



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

5 **III. SUMMARY OF COMPLAINT**

6 The Complaint identifies the following officials at Kern Valley State Prison (KVSP)  
7 as Defendants: (1) H. Haro, Correctional Counselor II; (2) R. Sherrill, Correctional  
8 Counselor I; (3) A. Haddock, LCSW Mental Health; and (4) O. Smith, Facility C Captain  
9 and Unit Classification Committee Chairperson.

10 Plaintiff alleges the following:

11 On July 18, 2013, Plaintiff transferred into KVSP from Pelican Bay State Prison.  
12 A Unit Classification Committee (UCC) hearing was convened on July 31, 2013 to  
13 determine Plaintiff’s placement within KVSP. Plaintiff addressed the Defendants, each a  
14 committee member, and stated that he had contracted Valley Fever in 2005 at Pleasant  
15 Valley State Prison, that there is a chance the disease could be “reactivated” and  
16 threaten Plaintiff’s health if he were to remain in an area where Valley Fever is endemic,  
17 and that KVSP is located within the endemic zone. Plaintiff requested a transfer to a  
18 prison outside the endemic zone. (Compl. at 4.) The Defendants reviewed Plaintiff’s file  
19 and explained that Plaintiff was categorized a low medical risk and not restricted from  
20 prisons where Valley Fever is most prevalent. (Id. at 4 and 16.)

21 Plaintiff’s health was stable when he first arrived at KVSP but it quickly  
22 deteriorated. On September 5, 2013 lab results revealed a high level of Valley Fever in  
23 Plaintiff’s system. He was transferred to an outside hospital where it was determined  
24 that Valley Fever had disseminated beyond his lungs. Plaintiff was treated intravenously  
25 for a week at the hospital followed by six weeks of further treatment at a hospital within  
26 Corcoran State Prison. Plaintiff now suffers nightly chills and sweats and will require oral  
27 medication for the rest of his life. (Id. at 5.)

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1 **IV. ANALYSIS**

2 **A. Section 1983**

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

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

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

23 **B. Eighth Amendment**

24 The Eighth Amendment protects prisoners from inhumane methods of  
25 punishment and from inhumane conditions of confinement. Morgan v. Morgensen, 465  
26 F.3d 1041, 1045 (9th Cir. 2006). Extreme deprivations are required to make out a  
27 conditions of confinement claim, and only those deprivations denying the minimal  
28 civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth

1 Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9 (1992) (citations and  
2 quotations omitted). In order to state a claim for a violation of the Eighth Amendment,  
3 the plaintiff must allege facts sufficient to support a claim that prison officials knew of and  
4 disregarded a substantial risk of serious harm to the plaintiff. Farmer v. Brennan, 511  
5 U.S. 825, 847 (1994).

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

10 The Courts of this district have repeatedly found that confinement in a location  
11 where Valley Fever<sup>1</sup> is prevalent, in and of itself, fails to satisfy the first element of an  
12 Eighth Amendment claim, i.e. that the condition poses an excessive risk of harm. See,  
13 e.g., Smith v. Yates, 2012 WL 1498891, \*2 (E.D. Cal. Apr. 27, 2012) (citing King v.  
14 Avenal State Prison, 2009 WL 546212, \*4 (E.D. Cal. Mar. 4, 2009) ("[T]o the extent that  
15 Plaintiff is attempting to pursue an Eighth Amendment claim for the mere fact that he  
16 was confined in a location where Valley Fever spores existed which caused him to  
17 contract Valley Fever, he is advised that no courts have held that exposure to Valley  
18 Fever spores presents an excessive risk to inmate health."); see also Gilbert v. Yates,  
19 2010 WL 5113116, \*3 (E.D. Cal. Dec. 9, 2010); Willis v. Yates, 2009 WL 3486674, \*3  
20 (E.D. Cal. Oct. 23, 2009).

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

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26 <sup>1</sup> Valley Fever, also known as coccidioidomycosis, is "an infectious disease caused by inhalation of a  
27 fungus (*Coccidioides*) that lives in the soil of dry, low rainfall areas. It is spread through spores that  
28 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 based on Valley Fever exposure). Courts have deemed the first prong of an Eighth  
2 Amendment claim satisfied where the plaintiff has identified a factor responsible for  
3 either increasing the risk of contraction or the severity of infection. See, e.g., Stevens v.  
4 Yates, 2012 WL 2520464, \*3 (E.D. Cal. June 28, 2012) (nearby construction disturbed  
5 soil); Owens v. Trimble, 2012 WL 1910102, \*2 (E.D. Cal. May 25, 2012) (asthma);  
6 Whitney v. Walker, 2012 WL 893783, \*2-4 (E.D. Cal. Mar. 15, 2012) (immune system  
7 compromised by cancer); Thurston v. Schwarzenegger, 2008 WL 2129767, \*2 (E.D. Cal.  
8 May 21, 2008) (various medical conditions, including asthma, and race); see also Plata  
9 v. Brown, 2013 WL 3200587, \*7 n. 10, \*14 (N.D. Cal. June 24, 2013) (finding that the  
10 following groups are at an increased risk of harm from Valley Fever infection and should  
11 therefore be excluded from Pleasant Valley State Prison and Avenal State Prison:  
12 inmates designated as medically high-risk; "[p]atients with impaired cellular immunity,  
13 such as those with solid organ transplants, those with HIV infection, and those with  
14 chronic obstructive pulmonary disease, chronic renal failure, congestive heart failure,  
15 diabetes; patients receiving TNF inhibitors (medications used in the treatment of  
16 arthritis); Filipino and African-American men; and pregnant women in the 2nd or 3rd  
17 trimester.").

18 In this case Plaintiff alleges that he was at an increased risk of harm from Valley  
19 Fever because he was previously diagnosed with the disease. Plaintiff asserts that his  
20 transfer from Pelican Bay State Prison to KVSP, where Valley Fever is endemic, created  
21 a risk that his condition would reactivate and spread beyond his lungs. The Defendants  
22 explained at the UCC hearing that Plaintiff was medically low risk and could safely be  
23 housed in the Valley Fever area. Shortly after being forced to remain at KVSP, Plaintiff's  
24 health deteriorated and tests revealed disseminated Valley Fever.

25 The facts alleged in the Complaint do not support the conclusion that Plaintiff's  
26 earlier diagnosis left him more vulnerable to the disease. A handout titled "Basic  
27 Information about Valley Fever", produced by the Prison Law Office and attached to the  
28 Complaint, states that most people who contract Valley Fever gain a life-long immunity

1 to further infection. (Compl. at 11.) Nothing in the Complaint other than Plaintiff's  
2 conjecture and the worsening of his symptoms after his arrival at KVSP supports the  
3 contrary conclusion. In Plata v. Brown the Ninth Circuit came to the conclusion that  
4 inmates who had previously been diagnosed with Valley Fever were not at an increased  
5 risk of harm. 2013 WL 3200587, \*14 (“Individuals with a prior history of cocci are  
6 immune to subsequent infection,’ Expert Report at 2, so any such individuals need not  
7 be transferred or excluded from the affected institutions.”). Inmates who had previously  
8 been diagnosed with Valley Fever were exempted from the Plata order. Id.

9 Accordingly, the court feels compelled to conclude that the Complaint does not  
10 identify a substantial risk of harm to Plaintiff's health from the re-exposure to Valley  
11 Fever spores. Accordingly, it fails to state a claim. Plaintiff will be granted leave to  
12 amend. To state a claim Plaintiff must clearly allege the basis for his conclusions that  
13 his previous exposure to Valley Fever created an increased risk of harm from re-  
14 exposure and that Defendants knowingly disregarded that risk, and he must reconcile  
15 those conclusions with the findings in Plata. Plaintiff's theory must be supported by  
16 something more than his lay opinion or mere conjecture.

17 **V. CONCLUSION AND ORDER**

18 Plaintiff's Complaint does not state a claim for relief. The Court will grant Plaintiff  
19 an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49  
20 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts  
21 resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff  
22 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”  
23 Id. at 1949 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate  
24 that each named Defendant personally participated in a deprivation of his rights. Jones  
25 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

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

3 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
4 complaint be complete in itself without reference to any prior pleading. As a general  
5 rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
6 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint  
7 no longer serves any function in the case. Therefore, in an amended complaint, as in an  
8 original complaint, each claim and the involvement of each defendant must be  
9 sufficiently alleged. The amended complaint should be clearly and boldly titled "First  
10 Amended Complaint," refer to the appropriate case number, and be an original signed  
11 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
12 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
13 right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
14 omitted).

15 Accordingly, it is HEREBY ORDERED that:

16 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights complaint form  
17 and (2) a copy of his Complaint, filed January 6, 2014;

18 2. Plaintiff's Complaint is dismissed for failure to state a claim upon which  
19 relief may be granted;

20 3. Plaintiff shall file an amended complaint within thirty (30) days; and

21 4. If Plaintiff fails to file an amended complaint in compliance with this order,  
22 the Court will recommend that this action be dismissed, with prejudice, for failure to state  
23 a claim and failure to comply with a court order.

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25 IT IS SO ORDERED.

26 Dated: March 30, 2014

27 /s/ Michael J. Seng  
28 UNITED STATES MAGISTRATE JUDGE

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