] Date Submitted: 8/15/13

D. Continuation of CDCR 602, Section D only (Dissatisfied with First Level response): ~~See Page 3~~ Page 3, Als

states that if a prisoner has been in the past already been infected with (valley fever cocci) that some prisoners can reactivate and can be reinfected with the valley fever, or cocci if he is placed or housed in a prison or area that is already known with valley fever cocci infections reports and this prison (K.V.S.P.) is located in that valley fever geographical area, Now Page 5, states that inmate LWA was already infected with valley fever cocci and pneumonia; in (PVSP) present valley state prison dated 9-16-05, on page 6, there is a lab report dated 3-17-06, which states inmate LWA is positive for (cocci) valley fever, inmate was treated, then see page 7, this lab report states inmate LWA (cocci) infection reactivated while he was housed at (LAC), page 8, shows that inmate was seen by a physician who advised inmate his (valley fever cocci) infection reactivated and dissipated in his body, at that time the date was 7/30/13 see page 8, so the physician started to treat inmate with Diflucan, where inmate was also hospitalized, now inmate is and has been having the (cocci) symptoms again where he fears he has developed (meningitis) due to he has been having the symptoms that are consistent with (meningitis) where he has been having head aches, dizziness, ~~lost of hunger~~, stiff neck, lost of energy, difficulty breathing when laying down, irregular breathing, besides this side effects since inmate has had valley fever in the past and is in high risk in reactivating the infection (C.D.C.R.) are required by the court and sacramento not to house inmate's like my condition in this prison, prison officials are liable for deliberate indifference when they expose a prisoner to a sufficiently substantial risk of serious damage to his future health, (see Helling, 509 U.S. at 35, 113 S.Ct. at 2481) Farmer v. Brennan (U.S. (wis) 1994) 114 S.Ct. 1970 511 U.S. 825) 8/22/13  
Inmate/Parolee Signature: Ayo ju Date Submitted: 8/22/13

F. Continuation of CDCR 602, Section F only (Dissatisfied with Second Level response): I have provided (ICC) members

and advised them I have a weak immune system and I already been infected with valley fever in the past before my arrival to (K.V.S.P.) I was feeling fine then a week later I started feeling sick with head aches, dizziness, stiff neck, and not eating well, I did send several medical slips to health care about my condition, and when I was seen by (ICC committee) members I told them I should not be here in (K.V.S.P.) cause of the cocci risk in this area and I warned (ICC) that if I get sick again where if my cocci level rises up again, putting me at risk of serious harm and death, then the (ICC) members will be liable for deliberate indifference for failing to exercise their power and have me transferred, now because they failed, to protect me from safe and serious harm, I got sick again, the nurse notified me that the blood sample is back and my cocci titer is real high that same day (9-5-13) I was taken to out side hospital at Bakers field, I was tested again and the doctor advised me the cocci dissipated, and I need to receive treatment through an I.V. for the next 3-months I am now at (C.S.P. corcoran) hospital and still being treated with (Ablecet) through an I.V., the physician here refuses to place me on the cocci restriction, he advised me <sup>that</sup> only sacramento can do that, THANK YOU FOR YOUR TIME  
Inmate/Parolee Signature: Ayo ju Date Submitted: 10/4/13

**OFFICE OF APPEALS**

1515 S Street, Sacramento, CA 95814  
P.O. Box 942883  
Sacramento, CA 94283-0001



October 29, 2013

LUA, HUGO, P48040  
Kern Valley State Prison  
P.O. Box 6000  
Delano, CA 93216

RE: TLR# 1304363 KVSP-13-02311 TRANSFER

The Office of Appeals, California Department of Corrections and Rehabilitation (CDCR) acts as the third level of review as established in California Code of Regulations (CCR) Title 15, Article 8. The Office of Appeals examines and responds to inmate and parolee appeals, after the institution or parole region has responded at the Second Level of Appeal.

Remove the Points and Authorities written on white lined paper. These extra documents constitute additional discussion of your issue without keeping to the original CDCR 602 and 602-A, and will not be accepted.

A handwritten signature in black ink, appearing to read "J.D. Lozano".

J. D. LOZANO, Chief  
Office of Appeals

Be advised that you cannot appeal a rejected appeal, but should take the corrective action necessary and resubmit the appeal within the timeframes specified in CCR 3084.6(a) and CCR 3084.8(b). Pursuant to CCR 3084.6(e), once an appeal has been cancelled, that appeal may not be resubmitted. However, a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation is granted.

\*\*\*\*PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE\*\*\*\*

# Memorandum

Date : September 18, 2013

To : LUA, P48040  
INFB1-16L  
Corcoran State Prison-ACH

Subject : **APPEAL LOG # KVSP-O-13-02311**  
**SECOND LEVEL RESPONSE**

*4402-16*  
*eng. 1-16*

**APPEAL ISSUE:** The appellant contends he was exposed to valley fever or cocci in 2005 at Pleasant Valley State Prison and that in 2010, physicians at California State prison in Lancaster advised him that his cocci level has risen and is spreading in his body. The appellant states that he has information that notes Kern Valley State Prison (KVSP) is in an area where valley fever is most common.

The appellant requests to be transferred to a prison not in the geographical area of valley fever.

**INTERVIEW/EFFECTIVE COMMUNICATION:** The appellant was telephonically interviewed on September 18, 2013, by M. Seaman, Correctional Counselor II (CCII), regarding this appeal. The appellant was afforded the opportunity to further explain his issue and to provide any supporting evidence or documents.

A review of the Test of Adult Basic Education list reveals the appellant has a Reading Grade Point Level above 4.0; therefore, he does not require special accommodation to achieve effective communication.

**REGULATIONS:** The rules governing this issue are:

- California Code of Regulations (CCR), Title 15, Section 3379

**APPEAL RESPONSE:** M. Seaman, CCII, was assigned to review this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, a thorough examination has been conducted regarding the claim presented and evaluated in accordance with Kern Valley State Prison (KVSP) Operational Procedures (OP), the California Code of Regulations (CCR) and the Department Operations Manual (DOM).

The appellant contends he was exposed to valley fever or cocci in 2005 at Pleasant Valley State Prison and that in 2010, physicians at California State prison in Lancaster advised him that his cocci level has risen and is spreading in his body. The appellant states that he has information that notes KVSP is in an area where valley fever is most common. He claims that upon arrival to KVSP he advised Unit Classification

Second Level Response

Lua, P48040

KVSP-O-13-02311

Page 2 of 2

Committee (UCC) that he was previously exposed to valley fever. He claims that he has recently been feeling very weak and has been throwing up. The appellant states that his various medical issues are derived from being exposed to Valley Fever and he has submitted documentation proving he was exposed to valley fever in 2005.

In response, the appellant has not provided medical documentation indicating he is unsuitable for placement at KVSP. While housed at Pelican Bay State Prison, the appellant was medically evaluated on February 7, 2013 by Doctor Rendleman and a CDCR 128-C3, Medical Classification Chrono, was prepared. The appellant was classified as permanent for low medical risk, low-Intensity acuity, with a functional capacity of limited duty. According to the Strategic Offender Management System, the appellant arrived at KVSP on July 18, 2013. The appellant's CDCR 128-C3 is clear for institutional or environmental housing concerns. Inmates unable to be housed at an institution located in the hyper endemic area for valley fever would have the "Restricted - Cocci Area" marked on their CDCR 128-C3. The appellant is appropriately housed in accordance with his medical needs as documented on his CDCR 128-C3.

CCR Title 15 Section 3379, Inmate Transfers, states in part, "(a) Transfer requirements. (1) Any inmate transfer from a facility other than a reception center shall require a classification committee action and endorsement by a classification staff representative (CSR)."

The appellant states he should be transferred from KVSP. In response, the appellants housing record notes he was endorsed by the Classification Staff Representative (CSR) and approved for KVSP-IV Enhanced Outpatient Program (EOP) Sensitive Needs Yard (SNY) on July 7, 2013, transferred to KVSP from Pelican Bay State Prison on July 18, 2013, then on July 31, 2013, appellant was seen by KVSP UCC for his Initial EOP Review. Based on the above aforementioned information, which includes current medical and custody review, the appellant is appropriately housed at KVSP.

**DECISION:** Based on the above, this appeal is **DENIED** at the Second Level of Review.

If dissatisfied, appellant may request a Director's Level review by following the instructions on the appeal form.



D. DAVEY  
Chief Deputy Warden  
Kern Valley State Prison

Dimitrios Pappagianis M.D.  
 Coccidioidomycosis Serology Laboratory  
 UCD School of Medicine  
 PO Box 1440  
 Davis, California 95617  
 (530) 752-1757

LAC

COCCIDIOIDAL SEROLOGY REPORT

PATIENT NAME: LIA, HUGO  
 NUMBER: 3323708

DATE: 09/29/10

PHYSICIAN: Olakanmi ~~1000-148040~~

Foundation Laboratories Inc.  
 Attn: SEND OUT DEPT.  
 1716 West Holt Ave  
 Pomona, CA 91768-0000

COCCIDIOIDAL SEROLOGY RESULTS

SPEC#	TEST(S) SOURCE *	CURRENT RECVD	ORDERED	IMMUNODIFFUSION (ID) TEST
1675I	BLD	09-23	CF, ID	Qualitative for PPTN (IgM) & CF (IgG)   <u>POSITIVE</u> for Comp Fix (IgG) antibody

COMPLEMENT FIXATION TEST (quantitative)

\*BLD=Serum incubated for two hours at 37 degrees C.  
 Spinal Fluid incubated overnight at 5 degrees C.

SPEC #	SOURCE	DRAWN	TESTED	Dilution										Anticomplement Control					
				1:2	1:4	1:8	1:16	1:32	1:64	1:128	1:256	1:512	1:1024	1:2	1:4	1:8			
3728H	BLD	07-07	09-28	4	4	4	0	0											
1675I	BLD	09-20	09-28	4	4	4	0	0	0	0	0	0	0	0	0	0	0	0	0

INTERPRETATION:

No change in the coccidioidal complement fixation titer

*D. Pappagianis, m.d.*

COPY

STATE OF CALIFORNIA  
**MEDICAL CLASSIFICATION CHRONO**  
 CDCR 128-C3 (10/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

<input checked="" type="radio"/> Permanent	<input type="radio"/> Temporary	<input type="radio"/> Expires on: _____	<input type="radio"/> Expiration Unspecified, review in 6 months
--	---------------------------------	---	--

Level of Care Based on Patient Need	Classification Factors
<input checked="" type="radio"/> OPX Acute Rehab <input type="radio"/> <input type="radio"/> Hospice <input type="radio"/> <input type="radio"/> OHU <input type="radio"/> SNF <input type="radio"/> <input type="radio"/> CTC <input type="radio"/> GACH/Outside Hospital <input type="radio"/>	Temporary Medical Hold* <input type="checkbox"/> Long-Term Stay <input type="checkbox"/> Temporary Med Isolation* <input type="checkbox"/> Override <sup>2</sup> * <input type="checkbox"/>

Intensity of Services	Functional Capacity	Medical Risk	Nursing Care Acuity
Proximity to Consult No particular need <input checked="" type="radio"/> Infreq Basic Consultation <input type="radio"/> Freq Basic Consultation <input type="radio"/> Tertiary Consultations* <input type="radio"/> Community Placement* <input type="radio"/>	Vigorous Activity <input type="radio"/> Full Duty <input type="radio"/> Limited Duty* <input checked="" type="radio"/> Totally Disabled* <input type="radio"/>	Low Risk <input checked="" type="radio"/> Medium Risk <input type="radio"/> High Risk <input type="radio"/>	Basic Nursing <input type="radio"/> Uncomplicated Nursing <input type="radio"/> Low-Intensity Nursing <input checked="" type="radio"/> Medium-Intensity Nursing <input type="radio"/> High-Intensity Nursing <input type="radio"/> Special Nursing <input type="radio"/>

Specialized Services	Institutional-Environmental
Clinical Category 1 <input type="checkbox"/> Clinical Category 2 <input type="checkbox"/> Pregnancy Program <input type="checkbox"/> Transplant Center <input type="checkbox"/> Hemodialysis <input type="checkbox"/> Dementia <input type="checkbox"/>	Therapeutic Diet* <input type="checkbox"/> Respiratory Isolation <input type="checkbox"/> Speech/Occupational Th* <input type="checkbox"/> Physical Therapy <input type="checkbox"/> Durable Med Equip* <input type="checkbox"/> Restricted - Altitude* <input type="checkbox"/> Restricted - Cocci Area* <input type="checkbox"/> Restricted - No Stairs* <input type="checkbox"/> Req. Electrical Access <sup>1</sup> * <input type="checkbox"/> Requires Adaptive Eq <sup>1</sup> * <input type="checkbox"/> Req. Medical Transport* <input type="checkbox"/> <sup>1</sup> See CDCR 1845 and 7410* <input type="checkbox"/>

Comments (all \* items)  
 (non-confidential)



Completed By (print name): <i>Ken Derman</i>	CDC NUMBER, NAME (LAST, FIRST, MI), DATE OF BIRTH: <i>Lua, Hugo</i>
Signature: <i>[Signature]</i>	
Title: <i>P+S</i>	Date: <i>7 Feb 13</i>
Institution: <i>Pelican Bay</i>	<i>P48040</i>

**MEDICAL CLASSIFICATION CHRONO**

\* Include details in Comments

<sup>1</sup> Include detail in CDCR 1845 or CDCR 7410 as appropriate  
<sup>2</sup> Regional Medical Executive only. State factors overridden in Comments

Screening For:  
CDC 602 Inmate/Parolee Appeals  
CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

August 19, 2013

LUA, P48040  
C 008 1121001LW

TRANSFER, Health Care, 08/19/2013  
Log Number: KVSP-O-13-02311  
(Note: Log numbers are assigned to all appeals for tracking purposes)

The enclosed documents are being returned to you for the following reasons:

*Your appeal has been rejected pursuant to the California Code of Regulations, Title 15, Section (CCR) 3084.6(b)(2). You have failed to demonstrate a material adverse effect upon your welfare. Material adverse effect means a harm or injury that is measurable or demonstrable, or the reasonable likelihood of such harm or injury. In either case, the harm or injury must be due to any policy, decision, action, condition, or omission by the department or its staff.*

- YOU HAVE NOT PROVIDED CURRENT MEDICAL DOCUMENTATION THAT SUPPORTS YOU ARE IMPROPERLY HOUSED AT KVSP.
- YOU MAY ADDRESS YOUR MEDICAL CONCERNS WITH YOUR FACILITY MEDICAL DEPARTMENT.

M. Seaman / S. Tallerico  
Appeals Coordinator  
Kern Valley State Prison

\*\*\*\*\* PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE \*\*\*\*\*

NOTE: If you are required to respond/explain to this CDC Form 695, use only the lines provided below.

I am ONLY Trying to exhaust my administrative remedies, I am already aware APPEAL coordinator IS going to Reject cancel or Deny my Appeal, but before I attempt to make a 1983 federal claim I need to exhaust my Appeal first. PLEASE Review the medical Lab reports and the valley fever information I attached to this Appeal

Be advised that you cannot appeal a rejected appeal, but should take the corrective action necessary and resubmit the appeal within the timeframes specified in CCR 3084.6(a) and CCR 3084.8(b). Pursuant to CCR 3084.6(e), once an appeal has been cancelled, that appeal may not be resubmitted. However, a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation is granted.

I attached to this Appeal to ANSWER your question

Continuation from section 0, Dissatisfied with first level Appeal  
Response 602

Prison officials violate the Eighth Amendment's proscription against cruel and unusual punishment when they display "deliberate indifference to serious medical needs of prisoners." *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). ~~to satisfy the objective component~~ A claim of deliberate indifference to a serious medical need contains both an objective and subjective component. To satisfy the objective component, a prisoner must demonstrate that his medical condition is objectively, sufficiently serious (*Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) (internal quotations omitted)); see also *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002). A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention. See *Foelker v. Outagamie County*, 394 F.3d 510, 512-13 (7th Cir. 2005). To satisfy the subjective component a prisoner must demonstrate that prison officials acted with a sufficiently culpable state of mind: "Farmer, 511 U.S. at 834, 114 S.Ct. 1970 (quoting - *Wilson v. Selter*, 501 U.S. 294, 297, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991)) the officials must know of and disregard an excessive risk to inmate health drawn that a substantial risk of serious harm exists" and must also draw the inference: "Farmer, 511 U.S. at 837, 114 S.Ct. 1970." This is not to say that a prisoner must establish that officials intended or desired the harm that transpired. (*Walker*, 293 F.3d at 1037.) Instead, it is enough to show that the defendants knew of a substantial risk of harm to the inmate and disregarded the risk. Id. Additionally, a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious: "Farmer, 511 U.S. at 842, 114 S.Ct. 1970."

EXHIBIT D

**NOTE: SEND COPY OF PHYSICIAN'S ORDER FOR MEDICATION TO PHARMACY AFTER EACH ORDER IS SIGNED.**

Order Date	Time	Problem #	Physician's Order and Medication (Orders must be dated, timed, and signed.)
9/05/13	1520		SEND to MERCY HOSPITAL BLS - state vehicle PT. accepted for direct admit to (5) West Dr. Mui accepted / LUA filed
9/5/13	@ 1522		Noted by P. Rodriguez RW

ALLERGIES: **NKA** INSTITUTION: **KVST** ROOM / WING: **C8-121**

Confidential client information  
See W & I Code, Sections 4514 and 5328

CDC NUMBER, NAME (LAST, FIRST, MI)  
**LUA, HUGO  
P48040**

**PHYSICIAN'S ORDERS**

Report generated at 09/09/13 06:39

Requested by: [REDACTED]

J600583 J25361650  
LUA,HUGO P48040 OPTOUT  
J.5W J.522-01  
MUI,BYRON

CHW CENTRAL CALIFORNIA  
MERCY HOSPITAL BAKERSFIELD  
2215 Truxtun Avenue  
Bakersfield, California 93301

Pol #: P48040  
DOB: 07/16/78  
Admit Date: 09/05/13

INMATE HISTORY & PHYSICAL

DATE OF ADMISSION: 09/05/2013

REASON FOR ADMISSION: Disseminated cocci.

HISTORY OF PRESENT ILLNESS: The patient is a 35 years old Hispanic male inmate, giving a very reliable history that he had pulmonary cocci involving the right lung along with pleural effusion in 2005 while he was at Pleasant Valley State Prison. The patient stated that he had been treated with 2 months of Diflucan therapy with improvement in his symptomatology. However the treatment was discontinued because of markedly elevated liver function tests secondary also to hepatitis C. The patient subsequently transferred to Tehachapi State Prison in 2010, in which the patient once again noticed he had a recurrence because of the rising titer, exact value the patient is unsure. He also stated that \_\_\_\_\_ was only treated for 2 months duration and subsequently transferred to Kern Valley State prison. The patient stated that for the past 4 months duration he has had dizziness, daily headache along with unsteady gait, and thought that he had another recurrence, therefore the patient stating that he requested his valley fever blood test to be rechecked. Subsequently the titer was found to be 1:128. I have received a call from Dr. Dailio because of the rising titer along with back pain and above complaints, and requested the patient be directly admitted to Mercy Hospital for further evaluation. The patient denied having any coughing, abdominal pain, weight loss, but he stated that he has had daily night sweats for the past several months.

PAST MEDICAL HISTORY: Remarkable for those mentioned in history of present illness. The patient also has a history of back surgery 15 years ago, as a complication patient developed neurogenic bladder that requires self-catheter 3-4 times a day.

CURRENT MEDICATIONS: Include venlafaxine 225 p.o. q.a.m., Zoloft 200 mg p.o. q.a.m., Tegretol 200 mg p.o. b.i.d., ziprasidone 40 mg p.o. daily.

ALLERGIES: DENIED.

SOCIAL HISTORY: Noncontributory.

REVIEW OF SYSTEMS: Noncontributory except for those mentioned in history of present illness.

PHYSICAL EXAMINATION: VITAL SIGNS: Temperature 97, blood pressure 109/55, pulse 51, respirations 18. HEENT: Pupils equal, react to light. Extraocular full. NECK: No palpable lymph nodes. LUNGS: Clear to auscultation. HEART: Normal rhythm. ABDOMEN: Soft,

**MEDICAL HISTORY AND PHYSICAL**

<b>NAME:</b> LUA, HUGO	<b>CDCR#:</b> P48040	<b>DATE OF SERVICE:</b> 09/12/2013
<b>DATE OF BIRTH:</b> 07/16/1978	<b>HOUSING:</b> S INFB1016001LP	<b>PAROLE DATE:</b>

REASON FOR ADMISSION: The patient is here for long-term Abelcet treatment for his established diagnosis of disseminated cocci. The patient supposedly had target total accumulated dose of 10,000 mg and he only received 750 mg at Mercy.

**CHIEF COMPLAINT:**

**HISTORY OF PRESENT ILLNESS:** This is a 35-year-old Hispanic male who has an extensive history of Valley fever. His original diagnosis of pulmonary cocci was made at Pleasant Valley State Prison in the year 2005. At that time, he was treated with Diflucan for approximately 2 months with symptom improvement. However, due to the significant elevation of LFT, his treatment had to be stopped. The patient later discovered that he has hepatitis C. Again the patient had relapse of his pulmonary cocci while he was staying at Tehachapi in 2010 which was noted by elevated cocci titer and again he was treated with antifungal agent for a short period of time. The patient then transferred to Kern Valley State Prison. For the past 4 months, he again was experiencing almost daily occurrence of headache along with dizziness and fatigue, thereby he was evaluated by the physician and the case was referred to infectious disease consultant. His titer was repeated, and it shows rising titer of 1:128. As there was a possibility of disseminated cocci, admission was advised, and the patient was taken to Mercy Hospital on 09/05/2013 and had undergone extensive inpatient workup. His CT of the chest and abdomen shows some scarring pattern in the right upper lobe with mild prominence of right hilar lymph node as well as prominence of retroperitoneal lymph node. Because of his complaining of back pain, a bone scan was ordered to rule out dissemination. Fortunately, there was no cocci involvement in bone. The patient also has undergone MRI of the head along with LP. Both studies were negative. The patient does have a history of chronic back pain, and he does have a history of back surgery which resulted in some neurogenic bladder symptoms, and he is doing intermittent self catheterization. The MRI of the lumbar spine shows incidental finding of mild protrusion of L4-L5 disk, but there is no significant stenosis. The patient was initiated on his Abelcet treatment since admission at Mercy and was continued until today. He has received a total of 750 mg and is planned to have total accumulation of 10,000 mg, thereby he was released to Corcoran to complete his therapy.

Upon receiving the patient reported he has been doing well with his Abelcet. He has no significant side effects that he is experiencing. The patient denies any current fever or chills. He denies any nausea or vomiting. He has no abdominal pain and no dysuria. The patient is stating that although he is using self catheterization, most of the time he is able to urinate by himself without using a catheter.

**PAST MEDICAL HISTORY:** As stated in History of Present Illness.

**MEDICATIONS:**

1. Venlafaxine.
2. Zoloft.
3. Ziprasidone.
4. Tegretol.
5. Abelcet.
6. Ultram, generic, for Tramadol

**ALLERGIES:** NO KNOWN DRUG ALLERGIES.

**SOCIAL HISTORY:** The patient is a nonsmoker. No history of alcohol abuse or dependency. Denied any history of IVDA.

**FAMILY HISTORY:**

**REVIEW OF SYSTEMS:** As stated in History of Present Illness.

EXHIBIT E