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

DERRICK JESUS ODEN, SR.,)	Case No.: 1:14-cv-00873-LJO-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER DISMISSING COMPLAINT
)	AND GRANTING LEAVE TO AMEND
v.)	(ECF No. 1)
)	
STATE OF CALIFORNIA, et al.,)	
)	
Defendants.)	THIRTY-DAY DEADLINE
)	
)	

I. Screening Requirement and Standard

Plaintiff Derrick Jesus Oden, Sr. (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on June 9, 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).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but

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

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

14 **II. Plaintiff’s Allegations**

15 Plaintiff is currently housed at California State Prison, Lancaster. Plaintiff has named the
16 following defendants: (1) Anthony Grounds, Warden at Salinas Valley State Prison; (2) Governor of
17 California Brown; and (3) the State of California.

18 Plaintiff alleges as follows:

19 While housed in Prison at Northern Kern Prison in Delano Plaintiff contracted Valley
20 Fever. This was October 2010. Defendants were aware of the Valley Fever in the area as
21 well as the fact that Plaintiff had asthma. Plaintiff was rushed to Delano Regional
22 Hospital with a fever of 104. Plaintiff now suffer from weakness, chronic pain, skin
23 discoloration, painful coughs, he aches, night sweats, joint pain, and other problems
associated with the Valley Fever including Psychological and neurological. Plaintiff also
claim hes not getting adequate medical care for pain.

24 (ECF No. 1, p. 3) (unedited text). Plaintiff seeks ten million dollars, compassionate release and
25 non-formulary medications to treat the Valley Fever.

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1 **III. Discussion**

2 **A. Federal Rule of Civil Procedure 8**

3 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain
4 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed
5 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
6 supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678 (citation omitted).
7 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
8 plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570, 127 S.Ct. at 1974).
9 While factual allegations are accepted as true, legal conclusions are not. Id.; see also Twombly, 550
10 U.S. at 556–557.

11 Here, Plaintiff’s complaint is short, but it fails to set forth sufficient factual matter to state a
12 claim for relief that is plausible on its face. Plaintiff’s complaint lacks basic facts, including what
13 happened and who was involved in his placement at North Kern State Prison, how defendants were
14 aware that he had asthma, when he was first housed at North Kern State Prison, and the care he did or
15 did not receive. Plaintiff will be given leave to cure these deficiencies.

16 **B. Linkage Requirement**

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

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

21 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the
22 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.
23 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.
24 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that “[a] person ‘subjects’
25 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an
26 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally
27 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d
28 740, 743 (9th Cir. 1978).

1 Here, Plaintiff fails to link any individual defendant to a constitutional violation. Instead,
2 Plaintiff lumps the individual defendants together with the State. Plaintiff will be given leave to cure
3 this deficiency. If Plaintiff elects to amend his complaint, he must allege what each individual
4 defendant did or did not do that resulted in a violation of his rights.

5 **C. Eleventh Amendment**

6 To the extent Plaintiff seeks to bring claims against the State for monetary damages, he may
7 not do so. The Eleventh Amendment prohibits suits for monetary damages against a State, its
8 agencies, and state officials acting in their official capacities. Aholelei v. Dep't of Public Safety, 488
9 F.3d 1144, 1147 (9th Cir. 2007).

10 **D. Deliberate Indifference/Cruel and Unusual Punishment**

11 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
12 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452
13 U.S. 337, 347 (1981). A prisoner's claim does not rise to the level of an Eighth Amendment violation
14 unless (1) “the prison official deprived the prisoner of the “minimal civilized measure of life's
15 necessities,” and (2) “the prison official ‘acted with deliberate indifference in doing so.’” Toguchi v.
16 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir.
17 2002) (citation omitted)). In order to find a prison official liable under the Eighth Amendment for
18 denying humane conditions of confinement within a prison, the official must know “that inmates face
19 a substantial risk of serious harm and disregard [] that risk by failing to take reasonable measures to
20 abate it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994).

21 Here, Plaintiff has not set forth sufficient factual allegations to state a claim for deliberate
22 indifference against any individual. Plaintiff's complaint is filled with conclusory statements and does
23 not demonstrate that the Warden of Salinas Valley State Prison or the Governor knew of a substantial
24 risk of serious harm to Plaintiff by his placement at North Kern State Prison and failed to take
25 reasonable measures to abate it. Further, Plaintiff's decision to lump all defendants together rather
26 than identifying those persons he believes are responsible for the constitutional violations also is not
27 sufficient. Plaintiff will be given leave to cure these deficiencies.

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1 **E. Deliberate Indifference to Serious Medical Needs**

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

10 Deliberate indifference is shown where the official is aware of a serious medical need and fails
11 to adequately respond. Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1018 (9th Cir. 2010).
12 “Deliberate indifference is a high legal standard.” Id. at 1019; Toguchi v. Chung, 391 F.3d 1051, 1060
13 (9th Cir. 2004). The prison official must be aware of facts from which he could make an inference that
14 “a substantial risk of serious harm exists” and he must make the inference. Farmer, 511 U.S. at 837.

15 Although Plaintiff complains of inadequate medical care, he does not provide sufficient factual
16 allegations to state a cognizable claim for deliberate indifference to serious medical needs against any
17 individual defendant. Plaintiff will be given leave to cure this deficiency.

18 **IV. Conclusion and Order**

19 Plaintiff has failed to state a cognizable claim against any individual defendant. The Court will
20 grant Plaintiff an opportunity to cure the identified deficiencies. Lopez v. Smith, 203 F.3d 1122, 1130
21 (9th Cir. 2000).

22 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each
23 named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal, 556 U.S. at
24 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be
25 [sufficient] to raise a right to relief above the speculative level” Twombly, 550 U.S. at 555
26 (citations omitted).

