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

JESUS A. GARCIA,	)	Case No.: 1:14-cv-00459-BAM (PC)
	)	
Plaintiff,	)	SCREENING ORDER DISMISSING AMENDED
	)	COMPLAINT WITH LEAVE TO AMEND
v.	)	(ECF No. 9.)
	)	
CALIFORNIA DEPARTMENT OF	)	
CORRECTIONS, et al.,	)	
	)	THIRTY-DAY DEADLINE
Defendants.	)	
	)	

**I. Screening Requirement and Standard**

Plaintiff Jesus A. Garcia (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On October 14, 2014, the Court dismissed Plaintiff’s complaint with leave to amend. Following an extension of time, Plaintiff’s first amended complaint, filed on December 3, 2014, is currently before the Court for screening.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell  
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff’s  
6 allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v.  
7 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
8 omitted).

9 To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient  
10 factual detail to allow the Court to reasonably infer that each named defendant is liable for the  
11 misconduct alleged. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss v.  
12 United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant  
13 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
14 plausibility standard. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572  
15 F.3d at 969.

## 16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at Valley State Prison. Plaintiff names the following defendants:  
18 (1) Jeffrey Beard, Secretary of the California Department of Corrections; (2) J. Mejia, Classification  
19 Staff Representative (“CSR”); (3) J. Faure, Correctional Counselor; (4) Ron Davis, Warden at Avenal  
20 State Prison; and (5) Does 1-50.

21 Plaintiff alleges as follows: In 2009, Plaintiff was sentenced to state prison and sent to the  
22 Delano Reception Center. While at Delano, Plaintiff informed prison officials that he had asthma.  
23 Plaintiff later saw a correctional counselor, who had the opportunity to review the note in Plaintiff’s  
24 central file that he had asthma. Plaintiff was sent to Avenal State Prison by Defendant CSR Mejia.  
25 Plaintiff alleges that it is the CSR’s duty to ensure that inmates fit the classification status necessary to  
26 be transferred to a certain prison. Plaintiff contends that it was Defendant Mejia’s duty to ensure that  
27 Plaintiff was sent to a prison that did not have a disease that could endanger his health.  
28

1 Plaintiff further alleges that Avenal State Prison is known for having a fungus called  
2 coccidioidomycosis (“Valley Fever”), which is highly endemic to both Valley State Prison and Avenal  
3 State Prison. Plaintiff contends that CDCR officials have been notified of the risk of contracting  
4 Valley Fever.

5 Plaintiff asserts that he arrived at Avenal State Prison unaware that his life was endangered by  
6 Valley Fever and that the chance of contracting the infection was increased because of his asthma.  
7 Plaintiff alleges that it was the duty of Avenal State Prison’s Warden to ensure that Plaintiff’s safety  
8 was secure. After Plaintiff was cleared to program at Avenal State Prison, he began to experience flu-  
9 like symptoms, which are a strong indicator of Valley Fever. The symptoms worsened in 2010, but  
10 doctors at Avenal State Prison informed Plaintiff that they believed he had a common cold.

11 Plaintiff was paroled from Avenal State Prison on January 5, 2012, without having been tested  
12 for Valley Fever. Once paroled, Plaintiff became very sick, with fever, chills, body aches and  
13 headaches. Plaintiff sought treatment at a clinic where a physician ordered chest x-rays. The  
14 physician indicated that the x-rays presented as a person with bronchitis and that Plaintiff had  
15 pneumonia. Plaintiff informed the physician that he had asthma and that he had paroled from Avenal  
16 State Prison two weeks earlier. Plaintiff also indicated that they had Valley Fever at Avenal State  
17 Prison. The physician gave plaintiff a shot and a prescription.

18 About 12 months after being released from prison, Plaintiff began to break out with small spots  
19 around his ankles and top of his feet. Eighteen months after being released, Plaintiff was  
20 reincarcerated. While being detained in the county jail, the spots began to worsen. When finally sent  
21 to prison, Plaintiff spots worsened and he broke out in bumps. Plaintiff’s shins became swollen and  
22 his feet began to peel. Doctors began to prescribe creams which made it worse. Plaintiff asked to be  
23 tested for Valley Fever. Without being told the results, Plaintiff was prescribed Diflucanate and  
24 antibiotics. Upon his second refill for Diflucanate, Plaintiff asked the nurse what it was prescribed for  
25 and for its side effects. The nurse came back with Valley Fever written on Plaintiff’s medication bag.  
26 Plaintiff asked if he had Valley Fever, but the nurse told him to ask his doctor.

27 When Plaintiff saw a doctor, he asked about his lab results. The doctor verified that Plaintiff  
28 had Valley Fever. Plaintiff took Diflucanate for 9 months, which caused him constipation,

1 dehydration, blurred vision, headaches, dizziness, disorientation, muscle weakness, fatigue, anxiety  
2 stress, and weight loss.

3 Plaintiff further alleges that Defendant Jeffry Beard was responsible for the safety and security  
4 of all inmates under the care of CDCR. Plaintiff contends that Defendant Beard deliberately allowed  
5 officials to subject Plaintiff to cruel and unusual punishment by allowing him to be housed in a prison  
6 where Valley Fever is highly endemic.

7 Plaintiff seeks compensatory and punitive damages.

### 8 **III. Discussion**

#### 9 **A. Linkage Requirement**

10 The Civil Rights Act under which this action was filed provides:

11 Every person who, under color of [state law] ... subjects, or causes to be subjected, any citizen  
12 of the United States ... to the deprivation of any rights, privileges, or immunities secured by the  
13 Constitution ... shall be liable to the party injured in an action at law, suit in equity, or other  
proper proceeding for redress.

14 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the  
15 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.  
16 Dep't of Soc. Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); Rizzo v. Goode, 423 U.S.  
17 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that “[a] person ‘subjects’  
18 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an  
19 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally  
20 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d  
21 740, 743 (9th Cir. 1978).

22 Here, Plaintiff fails to J. Faure and the Doe Defendants to any constitutional violation.  
23 Plaintiff will be given leave to cure this deficiency. If Plaintiff elects to amend his complaint, he must  
24 allege what each individual defendant did or did not do that resulted in a violation of his rights.

#### 25 **B. Doe Defendants**

26 “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.” Gillespie v.  
27 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that John Doe defendants (i.e.,  
28

1 unknown defendants) cannot be served by the United States Marshal until Plaintiff has identified them  
2 as actual individuals and amended his complaint to substitute names for the John Does.

3 **C. Deliberate Indifference/Cruel and Unusual Punishment**

4 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison  
5 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452  
6 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment violation  
7 unless (1) “the prison official deprived the prisoner of the “minimal civilized measure of life’s  
8 necessities,” and (2) “the prison official ‘acted with deliberate indifference in doing so.’” Toguchi v.  
9 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir.  
10 2002) (citation omitted)). In order to find a prison official liable under the Eighth Amendment for  
11 denying humane conditions of confinement within a prison, the official must know “that inmates face  
12 a substantial risk of serious harm and disregard [ ] that risk by failing to take reasonable measures to  
13 abate it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994).

14 Defendant Jeffrey Beard

15 Plaintiff fails to state a cognizable claim against Defendant Beard for deliberate indifference to  
16 Plaintiff’s health and safety. There are no allegations linking Defendant Beard to Plaintiff’s housing  
17 assignment at Avenal State Prison. There also are no allegations that Defendant Beard knew of  
18 Plaintiff’s asthma or, more importantly, that Plaintiff contracted Valley Fever while housed at Avenal  
19 State Prison.

20 Defendant J. Mejia

21 Plaintiff has not stated a cognizable claim against Defendant J. Mejia arising out of Plaintiff’s  
22 assignment to Avenal State Prison. There are no allegations indicating that Defendant Mejia knew  
23 that Avenal State Prison was in an endemic area or that Plaintiff was at risk of contracting Valley  
24 Fever. There also are no allegations indicating that Plaintiff contracted Valley Fever while housed at  
25 Avenal State Prison.

26 Ron Davis

27 Plaintiff has not stated a cognizable claim against Defendant Davis for deliberate indifference  
28 to Plaintiff’s health and safety. There are no allegations indicating that Defendant Davis knew that

1 Plaintiff had asthma or was at risk to contract Valley Fever. Additionally, there are no allegations  
2 indicating that Plaintiff contracted Valley Fever while housed at Avenal State Prison.

3 **D. Deliberate Indifference to Serious Medical Needs**

4 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
5 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096  
6 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251  
7 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) “a ‘serious  
8 medical need’ by demonstrating that failure to treat a prisoner’s condition could result in further  
9 significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s  
10 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096; Wilhelm v. Rotman, 680  
11 F.3d 1113, 1122 (9th Cir. 2012).

12 Deliberate indifference is shown where the official is aware of a serious medical need and fails  
13 to adequately respond. Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1018 (9th Cir. 2010).  
14 “Deliberate indifference is a high legal standard.” Id. at 1019; Toguchi, 391 F.3d at 1060. The prison  
15 official must be aware of facts from which he could make an inference that “a substantial risk of  
16 serious harm exists” and he must make the inference. Farmer, 511 U.S. at 837.

17 Although Plaintiff complains of inadequate medical care, he does not provide sufficient factual  
18 allegations to state a cognizable claim for deliberate indifference to serious medical needs against any  
19 individual defendant. He merely lumps all medical staff together. Plaintiff will be given leave to cure  
20 this deficiency.

21 **IV. Conclusion and Order**

22 Plaintiff has failed to state a cognizable claim against any individual defendant. The Court will  
23 grant Plaintiff a final opportunity to cure the identified deficiencies. Lopez v. Smith, 203 F.3d 1122,  
24 1130 (9th Cir. 2000).

25 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each  
26 named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal, 556 U.S. at  
27 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be  
28

1 [sufficient] to raise a right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555  
2 (citations omitted).

3 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated claims  
4 in his first amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”  
5 complaints).

6 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
7 Lacey v. Maricopa County, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended  
8 complaint must be “complete in itself without reference to the prior or superseded pleading.” Local  
9 Rule 220.

10 Based on the foregoing, it is HEREBY ORDERED that:

- 11 1. The Clerk’s Office shall send Plaintiff a complaint form;
- 12 2. Plaintiff’s first amended complaint is dismissed with leave to amend;
- 13 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a  
14 second amended complaint; and
- 15 4. If Plaintiff fails to file a second amended complaint in compliance with this order, this  
16 action will be dismissed for failure to obey a court order and failure to state a claim.

17  
18 IT IS SO ORDERED.

19 Dated: January 6, 2015

/s/ Barbara A. McAuliffe  
20 UNITED STATES MAGISTRATE JUDGE

Plaintiff's Name \_\_\_\_\_

Inmate No. \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

(Name of Plaintiff)

(Case Number)

vs.

**AMENDED CIVIL RIGHTS COMPLAINT UNDER:**

42 U.S.C. 1983 (State Prisoner)

Bivens Action [403 U.S. 388 (1971)] (Federal Prisoner)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Names of all Defendants)

**I. Previous Lawsuits (list all other previous or pending lawsuits on additional page):**

A. Have you brought any other lawsuits while a prisoner? Yes \_\_\_ No \_\_\_

B. If your answer to A is yes, how many? \_\_\_\_\_

Describe previous or pending lawsuits in the space below. (If more than one, attach additional page to continue outlining all lawsuits in same format.)

1. Parties to this previous lawsuit:

Plaintiff \_\_\_\_\_

Defendants \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

3. Docket Number \_\_\_\_\_ 4. Assigned Judge \_\_\_\_\_

5. Disposition (Was the case dismissed? Appealed? Is it still pending?)

\_\_\_\_\_

**II. Exhaustion of Administrative Remedies**

**NOTICE:** Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prior to filing suit, inmates are required to exhaust the available administrative remedy process, *Jones v. Bock*, 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1999 (9th Cir. 2002), and neither futility nor the unavailability of money damages will excuse the failure to exhaust, *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002). If the court determines that an inmate failed to exhaust prior to filing suit, the unexhausted claims will be dismissed, without prejudice. *Jones*, 549 U.S. at 223-24, 127 S.Ct. at 925-26.

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

Yes \_\_\_\_\_ No \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_

C. Is the process completed?

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

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

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**III. Defendants**

List each defendant’s full name, official position, and place of employment and address in the spaces below. If you need additional space please provide the same information for any additional defendants on separate sheet of paper.

A. Name \_\_\_\_\_ is employed as \_\_\_\_\_

Current Address/Place of Employment \_\_\_\_\_

B. Name \_\_\_\_\_ is employed as \_\_\_\_\_

Current Address/Place of Employment \_\_\_\_\_

C. Name \_\_\_\_\_ is employed as \_\_\_\_\_

Current Address/Place of Employment \_\_\_\_\_

D. Name \_\_\_\_\_ is employed as \_\_\_\_\_

Current Address/Place of Employment \_\_\_\_\_

E. Name \_\_\_\_\_ is employed as \_\_\_\_\_

Current Address/Place of Employment \_\_\_\_\_

**IV. Causes of Action** (You may attach additional pages alleging other causes of action and the facts supporting them if necessary. Must be in same format outlined below.)

**Claim 1:** The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

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**Supporting Facts** (Include all facts you consider important to Claim 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 1.):

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**Claim 2:** The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

Supporting Facts (Include all facts you consider important to Claim 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 2.):

