

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

HENRY AQUAYO HERNANDEZ,	)	Case No.: 1:15-cv-00274-AWI-BAM (PC)
	)	
Plaintiff,	)	SCREENING ORDER DISMISSING COMPLAINT
	)	AND GRANTING LEAVE TO AMEND
v.	)	(ECF No. 1)
	)	
WOFFORD, et al.,	)	
	)	
Defendants.	)	THIRTY-DAY DEADLINE
	)	

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**I. Screening Requirement and Standard**

Plaintiff Henry Hernandez (“Plaintiff”) is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was transferred to this Court on February 20, 2015. Plaintiff’s complaint, filed on February 9, 2015, 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 alleges as follows:

18 Robin Larse: RN-1-30-12 reused me blood test more than one time said I had a cold on:  
19 4-4-12; I was authored by Jhon Dovey Deputy Diertor [sic], HC: fied [sic] operation per  
20 [transfer] medical high risk Avenal N. Lopez Correctional Captain [refused] to move me;  
21 that was after my [release] on: Oct-22-2012 my return was 7-29-13 on Feb-4-2014 valley  
22 symptoms again.

(ECF No. 1, p. 2.)

23 Plaintiff further alleges:

24 H. Hatten [Correctional] Counselor II; Feb-4 Committee date 2-4-2014 I told them I was  
25 hi [sic] risk for Valley Fever refused to move me Captain Lopez CC II C. Hooper (A)  
26 CCI D. Franco and Dr: Atienza M. Boparai, M.D. Chief Medical Exef [sic] Medical  
27 Officer (A) Avenal State Prison: E. Conanan, M.D....Avenal State Prison Since 1-15-  
28 2012 they had refuse me a blood test left six yard to add seg 2-7-2012 x-ray left  
pneumonia left lung by: Tony Deeths MD. Damages are permanent I still suffer from  
VF Chest pain lung at time and heart pain’s [sic] Dizzy spells Joint Pain’s [sic] Burning  
sensations at various parts of the body Headaches Night sweats chills muscle aches and  
lose my [balance] at time; and suffer [these] effects of cocci-VF: for the rest of my life.

1 (ECF No. 1, p. 3.)

2 Plaintiff also alleges:

3 Dr: Ateinza [sent an order] to get my heart check a [diagram] my arteries could be block  
4 here at Donovan Dr. Silva [refused] to have a [diagram] exam sent me to talk with a heart  
5 doctor over a cam via I still get chest pain's [sic] I know this will give me a shorter my  
6 life span date back to 2-7-12 I noticed they did not report how much [weight] I had lost in  
7 two weeks I went from 212 to 178 in [weight] I [really believe] Itraconazole has to do  
8 with my heart pain side affect's [sic] or valley fever incurable not able to be completely  
9 healed by current medicine since treatment does not [ ] eliminate all coccidioides spores  
10 in the body and they can reactivate after becoming dormant, valley fever is presently an  
11 incurable disease and after I was authored by Jhon Dovey Director Field Operations,  
inmate has been identified by California Correctional Health Care Services as [clinically]  
complex high risk by Jhon Dovey 4-4-12 and [refuse] me high risk [causing] valley fever  
to strike me again on 2-2-14 by Avenal State Prison officials and medical staff knew I  
was hi [sic] risk medical and Wasco medical staff also knew I filed Appeal 602 Log No:  
WSP-H-13-02-620.

12 (ECF No. 1-1, p. 1.)

13 Plaintiff seeks compensation for damages caused by Valley Fever cocci.

14 **III. Deficiencies of Complaint**

15 Plaintiff's complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state a  
16 cognizable claim. Plaintiff will be given leave to cure these deficiencies. To assist Plaintiff, the Court  
17 provides the pleading and legal standards that appear applicable to his claims. Plaintiff should amend  
18 only those claims that he believes, in good faith, state a cognizable claim for relief.

19 **A. Pleading Standards**

20 **1. Federal Rule of Civil Procedure 8**

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

1 Here, Plaintiff's complaint is short, but fails to set forth sufficient factual matter to state a  
2 claim for relief that is plausible on its face. Plaintiff's complaint is disjointed, confusing and lacks  
3 basic facts, including what happened and who was involved. Plaintiff will be given leave to cure these  
4 deficiencies.

## 5 **2. Linkage Requirement**

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

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

10 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.  
12 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.  
13 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that "[a] person 'subjects'  
14 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an  
15 affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally  
16 required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d  
17 740, 743 (9th Cir. 1978).

18 Here, Plaintiff fails to clearly link any individual defendant to a constitutional violation.  
19 Plaintiff's disjointed phrases and listing of names is not sufficient. Plaintiff will be given leave to cure  
20 this deficiency. If Plaintiff elects to amend his complaint, he must allege what each individual  
21 defendant did or did not do that resulted in a violation of his rights.

## 22 **B. Legal Standards**

### 23 **1. Eighth Amendment-Deliberate Indifference to Serious Medical Needs**

24 "[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
25 must show "deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d 1091, 1096  
26 (9th Cir.2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251  
27 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) "a 'serious  
28 medical need' by demonstrating that failure to treat a prisoner's condition could result in further

1 significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant's  
2 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096; Wilhelm v. Rotman, 680  
3 F.3d 1113, 1122 (9th Cir. 2012).

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

9 “Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of  
10 action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle, 429 U.S.  
11 at 105–06. “[A] complaint that a physician has been negligent in diagnosing or treating a medical  
12 condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical  
13 malpractice does not become a constitutional violation merely because the victim is a prisoner.”  
14 Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995).  
15 Even gross negligence is insufficient to establish deliberate indifference to serious medical needs. See  
16 Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

17 At this juncture, Plaintiff’s complaint fails to state a cognizable Eighth Amendment claim for  
18 deliberate indifference to serious medical needs. Plaintiff’s complaint is confusing and does not  
19 clearly identify what happened, when it happened and who was involved in the alleged deliberate  
20 indifference to serious medical needs.

### 21 **3. Eighth Amendment – Conditions of Confinement**

22 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison  
23 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452  
24 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment violation  
25 unless (1) “the prison official deprived the prisoner of the “minimal civilized measure of life's  
26 necessities,” and (2) “the prison official ‘acted with deliberate indifference in doing so.’” Toguchi v.  
27 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir.  
28 2002) (citation omitted)). In order to find a prison official liable under the Eighth Amendment for

1 denying humane conditions of confinement within a prison, the official must know “that inmates face  
2 a substantial risk of serious harm and disregard [ ] that risk by failing to take reasonable measures to  
3 abate it.” Farmer, 511 U.S. at 847.

4 Here, Plaintiff’s complaint fails to state a claim for deliberate indifference. As noted above,  
5 Plaintiff’s complaint is disjointed and confusing. If Plaintiff amends his complaint, he must allege  
6 what each individual did or did not do that resulted in a violation of his constitutional rights.

#### 7 **IV. Conclusion and Order**

8 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state a  
9 cognizable claim. The Court will grant Plaintiff an opportunity to cure the identified deficiencies.  
10 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

11 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each  
12 named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal, 556 U.S. at  
13 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be  
14 [sufficient] to raise a right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555  
15 (citations omitted).

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

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

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

- 24 1. The Clerk’s Office shall send Plaintiff a complaint form;
- 25 2. Plaintiff’s complaint is dismissed with leave to amend;
- 26 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a first  
27 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: May 4, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE