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

KEVIN FIELDS,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

1:15-cv-00666-DAD-GSA-PC

**ORDER DISMISSING FIRST AMENDED
COMPLAINT FOR FAILURE TO STATE A
CLAIM, WITH LEAVE TO AMEND
(ECF No. 33.)**

**THIRTY DAY DEADLINE TO FILE SECOND
AMENDED COMPLAINT**

**ORDER FOR CLERK TO SEND PLAINTIFF A
CIVIL RIGHTS COMPLAINT FORM**

I. BACKGROUND

Kevin Fields (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On November 5, 2014, Plaintiff filed the Complaint commencing this action in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1.) On April 30, 2015, the case was transferred to the Fresno Division of the Eastern District of California. (ECF No. 6.)

On February 24, 2016, the court dismissed the Complaint for failure to state a claim, with leave to amend. (ECF No. 22.) On June 27, 2016, Plaintiff filed the First Amended Complaint, which is now before the court for screening. (ECF No. 33.)

1 **II. SCREENING REQUIREMENT**

2 The in forma pauperis statute provides that “the court shall dismiss the case at any time
3 if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief
4 may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). “Rule 8(a)’s simplified pleading standard
5 applies to all civil actions, with limited exceptions,” none of which applies to section 1983
6 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). A
7 complaint must contain “a short and plain statement of the claim showing that the pleader is
8 entitled to relief” Fed. R. Civ. P. 8(a)(2). “Such a statement must simply give the
9 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”
10 Swierkiewicz, 534 U.S. at 512. Detailed factual allegations are not required, but “[t]hreadbare
11 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
12 suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell
13 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not
14 required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681
15 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual allegations are
16 accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678. However, “the liberal
17 pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490
18 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply
19 essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
20 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266,
21 268 (9th Cir. 1982)).

22 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

23 Plaintiff is presently incarcerated at Corcoran State Prison (CSP) in Corcoran,
24 California, where the events at issue occurred. Plaintiff names the following 50 individuals as
25 Defendants: Jeffrey Beard, D. Daveys, Connie Gipson, R. K. Swift, T. Perez, M. Sexton, M.
26 Jennings, J. C. Smith, R. S. Lambert, S. Johnson, M. Junious, R. Broomfield, C. Moreno, C.
27 Rodriguez, S. C. Rousseau, C. Munoz, J. Callow, A. De La Cruz, A. Valdez, A. De Los Santos,
28 A. Gonzales, R. Vogel, A. Perez, D. B. Hernandez, E. Molina, S. Leon, A. Peterson, D. Case,

1 M. Calhoun, D. Madsen, M. Mason, M. Cuevas, V. Montoya, J. Padanos, P. Davis, N. Diaz, A.
2 Pacillas, D. Goree, M. Oliveira, Mary Kimbrell, Karen Cribbs, Teresa Macias, Jeffrey Wang,
3 Olga Beregovskaya, Edgar Clark, Julian Kim, Jong Moon, Ravijot Gill, P. Rouch, and M. Mays
4 (collectively, "Defendants").

5 Plaintiff's allegations follow:

6 CSP is located in a hyper-endemic region for Coccidioidomycosis (Cocci), a fungus
7 which causes the disease known as Valley Fever. African-Americans, Filipinos, people with
8 weak immune systems, such as those with an organ transplant or who have HIV/AIDS, and
9 those with chronic illnesses such as Diabetes and chronic lung disease requiring oxygen, are at
10 increased risk of developing severe disease. Individuals with a prior history of Cocci are
11 immune to subsequent infection.

12 Plaintiff is an African-American man who has never contracted Valley Fever and is at
13 an increased risk of extrapulmonary [*sic*] complications caused by Valley Fever. Plaintiff has
14 been diagnosed with chronic obstructive pulmonary disease, asthma, uncontrolled
15 hypertension, and a degenerative bulging disc in his neck and back, resulting in chronic pain.
16 Plaintiff requested to be transferred to California State Prison-Sacramento, which is located in a
17 non-hyper-endemic region for Valley Fever.

18 On July 10, 2013 and September 17, 2013, Plaintiff sent letters to Defendant Jeffrey
19 Beard, informing him that Plaintiff is an African-American prisoner, apprising him of
20 Plaintiff's medical maladies, and requesting to be transferred out of the hyper-endemic region.
21 Defendant Beard refused and/or failed to respond to the letters.

22 On July 10, 2013, Plaintiff also sent letters or Inmate Request for Interview forms to
23 these 27 Defendants: Connie Gipson, R. K. Swift, M. Sexton, M. Jennings, J. C. Smith, R. S.
24 Lambert, S. Johnson, M. Junious, C. Moreno, C. Rodriguez, S. C. Rousseau, J. Callow, R.
25 Vogel, A. Peterson, M. Calhoun, D. Madsen, M. Mason, P. Davis, N. Diaz, Mary Kimbrell,
26 Jeffrey Wang, Olga Beregovskaya, Edgar Clark, Julian Kim, Jong Moon, Ravijot Gill, and P.
27 Rouch, informing them of the same facts and requesting to be referred to the Institutional
28 Classification Committee (ICC) so he could be transferred. The Defendants ignored Plaintiff's

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2 written requests. Plaintiff subsequently informed these same 27 Defendants in person. They
3 all refused to refer Plaintiff to the ICC.

4 On October 15, 2013, Defendant Davis told Plaintiff that although Plaintiff is an
5 African-American, he is properly housed at CSP.

6 During consultations with eight of the Defendants who are medical personnel, these
7 eight Defendants admitted that they know Plaintiff is at an increased risk for extrapulmonary
8 complications, but they were instructed to classify him as medium-risk.

9 On October 15, 2013, Plaintiff sent CDCR-22 Request for Interview forms to
10 Defendants Jeffrey Wang, Olga Beregovskaya, Edgar Clark, Julian Kim, Jong Moon, Ravijot
11 Gill, and P. Rouch, requesting to be taken back to the ICC for transfer, due to his serious
12 medical conditions. Each of the six Defendants refused and/or failed to respond to the request
13 for transfer.

14 On October 22, 2014, Plaintiff sent CDCR-22 Request for Interview forms to
15 Defendants Karen Cribbs, N. Diaz, A. Pacillas, D. Goree, Mary Kimbrell, and Teresa Macias.

16 On September 3, 2014, Plaintiff sent Defendant Daveys a letter, informing him that
17 Plaintiff is an African-American, apprising him of Plaintiff's medical conditions, and
18 requesting transfer. Defendant Daveys refused and/or failed to respond.

19 Plaintiff alleges that Defendants Jeffrey Beard, D. Daveys, Connie Gipson, R. K. Swift,
20 M. Sexton, M. Jennings, J. C. Smith, R. S. Lambert, S. Johnson, M. Junious, C. Moreno, C.
21 Rodriguez, S. C. Rousseau, J. Callow, R. Vogel, A. Peterson, M. Calhoun, D. Madsen, M.
22 Mason, P. Davis, N. Diaz, A. Pacillas, D. Goree, Mary Kimbrell, Karen Cribbs, Jeffrey Wang,
23 Olga Beregovskaya, Edgar Clark, Julian Kim, Jong Moon, Ravijot Gill, P. Rouch, and M. Mays
24 acted with deliberate indifference to Plaintiff's needs, and their actions did not advance any
25 legitimate correctional goals.

26 Plaintiff requests monetary damages and injunctive and declaratory relief.

27 **IV. SCREENING STANDARDS**

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1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
3 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
4 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
5 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
6 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
7 paid, the court shall dismiss the case at any time if the court determines that the action or
8 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

9 A complaint is required to contain “a short and plain statement of the claim showing
10 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
11 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
13 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are
14 taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart
15 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
16 To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to
17 ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S.
18 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
19 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
20 this plausibility standard. Id.

21 **V. PLAINTIFF’S CLAIMS**

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

23 Every person who, under color of any statute, ordinance, regulation, custom, or
24 usage, of any State or Territory or the District of Columbia, subjects, or causes
25 to be subjected, any citizen of the United States or other person within the
26 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
27 secured by the Constitution and laws, shall be liable to the party injured in an
28 action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983

1 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
2 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
3 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
4 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
5 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
6 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of
7 a state law amounts to the deprivation of a state-created interest that reaches beyond that
8 guaranteed by the federal Constitution, Section 1983 offers no redress.” Sweaney v. Ada
9 County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997).

10 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
11 under color of state law and (2) the defendant deprived him of rights secured by the
12 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
13 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
14 “under color of state law”). A person deprives another of a constitutional right, “within the
15 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
16 omits to perform an act which he is legally required to do that causes the deprivation of which
17 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
18 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)); “The requisite causal
19 connection may be established when an official sets in motion a ‘series of acts by others which
20 the actor knows or reasonably should know would cause others to inflict’ constitutional harms.”
21 Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
22 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
23 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
24 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

25 **A. Prior Screening Order**

26 The court’s prior screening order for this case found that Plaintiff’s Complaint failed to
27 state a claim because Plaintiff failed to provide sufficient factual support for his claims, failed
28 to establish that he has a serious medical need because of exposure to Valley Fever, and failed

1 to allege facts showing that that Defendants knew of a substantial risk of serious harm to
2 Plaintiff and failed to prevent it. Plaintiff was advised that he must demonstrate how *each*
3 Defendant *personally* participated in a denial of his rights and that he must supply sufficient
4 facts to allow each Defendant to understand the claims against him or her.

5 Plaintiff's First Amended Complaint suffers from the same deficiencies. Plaintiff has
6 not set forth facts demonstrating that he has a serious medical need or that any of the
7 Defendants *personally* violated his rights or acted with deliberate indifference. Therefore, the
8 First Amended Complaint shall be dismissed. Plaintiff shall be granted another opportunity to
9 amend the complaint to cure the deficiencies found by the court.

10 **B. Eighth Amendment Medical Claim**

11 Under the Eighth Amendment, "prison officials are . . . prohibited from being
12 deliberately indifferent to policies and practices that expose inmates to a substantial risk of
13 serious harm." Parsons v. Ryan, 754 F.3d 657, 677 (9th Cir. 2014); see also Helling v.
14 McKinney, 509 U.S. 25, 35 (1993); Farmer v. Brennan, 511 U.S. 825, 847 (1994) (prison
15 official violates Eighth Amendment if he or she knows of a substantial risk of serious harm to
16 an inmate and fails to take reasonable measures to avoid the harm). Therefore, the first step in
17 stating an Eighth Amendment claim is to show that Plaintiff had a serious medical risk.
18 "Deliberate indifference occurs when '[an] official acted or failed to act despite his knowledge
19 of a substantial risk of serious harm.'" Solis v. Cnty. of Los Angeles, 514 F.3d 946, 957 (9th
20 Cir. 2008). A prisoner may state "a cause of action under the Eighth Amendment by alleging
21 that [prison officials] have, with deliberate indifference, exposed him to [environmental
22 conditions] that pose an unreasonable risk of serious damage to his future health." Helling, 509
23 U.S. at 35.

24 "The second step, showing 'deliberate indifference,' involves a two part inquiry."
25 Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010). "First, the inmate must show that the
26 prison officials were aware of a 'substantial risk of serious harm' to an inmate's health or
27 safety." Id. (quoting Farmer, 511 U.S. at 837). "This part of [the] inquiry may be satisfied if
28 the inmate shows that the risk posed by the deprivation is obvious." Id. (citation omitted).

1 “Second, the inmate must show that the prison officials had no ‘reasonable’ justification for the
2 deprivation, in spite of that risk.” Id. (citing Farmer, 511 U.S. at 844 (“[P]rison officials who
3 actually knew of a substantial risk to inmate health or safety may be found free from liability if
4 they responded reasonably.”) (footnote omitted).

5 In this case, Plaintiff alleges that he has been exposed to Valley Fever but has not
6 contracted the disease. To the extent that Plaintiff is attempting to pursue an Eighth
7 Amendment claim for the mere fact that he is confined in a location where Valley Fever spores
8 exist, he fails to state a claim. Smith, 2012 WL 1498891, *2 (citing King v. Avenal State
9 Prison, 2009 WL 546212, *4); see also Gilbert v. Yates, 2010 WL 5113116, *3 (E.D. Cal. Dec.
10 9, 2010); Willis v. Yates, 2009 WL 3486674, *3 (E.D. Cal. Oct. 23, 2009). “One cannot state
11 an Eighth Amendment claim based solely upon exposure to, or contraction of, Valley Fever.”
12 Chaney v. Beard, 2014 WL 2957469, at *3 (E.D. Cal. 2014); compare, Beagle v.
13 Schwarzenegger, 2014 WL 9866913 (E.D. Cal. 2014) (finding exposure to Valley Fever may
14 state a claim under the Eighth Amendment); Shabazz v. Beard, 2017 WL 735749 (E.D. Cal.
15 February 3, 2017).

16 Plaintiff has not shown that his race or medical conditions place him at greater risk of
17 contracting Valley Fever. Research has established that African-Americans are not at greater
18 risk of contracting the disease, although if they do contract it, they are at greater risk of
19 developing a serious case. Plaintiff alleges that defendant Davis told him that although
20 Plaintiff is an African-American, he is properly housed at CSP.

21 Those at greater risk of infection are those with weak immune systems, e.g., those with
22 an organ transplant, HIV/AIDS, chronic lung disease requiring oxygen, or those being treated
23 for cancer. Plaintiff has not alleged that he has a weak immune system, or that his lung disease
24 is being treated with oxygen. Studies have shown that a person’s asthma or pulmonary disease
25 may become worse if he or she becomes infected with Valley Fever, but that neither asthma nor
26 pulmonary disease causes a greater risk of initial infection. Medical personnel told Plaintiff
27 that he is at an increased risk for extra pulmonary complications, causing him to be classified as
28 medium-risk. Hypertension and bulging discs are not associated with a weak immune system.

1 Therefore, Plaintiff has not shown that he is at increased risk of contracting Valley Fever
2 because of his race or medical conditions.

3 Moreover, Plaintiff has not shown that any of the Defendants were aware of a
4 substantial risk of serious harm to Plaintiff and deliberately or recklessly disregarded the risk
5 when deciding not to transfer Plaintiff to another institution. First, Plaintiff alleges no facts
6 demonstrating that any Defendant believed Plaintiff had a serious medical need requiring his
7 transfer to another institution. It is not enough for Plaintiff to allege that he sent letters or
8 personally informed each of the Defendants of his risk factors. Plaintiff alleges that Defendants
9 “refused and/or failed to respond” to his requests for transfer. Defendants’ failure to respond
10 does not show their awareness of a substantial risk to Plaintiff. ““If a prison official should
11 have been aware of the risk, but was not, then the official has not violated the Eighth
12 Amendment, no matter how severe the risk.” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th
13 Cir. 2004). Nor has Plaintiff alleged any facts showing that any of the Defendants acted against
14 him with deliberate indifference. The fact that Plaintiff was not granted a transfer does not
15 show that any Defendant acted with the requisite mindset for deliberate indifference.

16 If Plaintiff files a Second Amended Complaint, he should only name Defendants who
17 he reasonably believes are liable for their involvement in violating Plaintiff’s rights, knew
18 Plaintiff had a risk of serious harm, and deliberately ignored the risk. To succeed with a claim,
19 Plaintiff should first **name** a Defendant and state the Defendant’s **title** or type of employment
20 at CSP. Second, Plaintiff should give facts showing that the Defendant had the **authority** to
21 transfer Plaintiff. Last, Plaintiff should allege facts showing that the Defendant **knew** that
22 Plaintiff had a serious medical need and was at substantial risk of serious harm, but
23 **deliberately disregarded** the risk when **refusing** to transfer Plaintiff.

24 While the court recognizes that the exact circumstances required to state a claim under
25 the Eighth Amendment based on Valley Fever exposure are not clear, it is well settled that
26 exposure to, and contraction of, Valley Fever alone, while housed at an endemic institution are
27 not, by themselves, sufficient to state a claim under the Eighth Amendment. In other words,
28 the premise that the location of CSP is so inherently dangerous due to the presence of Valley

1 Fever cannot support a constitutional violation. See Hines v. Youssef, 2015 WL 164215, at *4
2 (E.D. Cal. 2015) (rejecting African-American asthmatic prisoner’s Eighth Amendment claim
3 arising from exposure to and contraction of Valley Fever); accord Williams v. Biter, 2015 WL
4 1830770, at *3 (E.D. Cal. 2015). This premise is unacceptable where free citizens residing in
5 the surrounding areas tolerate this increased risk, regardless of race or medical condition. “An
6 individual who lives out of custody . . . anywhere in the Southern San Joaquin Valley is at
7 relatively high risk exposure to *Coccidioides immitis* spores,” and “[u]nless there is something
8 about a prisoner’s conditions of confinement that raises the risk of exposure substantially above
9 the risk experienced by the surrounding communities, it cannot be reasoned that the prisoner is
10 involuntarily exposed to a risk society would not tolerate.” Hines, at *4; see also Smith v. State
11 of California, Case No. 1:13-cv-0869-AWI-SKO (PC), 2016 WL 398766, *1 (E.D. Cal. Feb. 2,
12 2016); see also Cunningham v. Kramer, Case No. 1:15-cv-01362-AWI-MJS (PC), 2016 WL
13 1545303 (E.D. Cal. Apr. 15, 2016) (discussing history of case law in Valley Fever cases).

14 Here, Plaintiff fails to allege facts to indicate that the risk of exposure to Valley Fever at
15 Corcoran State Prison is any higher than the surrounding community. Therefore, Plaintiff fails
16 to state a claim for his exposure to Valley Fever.

17 **VI. CONCLUSION AND ORDER**

18 The court finds that Plaintiff’s First Amended Complaint fails to state a claim upon
19 which relief may be granted under section 1983. The court will dismiss the First Amended
20 Complaint and grant Plaintiff leave to file a Second Amended Complaint addressing the issues
21 described above.

22 Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely
23 give leave to amend when justice so requires.” Accordingly, the court will provide Plaintiff an
24 opportunity to file another amended complaint curing the deficiencies identified above. Lopez
25 v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the Second
26 Amended Complaint within thirty days.

27 The Second Amended Complaint must allege facts showing what each named
28 Defendant did that led to the deprivation of Plaintiff’s constitutional rights. Fed. R. Civ. P.

1 8(a); Iqbal, 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff

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3 must demonstrate that each Defendant *personally* participated in the deprivation of his rights by
4 their actions. Id. at 676-77 (emphasis added).

5 Plaintiff should note that although he has been given the opportunity to amend, it is not
6 for the purpose of changing the nature of this suit or adding unrelated claims. George, 507 F.3d
7 at 607 (no “buckshot” complaints).

8 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
9 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete
10 in itself without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
11 amended complaint, as in an original complaint, each claim and the involvement of each
12 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
13 titled “Second Amended Complaint,” refer to the appropriate case number, and be an original
14 signed under penalty of perjury.

15 Based on the foregoing, it is **HEREBY ORDERED** that:

- 16 1. Plaintiff’s First Amended Complaint is dismissed for failure to state a claim,
17 with leave to amend;
- 18 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 19 3. Plaintiff is granted leave to file a Second Amended Complaint curing the
20 deficiencies identified by the court in this order, within **thirty (30) days** from
21 the date of service of this order;
- 22 4. Plaintiff shall caption the amended complaint “Second Amended Complaint”
23 and refer to the case number 1:15-cv-00666-DAD-GSA-PC; and
- 24 5. If Plaintiff fails to file a Second Amended Complaint within thirty days, this
25 case may be dismissed for failure to state a claim.

26
27 IT IS SO ORDERED.

28 Dated: April 6, 2017

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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