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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHRIS DOOP,	)	1:14cv01933 DLB PC
	)	
Plaintiff,	)	ORDER FIRST AMENDED
	)	COMPLAINT WITH LEAVE
vs.	)	TO AMEND
	)	
WOODFORD, et al.,	)	THIRTY-DAY DEADLINE
	)	
Defendant.	)	

Plaintiff Chris Doop (“Plaintiff”) is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff commenced this action by writing a letter to the United States District Court for the Northern District of California on October 10, 2014. He filed his complaint on October 24, 2014. On January 5, 2015, Plaintiff filed a First Amended Complaint (“FAC”) as a matter of right.<sup>1</sup>

**A. LEGAL STANDARD**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are

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<sup>1</sup> Plaintiff consented to the jurisdiction of the United States Magistrate Judge on December 12, 2014.

1 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
2 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
3 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
4 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
5 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.  
6 § 1915(e)(2)(B)(ii).

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8 A complaint must contain “a short and plain statement of the claim showing that the  
9 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing  
12 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
13 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting  
14 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are  
15 not. Id.

16 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
17 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
18 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
19 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the  
20 actions or omissions of each named defendant to a violation of his rights; there is no respondeat  
21 superior liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County,  
22 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235  
23 (9th Cir. 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to  
24 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572  
25 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this  
26 plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.  
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1 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

2 Plaintiff is now out of custody. The events at issue occurred while he was incarcerated at  
3 Avenal State Prison (“ASP”).

4 Plaintiff contends that Defendants have a duty to provide a safe environment to inmates,  
5 but they disregarded their duty by placing him at risk of Valley Fever exposure. Plaintiff alleges  
6 that Defendants continue to house inmates who test negative for Valley Fever at ASP, despite a  
7 court order. Plaintiff contends that Defendants are “falsifying lab results and medical records to  
8 stop litigation for Valley Fever” because of jobs. ECF No. 13, at 3. He explains that Defendants  
9 have posted information on Valley Fever that states that everyone has an equal chance of  
10 contracting the disease, but they have transferred Blacks and Filipinos from ASP. Plaintiff states  
11 that White and Hispanic inmates are left to suffer.

12 Defendants also refuse to permit Plaintiff to send his blood to an outside lab, at his  
13 expense, for a second opinion. Plaintiff has requested a transfer from ASP due to preexisting  
14 medical conditions (Hepatitis C).

15 He also alleges that Defendants have refused treatment for Hepatitis C, and have created  
16 a protocol that is illegal and unconstitutional. He contends that on May 14, 2014, Defendants  
17 found a growth on Plaintiff’s liver and ordered a biopsy, but the biopsy was denied. He was also  
18 lied to, and suffered for months with joint pain while trying to find out what was wrong with  
19 him.  
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21 Finally, Plaintiff alleges that Defendants are committing mail fraud to stop litigation for  
22 Valley Fever. He also believes that Defendants are blocking access to the courts.  
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24 **C. DISCUSSION**

25 1. Linkage and Rule 8

26 Pro se litigants are entitled to have their pleadings liberally construed and to have any  
27 doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121-23 (9th Cir. 2012);  
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1 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). However, Plaintiff's claims must be facially  
2 plausible to survive screening, which requires sufficient factual detail to allow the Court to  
3 reasonably infer that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S.  
4 at 678 (quotation marks omitted); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir.  
5 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere  
6 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678  
7 (quotation marks omitted); Moss, 572 F.3d at 969.

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9 Although Plaintiff lists numerous Defendants, he does not include any Defendants in the  
10 factual allegations.<sup>2</sup> Plaintiff cannot simply group all Defendants together and allege, generally,  
11 that they violated his rights. Such statements do not meet the pleading requirements. Iqbal, 556  
12 U.S. at 678. Rather, Plaintiff must specifically link each Defendant to factual allegations  
13 demonstrating personal participation in the alleged deprivation of rights.

14 Plaintiff therefore fails to state a claim against any Defendant. He will be permitted to  
15 amend.

## 16 2. Eighth Amendment- Conditions of Confinement

17 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
18 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
19 2006). Extreme deprivations are required to make out a conditions of confinement claim, and  
20 only those deprivations denying the minimal civilized measure of life's necessities are  
21 sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian,  
22 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of  
23 the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that prison  
24 officials knew of and disregarded a substantial risk of serious harm to him. E.g., Farmer v.  
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27 <sup>2</sup> Plaintiff's original complaint named Woodford, Seagriest, Bopari, McElroy, Conanan, Greenleaf and Kiester as  
28 Defendants. In his FAC, he only lists Defendant Woodward in the caption. However, Plaintiff is reminded that the  
FAC supersedes the original complaint, and he must list each Defendant in amending.

1 Brennan, 511 U.S. 825, 847 (1994); Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010);  
2 Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Frost v. Agnos, 152 F.3d 1124, 1128  
3 (9th Cir. 1998).

4 Plaintiff's conditions of confinement claim is related to his belief that Defendants have  
5 exposed him to a risk of contracting Valley Fever. Whether or not Plaintiff has Valley Fever, he  
6 must allege facts to show that Defendants acted with deliberate indifference with regard to his  
7 confinement at an institution posing a risk of infection. "Deliberate indifference is a high legal  
8 standard." Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir.2004). "If a [prison official] should  
9 have been aware of the risk, but was not, then the [official] has not violated the Eighth  
10 Amendment, no matter how severe the risk." Id. at 1057 (quoting Gibson v. Cnty. of Washoe,  
11 290 F.3d 1175, 1188 (9th Cir.2002)). The prisoner must show that "the official [knew] of and  
12 disregard[ed] an excessive risk to inmate ... safety; the official must both be aware of facts from  
13 which the inference could be drawn that a substantial risk of serious harm exists, and [the  
14 official] must also draw the inference." Id. at 837; Anderson v. Cnty. of Kern, 45 F.3d 1310,  
15 1313 (9th Cir.1995). To prove knowledge of the risk, the prisoner may rely on circumstantial  
16 evidence; in fact, the very obviousness of the risk may be sufficient to establish knowledge.  
17 Farmer, 511 U.S. at 842.

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19 Mere exposure, even to a hyper-endemic area, by itself does not constitute an excessive  
20 risk of harm. Sullivan v. Kramer, 2014 WL 1664983 (E.D.Cal. 2014); (being confined in an area  
21 where Valley Fever spores exist is insufficient to state a claim for deliberate indifference); Lua v.  
22 Smith, 2014 WL 1308605, at \*2 (E.D.Cal. 2014) (first prong of deliberate indifference claim  
23 satisfied where plaintiff identifies a factor responsible for increasing the risk of contraction or  
24 severity of infection); Willis v. Yates, 2009 WL 3486674, at \*3 (E.D.Cal. 2009) (risk of  
25 contracting Valley Fever by being housed at PVSP and fact that inmate contracted Valley Fever  
26 is insufficient to state a claim).  
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1 Plaintiff's claims are too vague to state a claim. He will be permitted to amend.

2 3. Eighth Amendment- Medical Treatment

3 While the Eighth Amendment of the United States Constitution entitles Plaintiff to  
4 medical care, the Eighth Amendment is violated only when a prison official acts with deliberate  
5 indifference to an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th  
6 Cir. 2012); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d  
7 1091, 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious medical need by demonstrating  
8 that failure to treat [his] condition could result in further significant injury or the unnecessary and  
9 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately  
10 indifferent." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)).  
11 Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a prisoner's  
12 pain or possible medical need, and (b) harm caused by the indifference." Wilhelm, 680 F.3d at  
13 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective  
14 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation  
15 and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

17 Plaintiff alleges that he has not received proper treatment for Hepatitis C, among other  
18 things. He fails to include sufficient factual information, however, to determine whether any  
19 Defendant acted with deliberate indifference. He will be permitted to amend.

20 21 4. Access to Courts

22 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,  
23 518 U.S. 343, 346, 116 S.Ct. 2174 (1996); Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir.  
24 2011); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). However, to state a viable claim for  
25 relief, Plaintiff must show that he suffered an actual injury, which requires "actual prejudice to  
26 contemplated or existing litigation." Nevada Dep't of Corr. v. Greene, 648 F.3d 1014, 1018 (9th  
27 Cir. 2011) (citing Lewis, 518 U.S. at 348) (internal quotation marks omitted), cert. denied, 132  
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1 S.Ct. 1823 (2012); Christopher v. Harbury, 536 U.S. 403, 415, 122 S.Ct. 2179 (2002); Lewis,  
2 518 U.S. at 351; Phillips, 588 F.3d at 655.

3 Plaintiff mentions access to the courts once by suggesting that Defendants are trying to  
4 stop Valley Fever litigation. Without a demonstration of actual injury, Plaintiff does not state a  
5 claim. He will be permitted to amend. In amending, however, Plaintiff should keep in mind that  
6 he may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P.  
7 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 507 F.3d  
8 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1)  
9 the claim arises out of the same transaction or occurrence, or series of transactions and  
10 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2);  
11 Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997); Desert Empire Bank v. Insurance Co.  
12 of North America, 623 F.3d 1371, 1375 (9th Cir. 1980). Only if the defendants are properly  
13 joined under Rule 20(a) will the Court review the other claims to determine if they may be joined  
14 under Rule 18(a), which permits the joinder of multiple claims against the same party.  
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16 5. Mail

17 Prisoners have “a First Amendment right to send and receive mail.” Witherow v. Paff, 52  
18 F.3d 264, 265 (9th Cir. 1995). However, Plaintiff’s claims of “mail fraud” are too vague to  
19 determine the exact nature of his claim. Plaintiff will be permitted to amend, and he should  
20 continue to keep in mind the prohibition against joining unrelated claims and parties.  
21

22 6. Due Process

23 Plaintiff’s due process claim appears to be related to his appeals.

24 “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations  
25 of life, liberty, or property; and those who seek to invoke its procedural protection must establish  
26 that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384  
27 (2005). Plaintiff does not have a protected liberty interest in the processing his appeals, and  
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1 therefore, he cannot pursue a claim for denial of due process with respect to the handling or  
2 resolution of his appeals. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.  
3 Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

4 Plaintiff therefore fails to state a claim for due process.

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6 7. Equitable Relief

7 Insofar as Plaintiff requests relief related to the conditions of confinement, i.e., a transfer  
8 from ASP, he is no longer entitled to such relief. Because Plaintiff is no longer incarcerated at  
9 ASP, he lacks standing to pursue his claims for injunctive relief. Summers v. Earth Island  
10 Institute, 555 U.S. 488, 493, 129 S.Ct. 1142, 1149 (2009); Mayfield v. United States, 599 F.3d  
11 964, 969-73 (9th Cir. 2010); Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001).

12 In the event that Plaintiff is able to cure the deficiencies in his claims, he is limited to  
13 seeking damages.

14 **D. CONCLUSION AND ORDER**

15 Plaintiff does not state any cognizable claims. The Court will provide Plaintiff with the  
16 opportunity to file an amended complaint, if he believes, in good faith, he can cure the identified  
17 deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d  
18 1122, 1130-31 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If  
19 Plaintiff amends, he may not change the nature of this suit by adding new, unrelated claims in his  
20 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

21 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but under  
22 section 1983, it must state what each named defendant did that led to the deprivation of  
23 Plaintiff's constitutional rights and liability may not be imposed on supervisory personnel under  
24 the mere theory of *respondeat superior*, Iqbal, 556 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202,  
25 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012). Although accepted as true, the  
26 "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level. . ."  
27 Twombly, 550 U.S. at 555 (citations omitted).  
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1 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa  
2 County, 693 F.3d 896, 907 (9th Cir. 2012) (en banc), and it must be “complete in itself without  
3 reference to the prior or superceded pleading,” Local Rule 220.

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

- 5 1. Plaintiff’s complaint is dismissed with leave to amend;
- 6 2. The Clerk’s Office shall send Plaintiff a complaint form;
- 7 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must  
8 file an amended complaint curing the deficiencies identified by the Court in this  
9 order, and
- 10 4. If Plaintiff fails to comply with this order, this action will be dismissed, without  
11 prejudice, for failure to obey a court order.

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13 IT IS SO ORDERED.

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15 Dated: May 14, 2015

16 /s/ Dennis L. Beck  
17 UNITED STATES MAGISTRATE JUDGE  
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