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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

FREDERICK BEAGLE, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. 1:14-cv-00430- LJO-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING GRANTING IN PART AND  
DENYING IN PART DEFENDANTS BEARD,  
BRAZELTON, BROWN, CATE, HUBBARD,  
HYSEN, ROTHCHILD, AND  
SCHWARZENEGGAR’S MOTION TO DISMISS  
AND GRANTING DEFENDANTS IGBINOSA  
AND WINSLOW’S MOTION TO DISMISS

(ECF Nos. 25-26, 27-28, 51, 54, 55, 56, 58)

OBJECTIONS DUE WITHIN FOURTEEN DAYS

Plaintiffs filed this action on February 5, 2014. Currently before the Court are two motions to dismiss, filed May 5, 2014.

**I.**

**PROCEDURAL HISTORY**

Plaintiffs Frederick Beagle, Don Belardes, Floyd Boyd, Richard Burke, Joseph Bustamonte, Charles Carter, Otha Clark, Donald Dibble, Jerome Felder, Candelario Garza, Jeremy Hollis, Scott Imuta, Infinity, George Johnson, Bruce Koklich, Grady Montgomery, Peter Romero, Josh Thomas, Aaron Tillis, Rene Villanueva, Bertrum Westbrook, and Wayne Woods (“Plaintiffs”) filed a complaint in this action against Defendants Arnold Schwarzenegger, Edmund G. Brown , Jeffrey A. Beard, Paul D. Brazelton, Matthew Cate, James D. Hartley, Susan

1 L. Hubbard, Deborah Hysen, Dr. Felix Igbinsosa, Chris Meyer, Tanya Rothchild, Dr. Dwight  
2 Winslow, and James A. Yates alleging reckless exposure to dangerous conditions and deliberate  
3 indifference to serious medical needs in violation of the Eighth Amendment and negligence under  
4 California law in the Sacramento Division of the Eastern District of California on February 6,  
5 2104. (ECF No. 2.) On March 26, 2014, this action was transferred to the Fresno Division of the  
6 Eastern District of California. (ECF No. 11.) On March 27, 2014 an order issued relating this  
7 action to Jackson et al. v. State of California, et al., 1:13-cv-01055-LJO-SAB, a class action  
8 raising similar claims, and Smith v. Schwarzenegger, 1:14-cv-00430-LJO-SAB. (ECF No. 14.)

9 On May 5, 2014, Defendants Beard, Brazelton, Brown, Cate, Hubbard, Hysen, Rothchild,  
10 and Schwarzenegger filed a motion to dismiss and request for judicial notice. (ECF Nos. 25, 26,  
11 28.) On this same date, Defendants Igbinsosa and Winslow filed a motion to dismiss and a notice  
12 of joinder in the motion to dismiss filed by the co-defendants. (ECF Nos. 27, 29.)

13 On May 9, 2014, the Court issued an order to show cause why this action should not be  
14 consolidated with the related cases. (ECF No. 34.) On May 20, 2014, Plaintiffs filed a notice of  
15 voluntary dismissal of Defendant Kelso. (ECF No. 36.)

16 On May 21, 2014, responses to the order to show cause were filed. (ECF No. 37, 39.) On  
17 May 22, Defendant Kelso was dismissed without prejudice and an additional response to the  
18 order to show cause was filed by Defendants Kelso and Winslow. (ECF Nos. 40, 42.) On May  
19 29, 2014, Plaintiffs filed a notice of related case and Defendants Hartley and Yates filed a notice  
20 of joinder in Defendants' motion to dismiss. (ECF Nos. 46, 47.) On May 30, 2014, an order  
21 issued relating this action to Abukar et al. v. Schwarzenegger, et al., 1:14-cv-00816-SAB.  
22 Abukar et al. v. Schwarzenegger, et al., 1:14-cv-00816-SAB at ECF No. 11. On June 4, 2014,  
23 Defendants filed a supplement to the motion to dismiss. (ECF No. 51.)

24 On June 4, 2014, Plaintiffs filed oppositions to the motions to dismiss. (ECF Nos. 54, 55.)  
25 On June 11, 2014, Defendants Beard, Brazelton, Brown, Cate, Hartley, Hubbard, Hysen, Meyer,  
26 Rothchild, Schwarzenegger, and Yates filed a reply and an amended reply, and Defendants  
27 Igbinsosa and Winslow filed a reply and a notice of joinder in the co-defendants' reply. (ECF  
28 Nos. 56, 48, 59.) On June 12, 2014, Defendants Igbinsosa and Winslow filed a notice of joinder in

1 the co-defendants' amended reply. (ECF No. 61.)

2 The Court heard oral arguments on June 18, 2014. (ECF No. 63.) Counsel Benjamin  
3 Pavone appeared telephonically and counsel Gregg Zucker and David Elliot appeared for  
4 Plaintiffs; counsel Michelle Angus appeared for Defendants Schwarzenegger, Beard, Brazelton,  
5 Cate, Hartley, Hubbard, Hysen, Rothchild, Meyer, Yates, and Brown; and counsel Susan  
6 Coleman appeared for Defendants Igbinoso and Winslow. Id. Having considered the moving,  
7 opposition and reply papers, the declarations and exhibits attached thereto, arguments presented  
8 at the June 18, 2014 hearing, as well as the Court's file, the Court issues the following findings  
9 and recommendation.

## 10 II.

### 11 RELEVANT COMPLAINT ALLEGATIONS

12 Plaintiffs contend that Coccidioidomycosis ("Valley Fever") is carried by organisms that  
13 live in the soil in certain limited geographic areas. (First Am. Compl. ¶ 5, ECF No. 2.) Most  
14 individuals who contract Valley Fever have no symptoms or mild to moderate flu-like symptoms.  
15 (Id. at ¶ 6.) However, in certain ethnic and racial groups, including African-Americans, Filipinos  
16 and other Asians, Hispanics, and American Indians, as well as those who are immune-  
17 compromised or immune-suppressed, the disease can rapidly progress to a disseminated form.  
18 (Id.) In the disseminated form the disease attacks multiple organs requiring the individual to need  
19 life-long treatment and possibly causing brain damage or death. (Id. at ¶ 7.)

20 Plaintiffs to this action are inmates or former inmates of the state correctional system that  
21 contracted Valley Fever. (Id. at ¶ 8.) Plaintiffs contend that Defendants were aware of the danger  
22 of contracting Valley Fever and failed to take action to protect them from the disease. (Id. at ¶¶  
23 9-12.)

24 Plaintiffs allege that Defendant Schwarzenegger was the Governor of California from  
25 2003 through 2011 when the Valley Fever epidemic began and it sharply escalated during that  
26 time period. (Id. at ¶ 14.) Defendant Schwarzenegger acknowledged that inmates were coming  
27 down with Valley Fever but took no action to address the epidemic. (Id.) Defendant  
28 Schwarzenegger had the authority to establish CDCR policies and practices and failed to adopt a

1 policy that would have prevented high risk inmates from being located at or remaining at hyper-  
2 endemic prisons. (Id. at ¶ 15.) Defendant Schwarzenegger condoned the decision by his  
3 subordinates to authorize major construction at or immediately adjacent to the hyper-endemic  
4 prison at Pleasant Valley. (Id. at ¶ 17.)

5 Defendant Brown, the current Governor of California, continued the state policies and  
6 practices put in place by Defendant Schwarzenegger. (Id. at ¶ 19.)

7 Defendant Beard is the current Secretary of the California Department of Corrections and  
8 Rehabilitation (“CDCR”). (Id. at ¶ 20.) Defendant Beard is responsible for the policies and  
9 practices of the CDCR as well as the day to day operational decisions. (Id.) Defendant Beard  
10 allowed the policies set in place by his predecessor to continue. (Id.)

11 Defendant Cate was the Secretary of CDCR from 2008 through 2012. (Id. at ¶ 21.)  
12 Defendant Cate created and continued policies that allowed transfer of inmates and failed to  
13 protect high risk prisoner groups. (Id.)

14 Defendant Hubbard is the former Director of CDCR’s Division of Adult Operations and  
15 was personally involved in the decision to adopt a policy that continued to allow Plaintiffs to be  
16 housed in hyper-endemic prisons. (Id. at ¶ 22.) The policy acknowledged the health risk to  
17 medically compromised inmate groups but omitted exclusion of inmates at risk due to ethnicity or  
18 race. (Id.)

19 Defendant Rothchild is the former Chief of CDCR’s Classification Services Unit  
20 (“CSU”). (Id. at ¶ 23.) The CSU is responsible for setting policies to assign or prevent  
21 assignment of inmates to prisons and making the ministerial decisions to assign each individual  
22 inmate to a specific prison. (Id.) Defendant Rothchild created and continued policies authorizing  
23 transfer of at risk inmates to hyper-endemic prisons. (Id.)

24 Defendant Hysen is the Chief Deputy Secretary of the CDCR Executive Office of Facility  
25 Planning, Construction and Management. (Id. at ¶ 24.) Defendant Hysen did not implement any  
26 environmental mitigation measures that were identified to reduce the risk of infection to  
27 Plaintiffs. (Id.)

28 Defendant Meyer is Senior Chief of CDCR Executive Office of Facility Planning,

1 Construction and Management. (Id. at ¶ 25.) Defendant Meyer did not implement any  
2 environmental mitigation measures at the hyper-endemic prisons. (Id.)

3 Defendant Winslow is the former Statewide Medical Director for CDCR. (Id. at ¶ 27.) In  
4 June 2007, Defendant Winslow authored a memo disclosing that CDCR was aware of the risk of  
5 infection at hyper-endemic prisons and that the risk was greater for certain ethnic groups. (Id.)  
6 The memorandum included recommendations to reduce the infection rate inside the prison. (Id.)  
7 In November 2007, Defendant Winslow made policy recommendations that did not include  
8 exclusion of inmates based upon their racial or ethnic group. (Id.) Defendant Winslow  
9 personally participated in the adoption of policies that allowed high risk inmates to continue to be  
10 transferred to institutions that were experiencing epidemic levels of Valley Fever. (Id. at ¶ 28.)

11 Defendant Brazelton was Warden of Pleasant Valley State Prison (“PVSP”). (Id. at ¶ 29.)  
12 Defendant Brazelton failed to take any action to correct the unsafe conditions at the prison, to  
13 prevent Plaintiffs from being housed there, or to protect inmates from contracting Valley Fever.  
14 (Id.)

15 Defendant Yates was the Warden of PVSP from 2005 through 2012. (Id. at ¶ 30.)  
16 Defendant Yates was aware of the Valley Fever epidemic yet failed to adopt policies or  
17 procedures to avoid the transfer of high risk inmates into the prison or protect those high-risk  
18 inmates housed at PVSP. (Id.)

19 Defendant Hartley is the current Warden at Avenal State Prison (“ASP”). (Id. at ¶ 31.)  
20 Defendant Hartley made an independent decision to accept certain Plaintiffs at ASP. (Id.)  
21 Defendant Hartley is responsible for the operations of ASP and continued the policy to accept at-  
22 risk prisoners and failed to implement basic remedial measures to make the facility safe. (Id.)

23 Defendant Igbinosa is the Medical Director at PVSP. (Id. at ¶ 32.) Defendant Igbinosa  
24 was aware of the epidemic incidence rates of disease and medical risks to Plaintiffs and failed to  
25 take any action to address the epidemic or reduce inmate exposure to the disease. (Id.)  
26 Defendant Igbinosa did not implement a prison-level policy of screening inmates for risk of  
27 contracting Valley Fever. (Id.)

28 Plaintiffs contend that Defendants have had notice of the risk of Valley Fever for over

1 fifty years based upon publications in the American Journal of Public Health. (Id. at ¶¶ 53-55.)  
2 Between 1987 and 1997, the CDCR built eight prisons within the endemic and hyper-endemic  
3 regions of the Central Valley. (Id. at ¶ 54.) Plaintiffs contend that PVSP was extraordinarily  
4 dangerous in regards to exposing inmates to Valley Fever because the soil surrounding and under  
5 PVSP is densely contaminated with *Coccidioides* fungus. (Id. at ¶¶ 55, 57.) The prison grounds  
6 contain broad expanses of bare dirt without any vegetation which allows the spores to circulate in  
7 the air and into the buildings. (Id. at ¶ 58.)

8 In November 2004, Renee Kanan, Deputy Director of Health Care Services, wrote a  
9 memo to all health care managers, staff and CDCR officials regarding Valley Fever and its origin  
10 in soil. (Id. at ¶ 59.) The memo stated that Central Valley prisons are located within areas that  
11 host the fungus in the soil; Valley Fever can be lethal for people exposed to the fungus; winds and  
12 construction activity may cause the organism to be blown into the air where it could be inhaled;  
13 this may cause a percentage of individuals to catch pneumonia or disseminated disease; the risk of  
14 disseminated disease is highest in American Indians, Asians, Blacks, and immuno-compromised  
15 individuals. (Id. at ¶ 60.) Plaintiffs contend this memo was and is still widely distributed within  
16 CDCR. (Id. at ¶ 61.) A compromised immune system can be caused by chronic diseases such as  
17 diabetes, HIV, lung disease, organ transplant, or taking TNF inhibitors as medication for arthritis.  
18 (Id. at ¶ 88.) Individuals over the age of fifty five have also been found to be at increased risk of  
19 developing severe disseminated disease. (Id.)

20 In 2005, PVSP began to experience an epidemic of Valley Fever. (Id. at ¶ 62.) The  
21 infection rates at PVSP were as much as 1,000 times the rate seen in the local population. (Id. at  
22 ¶ 63.) An October 27, 2006 memo described the infection rates within the CDCR and the rates at  
23 PVSP had increased by more than 445% between 2001 and 2005, and by over 2,500% by 2006.  
24 (Id. at ¶¶ 64, 65.)

25 In 2005, a prisoner rights group sent an informational briefing to Defendant  
26 Schwarzenegger describing the threat of Valley Fever and the threat to African-Americans,  
27 Filipinos, elderly inmates, and the immune-compromised. (Id. at ¶ 101.) In 2006, the prison  
28 system accounted for 30% of all Valley Fever cases reported to the State Department of Health.

1 (Id. at ¶ 66.)

2 After the 2005 outbreak at PVSP, California Corrections Health Care Services  
3 (“CCHCS”) requested and received assistance from the California Department of Public Health  
4 (“CDPH”) in assessing and controlling cocci at PVSP. (Id. at ¶ 68.) CDPH reported that the rate  
5 of Valley Fever cases at PVSP was 38 times the rate of residents of Coalinga and 600 times the  
6 rate in Fresno County. (Id. at ¶ 69.) The increased rate at CDPH was reported as associated with  
7 increased outdoor time, pre-existing health conditions, and African-American race. (Id.)

8 An August 2006 internal memorandum confirmed that Defendants were aware that  
9 inmates were being housed in hyper-endemic locations. (Id. at ¶ 70.) During 2006 through 2010  
10 the rates of Valley Fever at PVSP, ASP, Wasco State Prison, and North Kern State Prison were  
11 significantly higher than rates in the counties in which they are located. (Id. at ¶ 71.) Of the  
12 twenty-seven inmates who died of Valley Fever between 2006 and 2010 sixty eight percent of  
13 them were African-American. (Id. at ¶ 73.) The rapid and continued increase in Valley Fever at  
14 PVSP in 2005/2006 was attributed to new construction next to the prison. (Id. at ¶ 74.)  
15 Defendants increased this risk by deciding to construct a new mental hospital facility immediately  
16 adjacent to the prison. (Id. at ¶ 75.)

17 Following the start of construction, the number of Valley Fever cases increased. (Id. at ¶  
18 77.) By mid-August 2006, PVSP had recognized 300 new cases of Valley Fever. (Id.) The  
19 excavation and construction adjacent to the prison placed an inordinate amount of *Coccidioides*  
20 spores into the air in and around the prison. (Id. at ¶ 77.)

21 In 2006 and 2007, a Fresno County Grand Jury evaluated inmate health status at PVSP  
22 and made a series of recommendations. (Id. at ¶ 94.) The report stated that inmates and staff  
23 continue to be at great risk from Valley Fever, and that African-American, Hispanic, Filipino, and  
24 other Asian inmates were at a far greater risk than other ethnicities. (Id. at ¶¶ 96, 99.) These  
25 reports were issued to Defendants Beard, Brazelton, Yates, and Cate and were forwarded to other  
26 CDCR officials. (Id. at ¶ 97.)

27 In January 2007, a study by the California Department of Public Health, Center for  
28 Infectious Disease was published. (Id. at ¶ 108.) The study found that the number of cases of

1 Valley Fever reported at PVSP in 2005 was three times that of the rest of Fresno County. (Id. at ¶  
2 109.) The study reported that individuals with a suppressed immune system, African-Americans,  
3 Hispanics, Filipinos, and other Asians are at a higher risk of developing disseminated disease.  
4 (Id.) The study, which was widely circulated within CDCR, recommended relocating those  
5 inmates at highest risk to areas not in the hyper-endemic area and to take steps to minimize  
6 exposure to Valley Fever, including ventilation, respiratory protection and dust suppression and  
7 soil control. (Id. at ¶ 110.)

8 In a January 11, 2007, memo to the CDCR informed the Department of Public Health  
9 (“DPH”) that studies have suggested that the risk of complications is increased for individuals of  
10 African or Filipino descent and heavily immuno-suppressed individuals. (Id. at ¶ 91.) The DPH  
11 concluded that exclusion of these high-risk inmates was the most effective method to decrease the  
12 risk of Valley Fever infections. (Id.)

13 In June 2007, CCHCS issued recommendations, including landscaping with ground cover  
14 and concrete, diverting and relocating inmates at high risk, and not expanding prison beds in the  
15 hyper-endemic areas, especially at PVSP. (Id. at ¶ 80.) In August 2007, Prison Legal News ran  
16 an article detailing the source, exposure, prognosis, and risk factors for Valley Fever in the  
17 subject prisons. (Id. at ¶ 113.)

18 In September 2007, Defendant Schwarzenegger proposed that California construct new  
19 dormitories at PVSP to expand the number of prisoners housed there. (Id. at ¶ 103.) When  
20 questioned during a press conference about the proposed expansion exposing more prisoners to  
21 Valley Fever, Defendant Schwarzenegger indicated he was not concerned and that they would go  
22 ahead and build. (Id. at ¶ 104.)

23 In November 2007, prison officials issued a formal exclusion policy for inmates with  
24 certain medical conditions, but did not include inmates at high risk due to their ethnicity or race.  
25 (Id. at ¶ 80.) During 2007, CDCR Facilities Department officials, including Defendant Hysen,  
26 stated that they were preparing measures to reduce the risk to inmates of contracting Valley Fever  
27 at PVSP. (Id. at ¶ 115.) The plan, which included extensive measures to control inmate’s  
28 exposure to contaminated soil and ventilation systems inside the buildings was never



1 implemented. (Id. at ¶¶ 116, 117.)

2 During 2007, Defendant Yates was quoted in an article by the New York Times as stating  
3 the inmates and staff at PVSP contracted Valley Fever from breathing the spores in the air as they  
4 walk around. (Id. at ¶ 119.) From 2007 through 2010, the rate of Valley Fever at PVSP was six  
5 times higher than the rate of infection at the adjacent state mental health facility. (Id. at ¶ 81.)

6 After a federal health agency project was terminated, in December 2009 officials from the  
7 Centers for Disease Control and National Institute for Occupational Safety and Health wrote  
8 letters to the CDCR stating that African-American, Asian or Filipino, or immuno-compromised  
9 individuals were at a greater risk of developing disseminated infection. (Id. at ¶ 82.)

10 In 2011, CDCR sprayed a temporary sealant on some soils at PVSP. (Id. at ¶ 179.)  
11 During an October 2011 press conference, Defendant Schwarzenegger announced that the State's  
12 policy and practice of transferring prisoners to PVSP would continue unabated despite the risk of  
13 Valley Fever. (Id. at ¶ 83.)

14 In April 2012, the CCHCS released a report finding that CDCR had done nothing between  
15 2006 and 2010 that had any effect on cocci incidence rates at PVSP and ASP. (Id. at ¶ 124.) The  
16 report indicated that Valley Fever incidence rates were drastically elevated and that African-  
17 Americans in particular were at an increased rate of contracting Valley Fever in its disseminated  
18 form. (Id. at ¶125.) The report found that PVSP had extensive areas of un-stabilized soil on its  
19 grounds. (Id. at ¶126.) Over 80 CDCR facility staff members have contracted Valley Fever and  
20 there has been at least one correctional officer who died from the disease. (Id. at ¶ 128.)

21 In November 2012, the court-appointed receiver managing the prison health care system  
22 issued a recommendation. (Id. at ¶ 188.) The document recommended ceasing to transfer  
23 African-Americans, persons with diabetes, and those with no HIV results to PVSP and ASP. (Id.)

24 In March 2013, CDCR installed dust control devices, such as air filters and door sweeps,  
25 in some prison facilities. (Id. at ¶ 180.) In April 2013, the Receiver's staff experts found that  
26 African-Americans were at a 90% higher risk for disseminated cocci disease than white inmates,  
27 and other race categories were at 100% increased risk, and inmates over 55 years of age had a  
28 60% increased risk. (Id. at ¶ 189.)

1 CDCR publishes an orientation manual for all medical personal that discusses the  
2 Coccidioiditis epidemic in detail and notes that African-Americans, Filipinos, and those with  
3 compromised immune systems or chronic diseases are at an increased risk of contracting Valley  
4 Fever. (Id. at ¶ 105.) The orientation manual is authorized and promulgated by Defendant  
5 Winslow. (Id. at ¶ 106.)

6 Plaintiffs allege that the exposure to dangerous conditions subjects them to cruel and  
7 unusual punishment and exhibited deliberate indifference in violation of the Eighth Amendment  
8 and is negligence under California law. (Id. at ¶¶ 359-399.) Plaintiffs seek monetary damages.  
9 (Id. at 75-76.<sup>1</sup>)

10 **A. Plaintiff Fredrick Beagle**

11 Plaintiff Beagle is a forty-one year old Caucasian male. (Id. at ¶ 201.) Prior to being  
12 housed at ASP, Plaintiff Beagle had elevated liver enzymes suggesting a compromised liver,  
13 blood clots in his legs, lower back pain, gout, and chronic pain from skin grafts. (Id. at ¶ 203.)  
14 Plaintiff Beagle was diagnosed with Valley Fever in March 2013. (Id. at ¶ 204.) Plaintiff Beagle  
15 has aching joints, back pain, severe headaches, night sweats, inflamed rashes on his head and  
16 legs, chest pain, and fatigue. (Id.)

17 **B. Plaintiff Don Belardes**

18 Plaintiff Belardes is a forty year old of Native American and Spanish descent. (Id. at ¶  
19 208.) Plaintiff Belardes was transferred to PVSP in May of 2010. (Id. at ¶ 209.) Plaintiff  
20 Belardes was diagnosed with Valley Fever in October of 2011. (Id. at ¶ 211.) Plaintiff Belardes  
21 has had bronchitis and pneumonia that are resistant to treatment and suffers from back spasms  
22 and pain. (Id. at ¶ 212.)

23 **C. Plaintiff Floyd Boyd**

24 Plaintiff Boyd is a forty-nine year old African-American. (Id. at ¶ 217.) Plaintiff Boyd  
25 was transferred to PVSP in 2012 and remained housed there until his release from prison. (Id. at  
26

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27 <sup>1</sup> All references to pagination of specific documents pertain to those as indicated on the upper right corners via the  
28 CM/ECF electronic court docketing system.

1 ¶ 218.) Plaintiff was diagnosed with Valley Fever on September 11, 2013. (Id. at ¶ 219.)  
2 Plaintiff Boyd continues to experience coughing, night sweats, joint pain, headaches, fevers and  
3 chill. (Id. at ¶ 22.)

4 **D. Plaintiff Richard Burke**

5 Plaintiff Burke is a fifty-two year old Caucasian male who was transferred to PVSP on  
6 January 2010. (Id. at ¶¶ 225, 226.) Plaintiff Burke was diagnosed with Valley Fever around  
7 February 2012. (Id. at ¶ 228.) Plaintiff Burke suffers from lesions on his arms and legs, swelling  
8 and skin rashes all over his body, shortness of breath, and aching joints. (Id. at ¶ 229.)

9 **E. Plaintiff Joseph Bustamonte**

10 Plaintiff Bustamonte, a former inmate, is a thirty-year old Hispanic male who was  
11 transferred to PVSP on December 9, 2010. (Id. at ¶ 234, 235.) Plaintiff Bustamonte was  
12 diagnosed with Valley Fever about July 30, 2011. (Id. at ¶ 235.) Plaintiff Bustamonte does not  
13 allege any current symptoms from Valley Fever.

14 **F. Plaintiff Charles Carter**

15 Plaintiff Carter is a forty-two year old African-American who was transferred to PVSP in  
16 March 2011. (Id. at ¶¶ 241, 242. Plaintiff Carter was diagnosed with Valley Fever in June 2012.  
17 (Id. at ¶ 243.) Plaintiff Carter does not allege any current symptoms from Valley Fever.

18 **G. Plaintiff Otha Clark**

19 Plaintiff Clark is a twenty-seven year old African-American who was transferred to PVSP  
20 in 2009. (Id. at ¶¶ 247, 248.) Prior to his transfer, Plaintiff Clark had asthma. (Id. at ¶ 248.)  
21 Plaintiff contracted Valley Fever around December 10, 2010, and was diagnosed in February  
22 2011. (Id. at ¶ 250.) Plaintiff has been admitted to the hospital over twenty times in the last year  
23 and suffers from persistent coughs, fevers and night sweats, and has trouble eating, drinking, and  
24 struggles to maintain his weight. (Id. at ¶¶ 251, 252.)

25 **H. Plaintiff Donald Dibble**

26 Plaintiff Dibble is a thirty-five year old male with chronic asthma. (Id. at ¶ 255.) Plaintiff  
27 was incarcerated at ASP in August of 2012 when he was treated for Valley Fever. (Id. at ¶ 256.)  
28 Plaintiff Dibble does not allege any current symptoms from Valley Fever.

1           **I.       Plaintiff Jerome Felder**

2           Plaintiff Felder is a thirty-six year old African-American who was transferred to PVSP in  
3 August of 2011. (Id. at ¶ 261.) Plaintiff was diagnosed with Valley Fever in January 2012. (Id.  
4 at ¶ 262.) Plaintiff Felder does not allege any current symptoms from Valley Fever.

5           **J.       Plaintiff Candelario Garza**

6           Plaintiff Garza is a fifty-nine year old Hispanic male who was transferred to PVSP in June  
7 2007. (Id. at ¶¶ 264, 265.) Prior to his transfer, Plaintiff Garza had Hepatitis C and a  
8 compromised immune system. (Id. at ¶ 265.) Plaintiff Garza was formally diagnosed with  
9 Valley Fever on December 14, 2010. (Id. at ¶ 266.) Plaintiff has developed pneumonia and  
10 Chronic Obstructive Pulmonary Disease, and blood clots in his legs and lungs. (Id. at ¶ 267.)

11           **K.       Plaintiff Jerry Hollis**

12           Plaintiff Hollis is a forty year old Caucasian male who was transferred to PVSP in  
13 December 2010. (Id. at ¶¶ 274, 275.) Plaintiff was treated for Valley Fever, but was not formally  
14 tested and has been told that he does not have Valley Fever. (Id. at ¶ 277.) Plaintiff has shortness  
15 of breath and recurrence of the symptoms which initiated his treatment for Valley Fever. (Id. at ¶  
16 277.)

17           **L.       Plaintiff Scott Imuta**

18           Plaintiff Imuta, a former inmate, is a forty-seven year old Japanese-American male who  
19 was housed at PVSP from 2005 through 2009. (Id. at ¶¶ 280, 281.) Plaintiff Imuta alleges he has  
20 had symptoms of Valley Fever since December 2010, but was not diagnosed until March 2012.  
21 (Id. at ¶¶ 283, 284.) Plaintiff Imuta's immune system is now compromised, he has contracted  
22 hepatitis and has constant staph infections. (Id. at ¶ 286.) Plaintiff Imuta coughs constantly, has  
23 very high blood pressure, and suffers from depression. (Id. at ¶ 286.)

24           **M.       Plaintiff Infinity**

25           Plaintiff Infinity is a sixty-six year old African-American male who was transferred to  
26 PVSP in May of 2011. (Id. at ¶ 291.) Plaintiff Infinity was diagnosed with Valley Fever in  
27 October of 2011. (Id.) The disseminated Valley Fever infection formed a mass on his left side  
28 that required surgery and the disseminated cocci has been detected in his spine. (Id. at ¶ 292.)

1 Plaintiff does not allege any current symptoms from Valley Fever.

2 **N. Plaintiff George Johnson**

3 Plaintiff Johnson, a former inmate, is a thirty-one year old African-American who was  
4 housed at PVSP for a brief sentence. (Id. at ¶¶ 296, 300.) Plaintiff Johnson was diagnosed with  
5 Valley Fever on February 15, 2012. (Id. at ¶ 297.) Plaintiff Johnson has problems breathing,  
6 difficulty walking, aching bones and fatigue. (Id. at ¶ 298.)

7 **O. Plaintiff Bruce Koklich**

8 Plaintiff Koklich is a fifty-four year old Caucasian male who was housed at PVSP from  
9 September 2008 through May 2009 during construction on the adjacent mental health facility.  
10 (Id. at ¶¶ 302, 304.) Plaintiff Koklich was diagnosed with Valley Fever on January 27, 2009. (Id.  
11 at ¶ 303.) Plaintiff Koklich suffers from pain in his lungs, back, spine, left hip and both hands.  
12 (Id. at ¶ 304.) Plaintiff also has skin lesions and rashes on his ankles, swelling in his legs and  
13 trouble breathing. (Id. at ¶ 304.)

14 **P. Plaintiff Grady Montgomery**

15 Plaintiff Montgomery is a forty-nine year old African-American male who was transferred  
16 to PVSP on January 1, 2012. (Id. at ¶ 309.) Plaintiff Montgomery was diagnosed with Valley  
17 Fever in December 2012. (Id. at ¶ 312.) Plaintiff Montgomery has fluid on his lungs, pain in his  
18 body and joints, difficulty breathing, scaling skin, chronic itching and skin rashes. (Id. at ¶ 314.)

19 **Q. Plaintiff Peter Romero**

20 Plaintiff Romero is a fifty-three year old Hispanic and Native American male who was  
21 housed at PVSP until September 3, 2010. (Id. at ¶¶ 317, 318.) Prior to his transfer to PVSP,  
22 Plaintiff Romero had a compromised immune system due to Hepatitis C. (Id. at ¶ 319.) Plaintiff  
23 was diagnosed with Valley Fever after he was hospitalized on September 30, 2011, and a  
24 subsequent test on June 23, 2011 confirmed the diagnosis. (Id. at ¶ 320.) Plaintiff Romero  
25 underwent two surgeries as a result of his Valley Fever. (Id. at ¶ 321.) One surgery left him with  
26 permanent nerve damage, back pain, and restricted mobility. (Id.)

27 **R. Plaintiff Josh Thomas**

28 Plaintiff Thomas is a sixty year old African-American who had a weakened immune

1 system prior to being incarcerated. (Id. at ¶ 325, 326.) Plaintiff Thomas was housed at the  
2 California Substance Abuse Treatment Facility and State Prison at Corcoran until 2012. (Id. at ¶  
3 327.) Plaintiff Thomas was diagnosed with Valley Fever in January 2011. (Id. at ¶ 328.)  
4 Plaintiff Thomas does not allege any current symptoms from Valley Fever.

5 **S. Plaintiff Aaron Tillis**

6 Plaintiff Tillis is a thirty year old African-American who was transferred to PVSP in 2009.  
7 (Id. at ¶¶ 333, 334.) Plaintiff Tillis was diagnosed with Valley Fever on February 21, 2012.  
8 (Id. at ¶ 335.) Plaintiff Tillis suffers from generalized body aches, night sweats, skin rashes and  
9 lesions, chronic fevers and trouble breathing. (Id. at ¶ 335.)

10 **T. Plaintiff Rene Villanueva**

11 Plaintiff Villanueva is a twenty-six year old Hispanic male who was transferred to PVSP  
12 in January 2011. (Id. at ¶¶ 339, 340.) Plaintiff Villanova was diagnosed with Valley Fever on  
13 September 22, 2011. (Id. at ¶ 342.) Plaintiff suffers from severe pain throughout his body,  
14 weight loss, labored breathing, chest and lung pain, excessive coughing, and rashes and swelling  
15 of his lower legs. (Id. at ¶ 342.)

16 **U. Plaintiff Bertrum Westbrook**

17 Plaintiff Westbrook is a thirty-seven year old African-American who was transferred to  
18 PVSP in early 2009. (Id. at ¶¶ 346, 347.) Plaintiff Westbrook was diagnosed with Valley Fever  
19 in 2010. (Id.) Plaintiff has aching joints that limit his movement, fevers, chest pain, nausea, and  
20 back problems. (Id. at ¶ 349.)

21 **V. Plaintiff Wayne Woods**

22 Plaintiff Woods is a fifty-eight year old African-American who was transferred to ASP on  
23 August 8, 2012. (Id. at ¶¶ 353, 354.) Plaintiff Woods was diagnosed with Valley Fever on  
24 October 30, 2012. (Id. at ¶ 355.) Plaintiff Woods has night sweats, chills, fever, rashes and  
25 fatigue. (Id. at ¶ 355.)

26 **III.**

27 **LEGAL STANDARD**

28 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on

1 the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.” A  
2 complaint must contain “a short and plain statement of the claim showing that the pleader is  
3 entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not  
4 require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-  
5 unlawfully harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In assessing the sufficiency of a  
7 complaint, all well-pleaded factual allegations must be accepted as true. Iqbal, 556 U.S. at 678-  
8 79. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice.” Id. at 678.

10 In deciding whether a complaint states a claim, the Ninth Circuit has found that two  
11 principles apply. First, to be entitled to the presumption of truth the allegations in the complaint  
12 “may not simply recite the elements of a cause of action, but must contain sufficient allegations of  
13 underlying facts to give fair notice and to enable the opposing party to defend itself effectively.”  
14 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Second, so that it is not unfair to require the  
15 defendant to be subjected to the expenses associated with discovery and continued litigation, the  
16 factual allegations of the complaint, which are taken as true, must plausibly suggest an  
17 entitlement to relief. Starr, 652 F.3d at 1216.

#### 18 IV.

#### 19 ANALYSIS

20 All defendants appearing move to dismiss this action under Rule 12(b)(6) on the grounds  
21 that the complaint 1) fails to allege any Defendant personally caused the alleged constitutional  
22 deprivations; 2) fails to state sufficient facts to demonstrate deliberate indifference on the part of  
23 any Defendant; 3) Plaintiffs Belardes, Carter, Clark, Felder, Garza, Hollis, Infinity, Koklich,  
24 Montgomery, Romero, Thomas, Tillis, Villanueva, Westbrook, and Woods claims for future  
25 medical care are not ripe; 4) the complaint includes misjoined parties and claims; 5) Plaintiffs  
26 failed to comply with the Government Tort Claim Act; and 6) the complaint violates Rule 8 of the  
27 Federal Rules of Civil Procedure. (Defs. Rothchild, Hysen, Meyer, Beard, Schwarzenegger,  
28 Hubbard, Brazelton, and Brown’s Mot. to Dismiss 2, ECF No. 25.) Similarly, Defendants

1 Igbiosa and Winslow move to dismiss the complaint on the ground that the complaint fails to  
2 show that they personally violated the constitution. (Def's. Igbiosa and Winslow's Mot. to  
3 Dismiss Pls.' Compl. 9-13, ECF No. 27.)

4 Plaintiffs oppose the motions arguing that the complaint is sufficiently detailed to survive  
5 a motion to dismiss, Plaintiffs can bring a claim for future medical care, Defendants failure to  
6 comply with Government Code Section 53501 excuses Plaintiffs from the requirement that they  
7 submit claim forms to the Victim Compensation Board, the parties are properly joined in this  
8 action, and the complaint satisfies Rule 8. (Pls.' Opp. to Defense 12(b)(6) Mot. 13-32, ECF No.  
9 54; Pls.' Brief in Opp. to Defs. Igbiosa and Winslow's Mot. to Dismiss 9-13, ECF No. 62.)

10 **A. Personal Liability**

11 Defendants argue that Plaintiffs' complaint fails to state a claim as it does not allege that  
12 Defendants personally violated the United States Constitution. (ECF No. 25-1 at 12-15.)  
13 Plaintiffs counter that the complaint contains sufficiently detailed facts to state a claim against the  
14 defendants in this action. (ECF No. 54 at 13-16.)

15 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or  
16 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
17 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
18 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim, Plaintiffs must  
19 demonstrate that each defendant personally participated in the deprivation of his rights. Iqbal,  
20 556 U.S. at 677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);  
21 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934.

22 Under section 1983, liability may not be imposed on supervisory personnel for the actions  
23 or omissions of their subordinates under the theory of respondeat superior. Iqbal, 556 U.S. at  
24 677; Simmons, 609 F.3d at 1020-21; Ewing, 588 F.3d at 1235; Jones, 297 F.3d at 934. "A  
25 supervisor may be liable only if (1) he or she is personally involved in the constitutional  
26 deprivation, or (2) there is 'a sufficient causal connection between the supervisor's wrongful  
27 conduct and the constitutional violation.'" Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir.  
28 2013) (citations omitted). Supervisors may be held liable where they "participated in or directed



1 the violations, or knew of the violations and failed to act to prevent them.” Taylor v. List, 880  
2 F.2d 1040, 1045 (9th Cir. 1989); accord Starr, 652 F.3d at 1205-06; Corales v. Bennett, 567 F.3d  
3 554, 570 (9th Cir. 2009).

4 During the June 18, 2014 hearing defendants argued that the present allegations are  
5 sufficient to state a claim where they are plausible and under Iqbal the court may infer knowledge  
6 from the facts pled in the complaint. However, under Twombly and Iqbal “a complaint must  
7 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
8 face.” Iqbal, 556 U.S. at 678. This requires factual content for the court to draw the reasonable  
9 inference that the defendant is liable for the alleged misconduct. Id. A complaint stops short of  
10 the line between probability and the possibility of relief where the facts pled are merely consistent  
11 with a defendant’s liability. Id. “[W]here the well-pleaded facts do not permit the court to infer  
12 more than the mere possibility of misconduct,” the complaint has not shown that the plaintiff is  
13 entitled to relief. Id. Further, while the court is to accept all “well pleaded factual allegations” in  
14 the complaint as true, id. at 679, it is not bound to accept as true labels, conclusions, formulaic  
15 recitations of the elements of a cause of action or legal conclusions couched as factual allegations,  
16 Twombly, 550 U.S. at 555. The conclusory allegations in the complaint are not entitled to the  
17 presumption of truth. Iqbal, 556 U.S. at 681.

18 Defendants also argued that the court should allow the complaint to go forward on what  
19 the court deems conclusory allegations to allow discovery to determine if the defendants could be  
20 liable for the conduct alleged. However, when the allegations in the complaint do not state a  
21 claim for relief the court is to address the deficiency to avoid the expenditure of time and money  
22 by the parties and the court. Twombly, 550 U.S. at 558.

23 1. Defendant Brown

24 Plaintiffs appear to be blurring the line between official capacity and personal capacity  
25 lawsuits and are attempting to bring claims against current officials based solely on their position  
26 and the policies and procedures put in place by their predecessors.<sup>2</sup> In an official capacity lawsuit

27 \_\_\_\_\_  
28 <sup>2</sup> Plaintiffs are only seeking damages in this lawsuit. Plaintiffs may not bring suit against Defendants in their official capacity. “The Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and

1 it is appropriate to name the current official as a defendant in the action, Fed. R. Civ. P. 25(d),  
2 however to state a claim against the current official in their personal capacity requires allegations  
3 showing that the official was personally involved, or there was a sufficient causal connection  
4 between the supervisor's wrongful conduct and the constitutional violation. Crowley, 734 F.3d at  
5 977. Plaintiffs have failed to set forth allegations to show that Defendant Brown had knowledge  
6 of a risk to Plaintiffs and failed to act. Plaintiffs' conclusory allegations that Defendant Brown  
7 knew of the risk and continued the state policies and practices put in place by Defendant  
8 Schwarzenegger is insufficient to show that Defendant Brown participated in any violation that  
9 caused injury to Plaintiffs in this action. Defendants' motion to dismiss Defendant Brown should  
10 be granted.

11 2. Defendants Beard and Brazelton

12 Plaintiffs contend that Defendants Beard and Brazelton had knowledge of the risk of  
13 Valley Fever due to the Grand Jury reports. However, the complaint fails to allege when these  
14 reports were provided to Defendants Beard and Brazelton. Additionally, the complaint does not  
15 identify the position at CDCR that these defendants held during the time period in which  
16 Plaintiffs contracted Valley Fever. Therefore, there is no information contained in the complaint  
17 from which the Court can infer that Defendants Beard or Brazelton were liable for the policy to  
18 house high risk inmates in the hyper-endemic area. Absent such factual allegations the complaint  
19 is insufficient to link Defendants Beard or Brazelton to the alleged violations.

20 Further, Plaintiffs complaint fails to contain allegations to state a plausible claim that  
21 Defendants Beard and Brazelton's actions after they were appointed as the Secretary of CDCR or  
22 Warden of PVSP contributed to the plaintiffs injuries. Absent such factual allegations the  
23 complaint is insufficient to link Defendants Beard or Brazelton to the alleged violations.

24 Plaintiffs allege that Defendant Beard is the current Secretary of the CDCR, being  
25 appointed to the position in December 2012. (ECF No. 2 at ¶ 20.) The only plaintiff to this  
26 action who would state a claim as being at a substantial risk of harm, as discussed below, and was

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27 state officials acting in their official capacities.” Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir.  
28 2007).

1 diagnosed with Valley Fever after Defendant Beard was appointed as Secretary in December  
2 2012 is Plaintiff Boyd. Plaintiff Boyd was transferred to PVSP in 2012 and was formally  
3 diagnosed with Valley Fever in September 2013, however the complaint fails to allege when he  
4 developed symptoms. The complaint fails to allege facts to show that Plaintiff Boyd was at a  
5 substantial risk of harm during the time period that Defendant Beard was Secretary of the CDCR.  
6 If Plaintiff Boyd had already contracted Valley Fever prior to Defendant Beard taking office, he  
7 would no longer be exposed to the risk and for this reason, Plaintiff Boyd fails to state a claim  
8 against Defendant Beard.

9 Similarly, Plaintiffs allege that Defendant Brazelton was the Warden of PVSP from  
10 summer 2012 to fall of 2013. (*Id.* at ¶ 29.) Plaintiffs to this action contracted Valley Fever  
11 between January 2009 and September 2013. (*Id.* at ¶¶ 201-355.). The only plaintiffs to this  
12 action who are within the high risk groups that were diagnosed after Defendant Brazelton became  
13 the Warden at PVSP were Plaintiffs Boyd, Montgomery, and Woods. Plaintiff Woods was  
14 housed at ASP, not PVSP, and therefore he fails to state a claim against Defendant Brazelton.  
15 Plaintiff Boyd fails to state a claim against Defendant Brazelton for the same reasons that his  
16 allegations fail to state a claim against Defendant Beard. Finally, Plaintiff Montgomery became  
17 ill around August 2012, and the allegations in the complaint fail to show that Defendant Brazelton  
18 was Warden of PVSP prior to Plaintiff Montgomery becoming ill. Plaintiff Montgomery fails to  
19 state a claim against Defendant Brazelton.

20 For these reasons, the complaint fails to state a claim against Defendants Beard and  
21 Brazelton and Defendants motion to dismiss Defendants Beard and Brazelton should be granted.

22 3. Defendants Hubbard, Rothchild, Hysen, Meyer, and Hartley

23 Despite Plaintiffs' allegations that prison officials have known of the risk of Valley Fever  
24 for over 50 years, the fact that medical journals have published articles does not show that the risk  
25 was evident to Defendants in this action. Based on the allegations in the complaint, it was not  
26 until 2004 that a memo was provided to officials within the prison system which mentioned that  
27 the risk of disseminated disease was highest in certain individuals. (*Id.* at ¶ 60.) In June 2007,  
28 the CCHCS issued recommendations to address the spread of Valley Fever in the prison system

1 and in November 2007 prison officials adopted their exclusion policy. (Id. at ¶¶ 80, 81.) While  
2 Plaintiffs set forth numerous allegations regarding information that was available after this time  
3 period, it is what Defendants knew at the time that they acted or that Plaintiffs were housed at  
4 ASP or PVSP and contracted Valley Fever that is relevant in making the analysis of whether the  
5 complaint states a claim. Further, Plaintiffs must set forth sufficient factual allegations to show  
6 that each named defendant acted in a manner that would harm these individual plaintiffs.

7 While Plaintiffs allege that Defendants Hubbard, Rothchild, Hysen, Meyer, and Hartley  
8 had knowledge of the risks of Valley Fever to specific classes of inmates, the complaint fails to  
9 allege that they held an office during the time period at issue in this action. For instance,  
10 Plaintiffs allege that Defendant Hubbard was the former director of CDCR's Division of Adult  
11 Operations and issued a memo in November 2007 that "continued to allow Plaintiffs and others  
12 who were members of high-risk groups to be housed in hyper-endemic prisons." (ECF No. 1 at ¶  
13 22.)

14 However, the complaint does not allege that Defendant Hubbard was involved in the  
15 adoption of the policy that failed to exclude those inmates at high risk of developing disseminated  
16 disease; nor does the complaint specify when she held this position; if she continued to hold the  
17 position as more information became available as to the extent of the risk to inmates in these high  
18 risk categories; or if Defendant Hubbard was director when any of these inmates were housed at  
19 the subject prisons. Plaintiffs' allegation that Defendant Hubbard issued a memo which  
20 continued to allow inmates to be housed at the prisons is insufficient to show that Defendant  
21 Hubbard was liable for the policy that injured Plaintiffs in this action.

22 Similarly, the complaint fails to allege any information from which the Court can infer  
23 that Defendants Rothchild, Hysen, Meyer, or Hartley held the position stated in the complaint at  
24 the time that Plaintiffs were subject to the violations alleged in the complaint. To the extent that  
25 Plaintiffs attempt to assert that the policies continue to violate the Constitution, Plaintiffs in this  
26 action are no longer at risk of contracting Valley Fever. Even if the policy has been continued by  
27 a successor, Plaintiffs do not state a claim against current CDCR officials who were not involved  
28 in the policy prior to the plaintiff being injured. Plaintiff may not state a claim against current

1 officials where their conduct did not cause or contribute to a completed constitutional violation  
2 that occurred in the past. See George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) (Only those  
3 who contribute to a constitutional violation are liable. “A guard who stands and watches while  
4 another guard beats a prisoner violates the Constitution; a guard who rejects an administrative  
5 complaint about a completed act of misconduct does not.”)

6 Plaintiffs’ complaint fails to state a claim against Defendants Hubbard, Rothchild, Hysen,  
7 Meyer, or Hartley; and the Court recommends that the motion to dismiss be granted as to these  
8 defendants.

9 4. Defendants Schwarzenegger, Yates, and Cate

10 While Defendants argue that the complaint fails to allege that any defendant personally  
11 participated in any act or failure to act that harmed Plaintiffs, “[t]he law clearly allows actions  
12 against supervisors under section 1983 as long as a sufficient causal connection is present and the  
13 plaintiff was deprived under color of law of a federally secured right.” Starr, 652 F.3d at 1207  
14 (quoting Redman v. Cnty. of San Diego, 942 F.2d 1435, 1447 (9th Cir.1991)). The Court shall  
15 address below whether Plaintiffs have set forth sufficient allegations to link Defendants  
16 Schwarzenegger, Yates, and Cate to the violations alleged.

17 **B. Eight Amendment**

18 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison  
19 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman,  
20 452 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment  
21 violation unless (1) “the prison official deprived the prisoner of the ‘minimal civilized measure of  
22 life’s necessities,’ ” and (2) “the prison official ‘acted with deliberate indifference in doing so.’ ”  
23 Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d  
24 732, 744 (9th Cir. 2002) (citation omitted)).

25 1. Conditions of Confinement

26 Plaintiffs allege that they have been subjected to cruel and unusual punishment by the  
27 policies and procedures allowing them to be housed in a hyper-endemic region and they  
28 subsequently contracted Valley Fever. The Eighth Amendment’s prohibition against cruel and

1 unusual punishment protects prisoners not only from inhumane methods of punishment but also  
2 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
3 2006) (citing Farmer v. Brennan, 511 U.S. 825, 847 (1994) and Rhodes v. Chapman, 452 U.S.  
4 337, 347 (1981)) (quotation marks omitted). While conditions of confinement may be, and often  
5 are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of pain.  
6 Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted). Thus,  
7 conditions which are devoid of legitimate penological purpose or contrary to evolving standards  
8 of decency that mark the progress of a maturing society violate the Eighth Amendment. Morgan,  
9 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer, 536 U.S. 730, 737  
10 (2002); Rhodes, 452 U.S. at 346. In order to state a claim for violation of the Eighth Amendment,  
11 the plaintiff must allege facts sufficient to support a claim that prison officials knew of and  
12 disregarded a substantial risk of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511 U.S.  
13 825, 847 (1994); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

14 The Court shall first address the substantial risk of harm prong of the deliberate  
15 indifference analysis.

16 **a. Substantial Risk of Harm**

17 Defendants argue that no court has held that exposure to Valley Fever, in and of itself,  
18 presents a substantial risk to an inmate's health. The Court agrees that merely being exposed to  
19 an area, even a hyper-endemic area, by itself does not constitute an excessive risk of harm. See  
20 Sullivan v. Kramer, No. 1:13-cv-00275-DLB-PC, 2014 WL 1664983, at \*5 (E.D. Cal. April 23,  
21 2014) (being confined in an area where Valley Fever spores exist is insufficient to state a claim  
22 for deliberate indifference); Lua v. Smith, No. 1:14-cv-00019-LJO-MJS, 2014 WL 1308605, at  
23 \*2 (E.D. Cal. Mar. 31, 2014) (first prong of deliberate indifference claim satisfied where plaintiff  
24 identifies a factor responsible for increasing the risk of contraction or severity of infection);  
25 Willis v. Yates, No. 1:08-cv-00125-0WW-SMS PC, 2009 WL 3486674, at \*3 (E.D. Cal. Oct. 23,  
26 2009) (risk of contracting Valley Fever by being housed at PVSP and fact that inmate contracted  
27 Valley Fever is insufficient to state a claim). As Plaintiffs' allege in their complaint, most  
28 individuals who contract Valley Fever get a mild form of the disease with moderate to mild flu-

1 like symptoms or no symptoms at all. (ECF No. 2 at ¶ 5.) Sixty percent of individuals  
2 experience no symptoms and most of the remaining forty percent only have mild flu-like  
3 symptoms. (Id. at ¶ 44, 45.) Therefore, to the extent that Plaintiffs attempt to state a claim based  
4 on mere placement at a prison in an area that results in Valley Fever, the complaint fails to state a  
5 claim.

6 However, the complaint contains sufficient facts to allege that African-Americans,  
7 Filipinos and other Asians, Hispanics, and American Indians, as well as individuals with  
8 compromised immune systems, were at a substantial risk of developing disseminated infection  
9 which causes life threatening pneumonia or blood-borne spread of the fungus to other parts of the  
10 body and can be fatal.<sup>3</sup> The Court finds that the complaint is sufficient to allege that individuals  
11 within these categories were at a substantial risk of harm due to their increased risk of developing  
12 disseminated infection.

13 Having found that Plaintiffs have sufficiently alleged that African-Americans, Filipinos  
14 and other Asians, Hispanics, and American Indians, as well as individuals with compromised  
15 immune systems were at a substantial risk of harm, Plaintiffs to this action must belong to one of  
16 these groups which place them at high risk of developing disseminated disease to state a claim.  
17 The Court addresses those plaintiffs that have not alleged facts to show they were at a substantial  
18 risk of harm.

19 i. Plaintiff Beagle

20 Plaintiff Beagle is a Caucasian male who alleges that prior to being transferred to ASP he  
21 had “elevated liver enzymes suggesting a compromised liver, blood clots in his legs, lower back  
22 pain, grout, and chronic pain from skin grafts.” (ECF No. 2 at ¶¶ 201-203.) Plaintiffs’ complaint  
23 alleges that individuals with compromised immune systems are at a greater risk of developing  
24 severe disseminated disease. (ECF No. 2 at ¶ 88.) As alleged in the complaint, “[a]  
25 compromised immune system may be caused by any of several chronic diseases including  
26

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27 <sup>3</sup> Although Plaintiffs allege that inmates over the age of fifty five are also at an increased risk of developing  
28 disseminated disease (ECF No. 2 at ¶ 92), it was not until April 11, 2013, that there is any indication that CDCR  
staff had any knowledge of a risk to inmates over 55 years old, (ECF No. 2 at ¶ 189).

1 diabetes, HIV, lung disease, organ transplant, or taking TNF inhibitors for arthritis.” (Id.)  
2 Plaintiff Beagle does not allege any facts which would include him within the category of  
3 individuals with a compromised immune system. As Plaintiff Beagle is not within the high risk  
4 categories placing him at a substantial risk of harm, he fails to state a claim and his claims should  
5 be dismissed.

6 ii. Plaintiff Burke

7 Plaintiff Burke is a Caucasian male and does not allege that prior to being housed at PVSP  
8 he had any medical condition that would place him in a high risk category. For that reason,  
9 Plaintiff Burke fails to state a cognizable claim and his claims should be dismissed.

10 iii. Plaintiff Hollis

11 Plaintiff Hollis alleges that he is a Caucasian male and does not allege any facts to show  
12 that he belongs to a high risk category. Further, Plaintiff Hollis alleges that he was healthy prior  
13 to being placed at PVSP. Plaintiff Hollis has failed to state a claim. Further, the Court finds that  
14 he is unable to allege any facts which would place him in a high risk category and for that reason;  
15 Plaintiff Hollis should be dismissed from this action without leave to amend.

16 iv. Plaintiff Koklich

17 Similarly, Plaintiff Koklich alleges that is a Caucasian male and was in good health prior  
18 to arriving at PVSP. Plaintiff Koklich has failed to allege facts to demonstrate that he belongs to  
19 a high risk category. Further, the Court finds that based on the allegations in the complaint,  
20 Plaintiff Koklich would be unable to allege any facts to correct the deficiencies in his claim in  
21 regards to the claims that are proceeding in this action.

22 To the extent that Plaintiff Koklich contends that construction around PVSP placed him at  
23 a higher risk of contracting Valley Fever, the Court finds that this claim is improperly joined in  
24 this action. Rule 20 of the Federal Rules of Civil Procedure provides that plaintiffs may be joined  
25 in an action “if: they assert any right to relief jointly, severally, or in the alternative with respect  
26 to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and  
27 any question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P.  
28 20(a)(1)(A) and (B).



1 In this action, Plaintiff Koklich’s claim to relief, that he was exposed to a substantial risk  
2 of harm by construction around PVSP is not common to the allegations of the other plaintiffs in  
3 this action. Plaintiff Koklich’s claim is not based upon the policy of housing high risk inmates in  
4 the hyper-endemic area and does not arise out of the same transaction, occurrence or series of  
5 transactions. Plaintiff Koklich’s claim is based upon discrete decisions by officials to build  
6 around PVSP and these facts do not rise in the claims brought by the other plaintiffs in this action.

7 For these reasons, the Court recommends that Plaintiff Koklich be dismissed from this  
8 action, without leave to amend.

9 **b. Deliberate Indifference**

10 Plaintiffs have set forth numerous publications by the CDCR and related public entities  
11 which were provided to Defendants Schwarzenegger, Yates and Cate in this action placing them  
12 on notice that certain individuals were at a significant risk of contracting Valley Fever and having  
13 it develop into the disseminated form of the disease by virtue of their race, national origin, or  
14 because they had a compromised immune system. This is sufficient to show that these defendants  
15 knew that African-Americans, Filipinos and other Asians, Hispanics, and American Indians, as  
16 well as those who are immune-compromised or immune-suppressed were at a significantly  
17 increased risk of contracting the disseminated form of Valley Fever.

18 Armed with such knowledge, Plaintiffs contend that Defendants Schwarzenegger, Yates  
19 and Cate failed to adopt a policy of excluding these high risk inmates from being housed in the  
20 hyper-endemic area or moving high risk inmates out of the hyper-endemic area. Defendants  
21 argue that the complaint fails to allege that the defendants personally caused the injury to  
22 Plaintiffs and cannot state a claim for deliberate indifference because the defendants were  
23 unaware of the details of the plaintiffs’ incarceration, medical conditions or increased risk of  
24 Valley Fever. However, “when a supervisory official advances or manages a policy that instructs  
25 its adherents to violate constitutional rights, then the official specifically intends for such  
26 violations to occur. Claims against such supervisory officials, therefore, do not fail on the state of  
27 mind requirement, be it intent, knowledge, or deliberate indifference.” OSU Student Alliance v.  
28 Ray, 699 F.3d 1053, 1076 (9th Cir. 2012).

1 i. Defendant Schwarzenegger

2 Specifically, Plaintiffs contend that Defendant Schwarzenegger was aware of the risk to  
3 these inmates housed at PVSP as early as 2005 when a prisoner rights group sent him an  
4 informational packet describing the threat posed to these high risk inmates by Valley Fever.  
5 (ECF No. 2 at ¶ 101.) Yet, despite this knowledge, Plaintiffs allege that in 2007 Defendant  
6 Schwarzenegger proposed that new dormitories be constructed at PVSP increasing the number of  
7 prisoners that could be housed there by 600. (Id. at ¶ 102.) Plaintiffs state that Defendant  
8 Schwarzenegger indicated he was not concerned about the incidence of Valley Fever and that  
9 they would go ahead and build when questioned during a press conference. (Id. at ¶ 103.)  
10 Plaintiffs also contend that in 2011, Defendant Schwarzenegger announced that housing prison  
11 inmates at PVSP would continue unabated. (Id. at ¶ 83.)

12 While Plaintiffs' complaint demonstrates that Defendant Schwarzenegger was or should  
13 have been aware of the threat to high risk inmates, the allegations in the complaint fail to show  
14 that he had any personal involvement in the policies that allowed such high risk inmates to be  
15 housed at PVSP or ASP. Plaintiffs' contend that Defendant Schwarzenegger "condoned  
16 subordinates' actions", however, there are no allegations in the complaint that Defendant  
17 Schwarzenegger was aware of the specific inmates that were being housed at these prisons or was  
18 responsible for promulgating the policies.

19 Defendant Schwarzenegger is not liable for the policies of the CDCR where he did not  
20 participate in or direct the violations, nor knew of the violations and failed to act to prevent them.  
21 Taylor, 880 F.2d at 1045. To the extent that Plaintiffs attempt to state a claim based solely upon  
22 the decision to house inmates in the endemic area, the amended complaint fails to state a claim.  
23 As the Court previously discussed, building a prison in the hyper-endemic area does not create a  
24 substantial risk of harm. Defendant Schwarzenegger's alleged comments during press  
25 conferences do not show that Defendant Schwarzenegger was aware that high risk inmates were  
26 were being housed at Corcoran, PVSP, or ASP and thereby exposed to a substantial risk of  
27 serious harm. The fact that Defendant Schwarzenegger made comments showing that he was  
28 aware of the risk of Valley Fever alone is not sufficient to state a claim that Defendant

1 Schwarzenegger was deliberately indifferent to the risk to Plaintiffs in this action.

2 The allegations in the complaint do not show that Defendant Schwarzenegger was aware  
3 of any substantial risk of harm to inmates due to the decision to build next to PVSP, and as  
4 discussed above, such claims are not properly joined in this action. Plaintiffs' complaint fails to  
5 state a claim against Defendant Schwarzenegger and the Court recommends that the motion to  
6 dismiss Defendant Schwarzenegger be granted.

7 ii. Defendants Cate and Yates

8 Plaintiffs allege that in 2007 the Fresno Grand Jury investigation informed Defendants  
9 Cate, and Yates of the incidence of Valley Fever at PVSP and the increased risk to African-  
10 Americans, Hispanics, and Filipinos and other Asians. (ECF No. 2 at ¶¶ 97-100.) Plaintiffs  
11 contend that although Defendants were aware that housing these inmates in the hyper-endemic  
12 prisons posed a greatly elevated risk of them contracting the disseminated disease, Defendant  
13 Cate created and continued policies that allowed inmates to be transferred into the high risk area  
14 and did not protect high risk prisoner groups; and Defendant Yates established and implemented a  
15 policy that allowed them to be housed in the endemic area.

16 The allegations contained in the complaint are sufficient to state a claim against  
17 Defendants Cate and Yates for deliberate indifference to conditions of confinement by allowing  
18 these high risk categories of inmates to be housed at prisons in the endemic and hyper-endemic  
19 area. The Court recommends that Defendants' motion to dismiss Defendants Cate and Yates be  
20 denied.<sup>4</sup>

21 iii. Defendant Winslow

22 Plaintiffs contend that Defendant Winslow was the former Statewide Medical Director for  
23 CDCR and authored a memo in June 2007 disclosing that CDCR was aware of the greatly  
24 increased risk of infection in the hyper-endemic areas and that the risk was multiplied several  
25 times over for certain ethnic groups. (ECF No. 2 at ¶ 27.) Defendant Winslow made  
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27 <sup>4</sup> While Defendants argue that they have taken, and continue to take in good faith, efforts to protect inmates based  
28 upon the evolving recommendations regarding Valley Fever, at the motion to dismiss stage the allegations in the  
complaint are taken as true.

1 recommendations that were ignored in his policy recommendations issued five months later. (Id.)

2 While Plaintiffs allege that Defendant Winslow personally participated in CDCR's  
3 adoption of policies that allowed high risk inmates to continue to be transferred to these prisons,  
4 there are no facts alleged in the amended complaint to support such a conclusory allegation.  
5 Plaintiffs have not alleged any facts to show that Defendant Winslow was personally involved in  
6 adopting or implementing the policies which are being challenged in this action.

7 Further, Plaintiffs contend that Dr. Winslow issued a memorandum in November 2007  
8 that did not include recommend excluding all African-American, Hispanic, Filipino and other  
9 Asian inmates. However, in June 2007 Defendant Winslow issued a memorandum making  
10 recommendations to reduce the infection rate inside the prison. Deliberate indifference occurs  
11 where the official fails to address a substantial risk of harm to the inmates. Simmons v. Navajo  
12 County, Arizona, 609 F.3d 1011, 1018 (9th Cir. 2010). In this instance, based on the allegations  
13 in Plaintiffs' complaint, Defendant Winslow was not deliberately indifferent to the risk, but made  
14 recommendations to reduce the incidence of infection rates at the prison. The Court recommends  
15 that Defendants' motion to dismiss Defendant Winslow be granted.

16 iv. Defendant Igbinsosa

17 Plaintiffs allege that Defendant Igbinsosa was the medical director at PVSP during the time  
18 period relevant to this complaint. (Id. at ¶ 32.) Plaintiffs contend that despite being aware of the  
19 incident rate of the disease, he failed to establish a prison level policy of screening inmates to  
20 enable them to be transferred away from the hyper-endemic prison. (Id.)

21 While Plaintiffs contend that Defendant Igbinsosa failed to establish a screening policy to  
22 identify high risk inmates, given the CDCR policy that existed at the time, instituting a policy to  
23 screen inmates would not have resulted in Plaintiffs being transferred from PVSP. Plaintiffs'  
24 complaint fails to allege any facts from which the Court may infer that Defendant Igbinsosa was  
25 responsible for the policy of housing high risk inmates at PVSP or had any authority, by virtue of  
26 his position as medical director at the prison, to have inmates transferred to another prison due to  
27 being at high risk of contracting disseminated disease.

28 Further, Plaintiffs' conclusory statement that Defendant Igbinsosa was aware of the

1 incidence rate of Valley Fever and medical risks and failed to take actions to address the epidemic  
2 or reduce inmates expose to disease fails to show state a plausible claim that Defendant Igbinsa  
3 failed to respond to a serious medical need. Plaintiffs' complaint specifically alleges that  
4 Plaintiffs should not have been transferred to PVSP or should have been transferred from PVSP.  
5 As discussed, the complaint fails to show that Defendant Igbinsa was responsible for transfer  
6 decisions or the CDCR policy. Plaintiffs fail to include any allegations that Defendant Igbinsa  
7 had the ability to protect Plaintiffs from expose to Valley Fever and failed to do so.

8 Plaintiffs fail to state a cognizable claim and the Court recommends that Defendants'  
9 motion to dismiss Defendant Igbinsa be granted.

10 2. Deliberate Indifference to Serious Medical Needs

11 Plaintiffs also contend that Defendants were deliberately indifferent to their serious  
12 medical needs by transferring them to an area where they were exposed to Valley Fever. In the  
13 context of deliberate indifference to medical needs, deliberate indifference is shown where the  
14 official is aware of a serious medical need and fails to adequately respond. Simmons, 609 F.3d at  
15 1018. Plaintiffs allegation that exposure to Valley Fever was deliberate indifference to a medical  
16 condition fails to state a claim.

17 Deliberate indifference may be manifested "when prison officials deny, delay or  
18 intentionally interfere with medical treatment," or in the manner "in which prison physicians  
19 provide medical care." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on  
20 other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).  
21 Plaintiffs allege that due to their risk factors, by exposing them to Valley Fever a serious medical  
22 condition could and did occur. At the time the inmates were transferred to the subject prison no  
23 serious medical condition existed that required response.

24 In the opposition to the motion, Plaintiffs argue that they did not receive appropriate care  
25 for their Valley Fever, however these allegations are not set forth in the complaint. While some  
26 plaintiffs do allege a period of time passed between their symptoms beginning and being formally  
27 diagnosed and treated, Plaintiffs have not linked this delay to any defendant named in this action.  
28 Nor have Plaintiffs linked any named defendant to any complications that they suffered due to

1 any alleged treatment received while incarcerated. As alleged in the complaint, Plaintiffs' claim  
2 is deliberate indifference to conditions of confinement. Plaintiffs fail to state a deliberate  
3 indifference to serious medical needs claim and the motion to dismiss this claim should be  
4 granted.

### 5 **C. Ripeness**

6 Defendants contend that since Plaintiffs Belardes, Carter, Clark, Felder, Garza, Hollis,  
7 Infinity, Koklich, Montgomery, Romero, Thomas, Tillis, Villanueva, Westbrook and Woods are  
8 still in custody their claims for the cost of on-going medical care are not ripe. Plaintiffs counter  
9 that their claims are ripe as they have contracted Valley Fever and therefore have demonstrated  
10 present injury and pleading general damages, including future medical costs, is legally proper at  
11 this phase of the litigation.

12 For each form of relief sought in federal court, Plaintiff must establish standing. Mayfield  
13 v. United States, 599 F.3d 964, 969 (9th Cir. 2010), cert.denied, 131 S. Ct. 503 (2010). This  
14 requires the plaintiff to “show that he is under threat of suffering ‘injury in fact’ that is concrete  
15 and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must  
16 be fairly traceable to challenged conduct of the defendant; and it must be likely that a favorable  
17 judicial decision will prevent or redress the injury.” Summers v. Earth Island Institute, 129 S. Ct.  
18 1142, 1149 (2009) (citation omitted); Mayfield, 599 F.3d at 969 (citation omitted). “The  
19 constitutional component of ripeness overlaps with the ‘injury in fact’ analysis for Article III  
20 standing. Whether framed as an issue of standing or ripeness, the inquiry is largely the same:  
21 whether the issues presented are ‘definite and concrete, not hypothetical or abstract.’ ” Wolfson  
22 v. Brammer, 616 F.3d 1045, 1058 (9th Cir. 2010) (internal citations omitted).

23 Defendants rely on Hassel v. Sisto, No. 2:10-cv-0191-GEB-CMK, 2011 WL 2946370  
24 (E.D. Cal. July 21, 2011), to argue that certain plaintiffs in this action cannot pursue claims for  
25 future medical care because they are still in the custody of CDCR. In Hassel the inmates alleged  
26 they had contracted tuberculosis (“TB”) as a result of prison officials deliberate indifference and  
27 were seeking future medical damages. Id. at \*1. However, none of the plaintiffs had active TB.  
28 Id. The defendants filed a motion to dismiss arguing that there was no case or controversy ripe

1 for adjudication as none of plaintiffs had active TB and any future damage was too speculative.  
2 Id. at \*2-3. The court found that any future damage was too speculative to bring to court. The  
3 reasons given by the court were that the costs of future healthcare would not be compensable until  
4 after the plaintiffs were released from prison; they would have to develop TB and show that it  
5 was attributable to a relapse of their treatment in prison; and there was no imminent danger of  
6 them developing active TB since they had been effectively treated in prison. Id. at \*3.

7 While Hassel could be relevant on a motion for summary judgment as to those Plaintiffs  
8 who do not allege they are currently suffering symptoms of Valley Fever or have not been  
9 diagnosed with Valley Fever, the complaint alleges a cause of action due to the risk of contracting  
10 disseminated disease. While not all Plaintiffs have alleged they have disseminated disease and  
11 some are suffering no symptoms, at this stage of the litigation, the Court cannot find that  
12 Plaintiffs' risk of their Valley Fever progressing to disseminated disease is too speculative to  
13 allow to proceed. Therefore, at the pleading stage, Plaintiffs have alleged an actual injury that  
14 can be addressed by a favorable judicial decision. While Defendants contend that the date that  
15 Plaintiffs will be released from custody is speculative, there are no facts before the court to  
16 determine that such a date could not be determined should this action proceed to trial.  
17 Defendants' motion to dismiss the claims for future medical damages on the grounds of ripeness  
18 should be denied.

19 **D. State Tort Claim**

20 In the complaint, Plaintiffs contend that Defendants waived all defenses based on  
21 presentation of claims to the Victims Compensation Board due to failing to comply with the  
22 statutory notice requirements under California Government Code section 53501. Defendants  
23 move to dismiss the state law claims on the ground that Plaintiffs did not comply with the  
24 Government Claims Act and Plaintiffs are not excused from presenting their claim prior to  
25 bringing suit.

26 The California Tort Claims Act<sup>5</sup> requires that a tort claim against a public entity or its

27 \_\_\_\_\_  
28 <sup>5</sup> The Court recognizes that in City of Stockton v. Superior Court, 42 Cal.4th 730, 742 (Cal. 2007), California's Supreme Court adopted the practice of referring to California's Tort Claims Act as the Government Claims Act. However, given that the federal

1 employees be presented to the California Victim Compensation and Government Claims Board,  
2 formerly known as the State Board of Control, no more than six months after the cause of action  
3 accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of a written  
4 claim, and action on or rejection of the claim are conditions precedent to suit. State v. Superior  
5 Court of Kings County (Bodde), 90 P.3d 116, 119 (Cal. 2004); Shirk v. Vista Unified School  
6 District, 42 Cal.4th 201, 209 (2007). To state a tort claim against a public employee, a plaintiff  
7 must allege compliance with the California Tort Claims Act. Cal. Gov't Code § 950.6; Bodde, 90  
8 P.3d at 123. “[F]ailure to allege facts demonstrating or excusing compliance with the  
9 requirement subjects a complaint to general demurrer for failure to state a cause of action.”  
10 Bodde, 90 P.3d at 120.

11 Plaintiffs contend that Defendants waived the presentation requirement by not complying  
12 with California Government Code section 53501 which requires that each public agency must file  
13 with the Secretary of State a form which includes:

- 14 1. The full, legal name of the public agency.
- 15 2. The official mailing address of the governing body of the public agency.
- 16 3. The name and residence or business address of each member of the governing  
17 body of the public agency.
- 18 4. The name, title, and residence or business address of the chairman, president, or  
19 other presiding officer, and clerk or secretary of the governing body of such  
20 public agency.

21 Cal. Gov. Code § 53051(a). Section 946.4, as relevant here, provides that the failure to present a  
22 claim does not bar a suit if “[a] statement or amended statement pertaining to the public agency is  
23 on file, or is placed on file . . . but the information contained therein is so inaccurate or  
24 incomplete that it does not substantially conform to the requirements of Section 53051.” A public  
25 agency is described as “a district, public authority, public agency, and any other political  
26 subdivision or public corporation in the state, but does not include the state or a county, city and  
27 county, or city.” Cal. Gov. Code § 53050.

28 “[S]ection 53051 was enacted ‘to provide a means for identifying public agencies and the  
names and addresses of designated officers needed to enable or assist a person to comply with

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government has also enacted a Tort Claims Act, 28 U.S.C. § 2671, the Court here refers to the Government Claims Act as the California Tort Claims Act in an effort to avoid confusion.



1 any applicable claims procedure[.]’ ” Wilson v. San Francisco Redevelopment Agency, 19  
2 Cal.3d 555, 561 (1977). An “agency’s failure to comply with section 53051 entitles the claimant  
3 to ignore the claim-filing requirement entirely.” Id.

4 In their opposition, Plaintiffs contend that, at the pleading stage, the Court should not  
5 decide the issue of substantial compliance. However, the Court disagrees for several reasons.  
6 Initially, Plaintiffs argue that the failure to comply with the California Tort Claims Act is an  
7 affirmative defense. However, to state a claim a plaintiff must allege compliance with the Act  
8 and it is therefore an element of the state law cause of action. Young v. City of Visalia, 687  
9 F.Supp.2d 1141, 1152 (E.D. Cal. 2009). Therefore, failure to comply with the California Tort  
10 Claim Act is fatal to Plaintiffs’ cause of action. Hacienda La Puente Unified School Dist. of Los  
11 Angeles v. Honig, 976 F.2d 487, 495 (9th Cir. 1992). Also, the issue of whether Defendants  
12 substantially conform with the requirements of the statute is not a factual issue, but is a legal  
13 issue. Finally, as the Ninth Circuit recently reiterated, issues dealing with exhaustion  
14 requirements, if feasible, should be decided before reaching the merits of a prisoner’s claim.  
15 Albino v. Baca, 767 F.3d 1162, 1169 (E.D. Cal. 2014).

16 The California Tort Claim Act defines the State as “the State and any office, officer,  
17 department, division, bureau, board, commission or agency of the State claims against which are  
18 paid by warrants drawn by the Controller.” Cal. Gov. Code §§ 900.6, 940.6. If the CDCR claims  
19 are paid by warrants drawn by the Controller, it would be considered the State for the purposes of  
20 the Tort Claims Act and is not required to comply with section 53050. See Galli v. State of  
21 California, 98 Cal.App.3d 662, 675 (1979).

22 Further, the Court takes judicial notice of the California Roster of State Agencies,  
23 Departments, Boards, and Commissions provided by Defendants in their request for judicial  
24 notice.<sup>6</sup> (ECF No. 38-1 at 2.) The information provided in the Roster for the CDCR includes the  
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26 <sup>6</sup> As a general rule, the court may not consider any material outside the pleadings in ruling on a Rule 12(b)(6) motion.  
27 United States v. Corinthian Colleges, 655 F.3d 984, 998 (9th Cir. 2011). However, the incorporation by reference  
28 doctrine allows material attached to the complaint to be considered, as well as “unattached evidence on which the  
complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the document is central to plaintiff’s  
claim; and (3) no party questions the authenticity of the document.” Corinthian Colleges, 655 F3d at 999.

1 address, phone number and website address for the CDCR. (Id.) The website address provided is  
2 for the CDCR website which provides the identity of the Secretary of the CDCR and information  
3 on each of the divisions and boards within the CDCR.<sup>7</sup>

4 An unpublished California case, Kahaunaele v. Tri-City Medical Center, No. D053214,  
5 2009 WL 2004428, at \*6 (July 10, 2009), recognizes the sparseness of the law addressing what  
6 defines substantial conformity with the requirements of section 53051. Kahaunaele applied the  
7 law of substantial compliance to determine the issue. Id. at \*7.

8 “Substantial compliance . . . means actual compliance in respect to the substance essential  
9 to every reasonable objective of the statute.” Costa v. Superior Court, 34 Cal.4th 986, 1017 n.24  
10 (2006) (citations omitted). This means that each objective of the statute must be achieved in  
11 order to satisfy the substantial compliance standard, but it does not require actual compliance with  
12 every specific statutory requirement. Id. In determining whether there has been substantial  
13 compliance, “[t]he paramount consideration is the objective of the statute.” North Pacifica LLC  
14 v. California Costal Com’n, 166 Cal.App.4th 1416, 1431 (2008).

15 The purpose of section 53051 is “to provide a means for identifying public agencies and  
16 the names and addresses of designated officers needed to enable or assist a person to comply with  
17 any applicable claims procedure.” Tubbs v. Southern California Rapid Transit Dist., 67 Cal.2d  
18 671, 676 (1967). The information provided on the Roster is sufficient to enable or assist an  
19 individual to comply with any applicable claims procedure. While Plaintiffs argue that the  
20 information is incomplete as found in Banfield v. Sierra View Hospital, 124 Cal.App.3d 444  
21 (1981), in Banfield the information on the roster was incorrect and therefore not substantially

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23 <sup>7</sup> Plaintiffs object to the request that the Court take judicial notice of the CDCR website citing Knievel v. ESPN, 393  
24 F.3d 1068, 1076 (9th Cir. 2005). While Plaintiffs cite to footnote 13, there is no footnote 13 in the opinion.  
25 However, at the page cited the court did take into account the web pages attached to the motion to dismiss under the  
26 “incorporation by reference” doctrine. Id. Further, courts may take judicial notice of “a fact that is not subject to  
27 reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot  
28 reasonably be questioned.” Fed. R. Evid. 201(b). Courts may take judicial notice of information displayed on  
government websites where neither party disputes the accuracy of the information contained therein. Daniels –Hall  
v. National Educ. Ass’n, 629 F.3d 992, 998-99 (9th Cir. 2010). The Court overrules Plaintiffs’ objections to the  
Court taking judicial notice of the CDCR website.

1 compliant because the hospitals had failed to file updated information with the Roster of Public  
2 Agencies. Id. at 456. Here, there is no argument that the information provided on the Roster was  
3 incorrect.

4 Plaintiffs' contend that the failure to name the secretary and each member of the  
5 governing board did not substantially comply with section 53051. However, the information  
6 provided on the roster includes the website for the CDCR which provides the current information  
7 regarding the contact information for each department or division of the CDCR. Plaintiffs are  
8 excused from presenting a claim only where the information provided by the agency "is so  
9 inaccurate or incomplete that it does not substantially conform to the requirements of Section  
10 53051." Cal. Gov. Code § 946.4. The Court finds that the information on the Roster  
11 substantially complies with the purpose of section 53051 as it provides a means to identify the  
12 officers so that Plaintiffs could comply with the claims procedure. See Media Services, Inc. v.  
13 Mehas, 50 Fed.Appx. 850, 1 (9th Cir. 2002) (unpublished) (finding alleged error of failure to list  
14 secretary or clerk insubstantial in complying with section 53051).

15 Defendants' motion to dismiss Plaintiffs state law claims for failure to file a claim in  
16 compliance with the California Tort Claim Act should be granted as to all Plaintiffs based the  
17 allegation that they are excused from complying with the California Tort Claims Act.

18 1. Plaintiff Boyd

19 Plaintiff Boyd is the **only** plaintiff who alleges that he presented a claim to the Victim  
20 Compensation Board. Defendants request that the Court take judicial notice of the claim form  
21 and that this action was filed prior to the Board rejecting his claim.<sup>8</sup>

22 The California Tort Claims Act provides that action on or rejection of the claim are  
23 conditions precedent to suit. Bodde, 90 P.3d at 119; Shirk, 42 Cal.4th at 209. Plaintiff Boyd  
24 submitted a claim form on October 21, 2013 which was rejected because it failed to comply with  
25 the requirements of California Government Code section 905.2(c). (Government Claim Form,  
26 ECF No. 26-2 at Exhibit K.) Plaintiff Boyd submitted a claim on November 20, 2013, and

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27 <sup>8</sup> The Court will take judicial notice of the claim forms referred to in the complaint based on the incorporation by  
28 reference doctrine.

1 January 24, 2014. (Id. at 15-20.) Plaintiff Boyd’s claim was rejected at the March 20, 2014  
2 meeting of the Victim Compensation Board. (ECF No. 26-2 at 13.) This action was filed on  
3 February 5, 2014, approximately two months prior to the Board acting on his claim, therefore,  
4 Plaintiff Boyd did not comply with the requirements of the California Tort Claim Act and he fails  
5 to state a state law claim in this action. The Court recommends that Plaintiff Boyd’s state law  
6 claims be dismissed for failure to state a claim. Wickland Oil Terminals v. Asarco, Inc., 654  
7 F.Supp. 955, 961 (N.D. Cal. 1987).

8 **E. Misjoinder of Parties**

9 Defendants move to sever the claims against the individual defendants contending that the  
10 parties are misjoined in this action. Plaintiffs counter that they are alleging that Defendants’  
11 policies and systemic pattern of inaction exposed them to a greater risk of contracting Valley  
12 Fever and they share common questions of law and fact making joinder of the parties and claims  
13 proper.

14 Rule 20 of the Federal Rules of Civil Procedure provides for joinder of parties in a single  
15 action where any right to relief is asserted by them or against them “jointly, severally, or in the  
16 alternative with respect to or arising out of the same transaction, occurrence, or series of  
17 transactions or occurrences; and any question of law or fact common to all plaintiffs [or  
18 defendants] will arise in the action. Fed. R. Civ. P. 20(a)

19 The complaint in this action arises out of the policy of housing high risk inmates in the  
20 endemic area which was allegedly promulgated and implemented by the defendants in this action.  
21 While the defendants argue that the injuries do not arise out of the same transaction or  
22 occurrence, other than Plaintiff Koklich as discussed above, the Court disagrees. Plaintiffs are all  
23 alleging to have been harmed by the same policy. Similarly the claims by all these Plaintiffs will  
24 share common questions of law and fact. Joinder is appropriate under Rule 20. While the Court  
25 agrees with Defendants that the issue of joinder for all purposes may need to be readdressed at a  
26 later stage of the proceedings, Defendants’ motion to dismiss for improper joinder should be  
27 granted for Plaintiff Koklich and denied as to all other parties to this action.

1           **F.     Rule 8**

2           Finally, Defendants move to dismiss the complaint claiming it violates Rule 8 of the  
3 Federal Rule of Civil Procedure. Plaintiffs oppose the motion on the ground that the complaint is  
4 appropriately detailed and is organized to allow Defendants to understand the Constitutional  
5 violations alleged.

6           While Defendants cite cases in which a complaint has been dismissed for being “prolix”  
7 with evidentiary detail, the Court does not find Plaintiffs’ complaint to violate Rule 8. The Ninth  
8 Circuit has held that a complaint may be dismissed where the allegations are such that the court  
9 has difficulty determining the circumstances that gave rise to the cause of action. Gottschalk v.  
10 City and County of San Francisco, 964 F.Supp.2d 1147, 1154 (N.D. Cal. 2013) “Rule 8(a) has  
11 ‘been held to be violated by a pleading that was needlessly long, or a complaint that was highly  
12 repetitious, or confused, or consisted of incomprehensible rambling.’ ” Cafasso, U.S. ex rel. v.  
13 General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1059 (9th Cir. 2011) (quoting 5 Charles A.  
14 Wright & Arthur R. Miller, Federal Practice & Procedure § 1217 (3d ed.2010)).

15           While the complaint is seventy-nine pages long, it asserts claims for twenty-two plaintiffs  
16 against thirteen defendants. Although the complaint does contain some unnecessary and  
17 repetitive detail, it is not so repetitious or confusing as to make it incomprehensible. The  
18 complaint is logically organized, divided into sections for parties, factual allegations, Plaintiffs  
19 theories of liability, and causes of action. The complaint here clearly delineates the claims being  
20 brought and the defendants against whom the claims are being made. The complaint in this action  
21 is distinguishable from those cases in which courts have dismissed the complaint for violating  
22 Rule 8. See Cafasso, 637 F.3d at 1059 (affirming denial of motion to amend where complaint  
23 contained 733 pages); Gottschalk, 964 F.Supp.2d at 1155 (dismissing complaint that was  
24 rambling, confusing, and unintelligible).

25           Further, while Defendants contend that Plaintiffs use terms such as high-risk or at-risk  
26 without defining the terms, the complaint makes it clear that certain racial groups, such as  
27 African-Americans, Filipinos and other Asians, Hispanics, and American Indians, as well as those  
28 who are immune compromised are those at high risk for developing disseminated disease.

1 Although Defendants contend that Plaintiffs fail to identify if they fall within these categories,  
2 each Plaintiff alleges which group he belongs to. Plaintiffs Boyd, Carter, Clark, Felder, Johnson,  
3 Montgomery, Romero, Thomas, Tillis, Westbrook and Woods identify themselves as African-  
4 American. Plaintiffs Bustamonte, Garza, Romero, and Villanueva identify themselves as  
5 Hispanic. Plaintiff Belardes identifies himself as American Indian and Plaintiff Plaintiff Imuta  
6 identifies himself as Japanese, which would be other Asian. Additionally, Plaintiffs Clark and  
7 Dibble allege they suffered from respiratory problems that placed them at high risk of contracting  
8 Valley Fever prior to being transferred into PVSP.

9 Defendants also argue that Plaintiffs have failed to define certain terms such as hyper-  
10 endemic regions or prisons. However, the complaint identifies the prisons in the endemic and  
11 hyper-endemic regions as ASP, California Correctional Institution, California State Prison-  
12 Corcoran, Wasco State Prison, North Kern State Prison, PVSP, California Substance Abuse  
13 Treatment Facility and State Prison at Corcoran, and Kern Valley State Prison. (ECF No. 2 at ¶  
14 54.)

15 The Court recommends that Defendants' motion to dismiss the complaint for violating  
16 Rule 8 be denied.

## 17 V.

### 18 CONCLUSION AND RECOMMENDATION

19 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 20 1. Defendants Winslow and Igbiosa's motion to dismiss be GRANTED;
- 21 2. Defendants Beard, Brazelton, Brown, Cate, Hartley, Hubbard, Rothchild,  
22 Schwarzenegger, Meyer, and Yates motion to dismiss be DENIED IN PART AND  
23 GRANTED IN PART as follows:
  - 24 a. The motion to dismiss Defendants Brown, Schwarzenegger, Beard, Brazelton,  
25 Hubbard, Rothchild, Hysen, Meyer, and Hartley be GRANTED;
  - 26 b. The motion to dismiss Defendants Cate and Yates be DENIED;
  - 27 c. Defendants' motion to dismiss the claim of deliberate indifference to conditions of  
28 confinement in violation of the Eighth Amendment be DENIED;

- 1 d. Defendants’ motion to dismiss the claim of deliberate indifference to serious  
2 medical needs in violation of the Eighth Amendment be GRANTED;
- 3 e. Defendants’ motion to dismiss the state law claims for failure to allege compliance  
4 with the Tort Claim Act be GRANTED;
- 5 f. Defendants’ motion to dismiss Plaintiffs’ complaint on all other grounds be  
6 DENIED;
- 7 g. Plaintiffs Beagle and Burke’s claims be dismissed with leave to amend for failure  
8 to state a claim; and
- 9 h. Plaintiffs Hollis and Koklich be dismissed, without leave to amend, for failure to  
10 state a claim; and
- 11 3. Plaintiffs should be granted an opportunity to file an amended complaint to cure  
12 the deficiencies identified in this findings and recommendations.<sup>9</sup>

13 These findings and recommendations are submitted to the district judge assigned to this  
14 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen  
15 (14) days of service of this recommendation, any party may file written objections to these  
16 findings and recommendations with the Court and serve a copy on all parties. Such a document  
17 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
18 district judge will review the magistrate judge’s findings and recommendations pursuant to 28  
19 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

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27 <sup>9</sup> Plaintiffs are not being granted an opportunity to file an amended complaint at this time. Once the district judge  
28 issues an order on the findings and recommendations, Plaintiffs shall be provided with the date by which to file an  
amended complaint.

1 time may waive the right to appeal the district judge's order. Martinez v. Ylst, 951 F.2d 1153  
2 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: June 24, 2014

  
UNITED STATES MAGISTRATE JUDGE

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