

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

ALBERT BILLINGER,)	Case No.: 1:14-cv-02031-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER DISMISSING COMPLAINT
)	AND GRANTING LEAVE TO AMEND
v.)	(ECF No. 9)
)	
YATES,)	
)	
Defendant.)	THIRTY-DAY DEADLINE
)	
)	
)	

I. Screening Requirement and Standard

Plaintiff Albert Billinger ("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 initiated this action on October 22, 2014. The matter was transferred to this Court on December 22, 2014. Plaintiff's complaint, filed on November 10, 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 the California Health Care Facility in Stockton, California.
18 Plaintiff has named Yates and Pleasant Valley State Prison as defendants.

19 Plaintiff alleges as follows:

20 I was transferred to Pleasant Vally from High Desert State Prison Sept 2006 I got sick the
21 month of Dec. 2006 Come Feb 2007 they took a blood test and it came back positive
22 Valley Fever so they sent me to a outside hospital where they gave me antibiotic for a
year or more.

23 (ECF No. 9, p. 3) (unedited text). Plaintiff seeks payment for pain and suffering.

24 **III. Discussion**

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

26 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain
27 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed
28 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,

1 supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678 (citation omitted).
2 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
3 plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570, 127 S.Ct. at 1974).
4 While factual allegations are accepted as true, legal conclusions are not. Id.; see also Twombly, 550
5 U.S. at 556–557.

6 Here, Plaintiff’s complaint is short, but it fails to set forth sufficient factual matter to state a
7 claim for relief that is plausible on its face. Plaintiff’s complaint lacks basic facts, including what
8 happened and who was involved in his placement at Pleasant Valley State Prison. Plaintiff will be
9 given leave to cure these deficiencies.

10 **B. Linkage Requirement**

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

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

15 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the
16 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.
17 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.
18 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that “[a] person ‘subjects’
19 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an
20 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally
21 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d
22 740, 743 (9th Cir. 1978).

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

26 **C. Eleventh Amendment**

27 To the extent Plaintiff seeks to bring claims against Pleasant Valley State Prison for monetary
28 damages, he may not do so. The Eleventh Amendment prohibits suits for monetary damages against a

1 State, its agencies, and state officials acting in their official capacities. Aholelei v. Dep't of Public
2 Safety, 488 F.3d 1144, 1147 (9th Cir. 2007).

3 **D. 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 Here, Plaintiff has not set forth sufficient factual allegations to state a claim for deliberate
15 indifference against any individual. Plaintiff’s complaint is filled with conclusory statements and does
16 not demonstrate that any individual defendant knew of a substantial risk of serious harm to Plaintiff by
17 his placement at Pleasant Valley State Prison and failed to take reasonable measures to abate it.
18 Plaintiff will be given leave to cure these deficiencies.

19 **IV. Conclusion and Order**

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

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

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

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

Based on the foregoing, it is HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: March 18, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE