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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LARRY JORDAN,)	1:15-cv-00900-BAM (PC)
)	
Plaintiff,)	ORDER DIRECTING CLERK OF COURT
)	TO RANDOMLY ASSIGN DISTRICT
v.)	JUDGE TO ACTION
)	
H. HUNG, et al.,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION
Defendants.)	FOR FAILURE TO STATE A CLAIM
)	
)	(ECF No. 18)
)	
)	FOURTEEN-DAY DEADLINE

Plaintiff Larry Jordan (“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 has consented to the jurisdiction of the Magistrate Judge. (ECF No. 4.) Plaintiff’s second amended complaint, filed on January 16, 2018, is currently before the Court for screening. (ECF No. 18).

Screening Requirement

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
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
5 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
6 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
7 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
8 (internal quotation marks and citation omitted).

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

16 **Summary of Plaintiff’s Allegations**

17 Plaintiff is currently housed at Folsom State Prison. The events in the complaint are
18 alleged to have occurred while Plaintiff was housed at Pleasant Valley State Prison (“PVSP”).
19 Plaintiff names the following defendants: (1) Dr. H. Hung; (2) Dr. R. Peterson; and (3) Dr. J.
20 Neubarth.

21 Plaintiff alleges: The area of Pleasant Valley State Prison was once used by the U.S.
22 Army, which moved women from the areas because they soon contracted Valley Fever. It was
23 well known by Health Care Staff and CDCR that the Army and women in the areas contracted
24 Valley Fever. The public has a choice to live in the area, but inmates do not have a choice.

25 Upon Plaintiff’s arrival at PVSP, he was screened by health care staff and at that time
26 defendants were required to inform plaintiff about the health risk of being housed at PVSP and
27 how to protect himself from Valley Fever.

1 Plaintiff alleges that his assigned primary care doctors at PVSP were Defendants Drs.
2 Hung, Neubarth and Peterson and were required to provide medical care, including care to
3 prevent illness, and education to Plaintiff of risks to his health. Drs. Hung, Neubarth and
4 Peterson knew or should have known that Plaintiff was in jeopardy of contracting Valley Fever,
5 due to his ethnicity and did not do anything to protect Plaintiff. Drs. Hung, Neubarth and
6 Peterson subjected Plaintiff to cruel and unusual punishment by failing to warn or protect him
7 from contracting Valley Fever.

8 In 2000, Plaintiff was housed at PVSP. Plaintiff, who is African American, soon
9 developed a cough and flu-like symptoms that would not go away. Plaintiff saw defendants for
10 treatment and his condition worsened. Plaintiff was finally tested for Valley Fever, and it was
11 discovered that Plaintiff had contracted this illness. Once it was determined that Plaintiff had
12 contracted Valley Fever, defendants started treating Plaintiff with medication. Plaintiff alleges
13 that at no time did any prison staff, including the named defendants, inform or warn him about
14 Valley Fever or ways to protect him from contracting the illness. Plaintiff also was never told
15 that because of ethnicity he was at a higher risk of contracting this illness. Plaintiff was told
16 “you are just one of the inmates who caught this illness and it’s no bodies [sic] fault.” (Doc. 18
17 at p. 8). Plaintiff alleges that Drs. Hung, Neubarth, and Peterson knew or should have known
18 that Plaintiff was at a high risk of contracting Valley Fever and should have told him and failed
19 to protect Plaintiff about the dangers of Valley Fever.

20 Plaintiff is now incarcerated at Folsom State Prison. In 2014, Plaintiff started to see
21 African American inmates that he knew from his stay at Pleasant Valley State Prison. Plaintiff
22 started to hear rumors about CDC being sued for failing to protect inmates against Valley Fever.
23 As weeks and months passed, Plaintiff started to see larger numbers of African American
24 inmates arriving from Pleasant Valley State Prison and Avenal State Prison. When Plaintiff
25 inquired why they left, Plaintiff was told that “they are excluding African Americans from
26 Avenal and Pleasant Valley.” (ECF No. 12 at p. 10).

27 Plaintiff soon became aware of a medical report written by Dr. Joe Goldenson, along with
28 several newspaper clippings, claiming that the Department of Corrections knew of the high risk

1 Valley Fever posed for African Americans, but continued to house said inmates at Avenal State
2 Prison and Pleasant Valley State Prison in total disregard for their health. Plaintiff also learned
3 from the report that Avenal State Prison and Pleasant Valley State Prison were told to prevent
4 inmates from contracting Valley Fever, to educate and screen inmates for the illness and to
5 landscape the prison's grounds to stop and/or hinder inmates from contracting Valley Fever, but
6 they did not do so. After investigating the issue, Plaintiff soon realized that someone at Pleasant
7 Valley State Prison had subjected him to cruel and unusual punishment by being deliberately
8 indifferent to health and safety.

9 On December 24, 2013, Plaintiff filed an inmate appeal concerning allegations that
10 Pleasant Valley State Prison failed to protect him from contracting Valley Fever. Plaintiff
11 alleges that staff knew or should have known that Plaintiff was at higher risk of contracting
12 Valley Fever based on his ethnicity, but they failed to educate him on how to prevent contracting
13 Valley Fever. Plaintiff sent his appeal to Pleasant Valley State Prison, where the violation
14 allegedly occurred.

15 On December 31, 2013, Appeals Coordinator J. Morgan rejected Plaintiff's appeal.
16 Defendant Morgan allegedly claimed that Plaintiff's appeal concerning staff failing to protect
17 him was a health care appeal. Plaintiff was instructed to file a health care appeal.

18 On January 28, 2014, Plaintiff complied with Defendant Morgan's instructions to file a
19 health care appeal. Plaintiff again alleged that health care staff at Pleasant Valley State Prison
20 failed to protect him while incarcerated at the prison. Plaintiff again sent his appeal to Pleasant
21 Valley State Prison. Plaintiff's appeal was answered by Folsom State Prison's appeals office.
22 On February 20, 2014, the appeal was cancelled. Plaintiff alleges that Appeals Coordinator S.
23 Navarro, at Folsom State Prison cancelled Plaintiff's appeal, claiming it was untimely and failed
24 to state how the issue being appealed demonstrated a material adverse effect on Plaintiff's
25 welfare.

26 Plaintiff then filed an inmate appeal concerning his appeal being cancelled by Defendant
27 Navarro. Plaintiff's appeal was granted on May 13, 2014. Although Plaintiff requested to have
28 no further hindrance from any appeals coordinators, Plaintiff's attempt to exhaust his

1 administrative remedies was met with further hindrance from the Folsom State Prison Appeals
2 Coordinator's office.

3 On May 14, 2014, Plaintiff was interviewed by K. Yount. Plaintiff was asked what his
4 appeal concerned and what he wanted to resolve the issue. Plaintiff reportedly made it clear that
5 he wanted the name of staff that was responsible for sending him to Pleasant Valley State Prison
6 and the name of the staff that was responsible for protecting him against Valley Fever and
7 educating him about Valley Fever. Plaintiff also wanted lifetime medical bills related to Valley
8 Fever paid and \$2,000,000 for the prison failing to protect him against Valley Fever and
9 educating him about the illness. Ms. Yount allegedly informed Plaintiff that what he wanted was
10 outside the scope of the appeal. Plaintiff again asked how Pleasant Valley protected him against
11 Valley Fever, but was told this was outside the scope of the appeal.

12 On May 23, 2014, Plaintiff's appeal was returned. On May 21, 2014, Plaintiff's appeal
13 regarding Valley Fever was returned to him. It had been denied at the second level. Plaintiff
14 forwarded his appeal to the Third Level for review.

15 On September 24, 2014, Plaintiff's appeal was denied. Plaintiff's was informed that all
16 of his medical issues were addressed and they were not going to intervene with the handling of
17 his appeal.

18 Plaintiff filed a Government claim form on October 27, 2014, which was denied on
19 November 21, 2014.

20 Plaintiff alleges that the Defendants failed to properly educate him about Valley Fever
21 which lead them to failing to properly protect him from Valley Fever; failed to warn Plaintiff of
22 the danger of contracting Valley Fever; were deliberately indifferent to his health and safety and
23 subjected Plaintiff to cruel and unusual punishment.

24 As relief, Plaintiff seeks \$2,000,000, and lifetime health care bills.

25 **Discussion**

26 **1. Linkage Requirement**

27 The Civil Rights Act under which this action was filed provides:
28

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

4 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
5 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See*
6 *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed. 2d 611 (1978);
7 *Rizzo v. Goode*, 423 U.S. 362, 96 S. Ct. 598, 46 L.Ed. 2d 561 (1976). The Ninth Circuit has held
8 that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning
9 of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits
10 to perform an act which he is legally required to do that causes the deprivation of which
11 complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

12 Plaintiff has failed to link Defendants Drs. Hung, Peterson and Neubarth to any
13 constitutional violations. Plaintiff identifies these defendants in the allegations of his complaint
14 as his treating and attending physicians, but he does not attribute any specific conduct to these
15 defendants. Plaintiff merely alleges that they failed to protect him by informing Plaintiff about
16 Valley Fever or educating him about the dangers of Valley Fever.

17 **2. Eighth Amendment**

18 Placement at Pleasant Valley State Prison

19 To the extent Plaintiff is attempting to bring suit alleging a violation of his Eighth
20 Amendment rights due to his placement at a prison in an area where Valley Fever is present, he
21 has fails to state a cognizable federal claim. To constitute cruel and unusual punishment in
22 violation of the Eight Amendment, prison conditions must involve “the wanton and unnecessary
23 infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). A prisoner’s claim does not
24 rise to the level of an Eighth Amendment violation unless (1) “the prison official deprived the
25 prisoner of the ‘minimal civilized measure of life’s necessities,’ ” and (2) “the prison official
26 ‘acted with deliberate indifference in doing so.’ ” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th
27 Cir. 2004) (quoting *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). A
28 prison official does not act in a deliberately indifferent manner unless the official “knows of and

1 disregards and excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834
2 (1994).

3 Until recently, courts in this district have found that mere confinement in a location
4 where Valley Fever is prevalent fails to pose an excessive risk of harm. *Jones v. Hartley*, No.
5 1:13-cv-01590-AWI-GSA-PC, 2015 WL 1276708, *4 (E.D. Cal. Mar. 19, 2015) (“no courts
6 have found that exposure to valley fever spores at the level experienced by the community at
7 large presents an ‘excessive risk’ to inmate health”); *Williams v. CDCR*, No. 1:14-cv-01912-JLT
8 (PC), 2015 WL 6669816, at *3 (E.D. Cal. Oct. 29, 2015) (“Unless there is something about a
9 prisoner’s conditions of confinement that raise the risk of exposure substantially above the risk
10 experienced by the surrounding community, it cannot be said that the prisoner is forcibly and
11 knowingly exposed to a risk the society would not tolerate to meet the objective component of a
12 claim under the Eighth Amendment.”); *Hines v. Yousseff*, No. 1:13-cv-00357-AWI-JLT, 2015
13 WL 164215, *5 (E.D. Cal. Jan. 13, 2015) (same); *Duran v. Lewis*, No. 1:16-cv-00468-AWI-SAB
14 (PC), 2017 WL 2797743, at *1 (E.D. Cal. June 27, 2017) (“Plaintiff cannot state a claim upon
15 which relief may be granted based solely on the mere exposure to Valley Fever spores,” even if
16 “he was at a greater risk of contracting Valley Fever due to []his race.”); *Montano v. Adams*, No.
17 1:15-cv-0452 DLB PC, 2016 WL 310175, at *3 (E.D. Cal. Jan. 26, 2016) (inmate cannot state a
18 claim under the Eighth Amendment based solely on the exposure to and contraction of Valley
19 Fever); *but c.f. Beagle v. Schwarzenegger*, 107 F.Supp.3d 1056, 1068 (E.D. Cal. 2014) (finding
20 that mere exposure to valley fever is sufficient to state a claim); *Jackson v. Davey*, No. 1:14-cv-
21 1311-LJO-MJS (PC), 2015 WL 3402992, at *5 (E.D. Cal. 2015) (“Plaintiff no longer needs to
22 allege particular[] susceptibility to Valley Fever; mere exposure is sufficient to state a claim.”).

23 “Deliberate indifference occurs when ‘[an] official acted or failed to act despite his
24 knowledge of a substantial risk of serious harm.’ ” *Solis v. Cnty. of Los Angeles*, 514 F.3d 946,
25 957 (9th Cir. 2008). A prisoner may state “a cause of action under the Eighth Amendment by
26 alleging that [prison officials] have, with deliberate indifference, exposed him to [environmental
27 conditions] that pose an unreasonable risk of serious damage to his future health.” *Helling v.*
28 *McKinney*, 509 U.S. 25, 35 (1993).

1 “The second step, showing ‘deliberate indifference,’ involves a two part inquiry.”
2 *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). “First, the inmate must show that the
3 prison officials were aware of a ‘substantial risk of serious harm’ to an inmate’s health or
4 safety.” *Id.* (quoting *Farmer*, 511 U.S. at 837). “This part of [the] inquiry may be satisfied if the
5 inmate shows that the risk posed by the deprivation was obvious.” *Id.* (citation omitted).
6 “Second, the inmate must show that the prison officials had no ‘reasonable’ justification for the
7 deprivation, in spite of that risk.” *Id.* (citing *Farmer*, 511 U.S. at 844) (“[P]rison officials who
8 actually knew of a substantial risk to inmate health or safety may be found free from liability if
9 they responded reasonably.”) (footnote omitted).

10 Plaintiff has not alleged that any of the named defendants, Drs. Hung, Neubarth and
11 Peterson, were responsible for his placement at PVSP. Plaintiff’s allegations are conclusory and
12 do not state facts showing that each Defendant was aware of a substantial risk of serious damage
13 to his health, and then failed to take reasonable measures to avoid harm to him. Plaintiff’s
14 general, vague allegations that the defendants knew or should have known that his placement in
15 PVSP does not show that each Defendant had the requisite knowledge to state a claim here.

16 More recently, courts have found that defendants are entitled to qualified immunity for a
17 claim of exposure to Valley Fever. Courts within the Eastern District of California have held
18 that wardens and prison officials are entitled to qualified immunity with respect to Eighth
19 Amendment claims regarding exposure to and contraction of Valley Fever. *See Williams v. Hill*,
20 No. 16-CV-00540-LJO-EPG, 2017 WL 1494610, at *7 (E.D. Cal. Apr. 26, 2017) (Finding
21 Defendants are entitled to qualified immunity because the right of not being exposed to cocci
22 was not clearly established at the time it was allegedly violated); *Smith v. Schwarzenegger*, 137
23 F.Supp.3d 1233, 1242–52 (E.D. Cal. 2015); *Price v. C&PR*, No. 2018 WL 1071211 (E.D. Cal.
24 Feb. 26, 2018) (By November of 2016, it was not beyond debate that if you were an inmate
25 susceptible to Valley Fever, there was a clearly established right not to be housed at NKSP,
26 located in an area endemic for Valley Fever.); *Jackson v. Brown*, 134 F.Supp.3d 1237, 1239–49
27 (E.D. Cal. 2015); *Hines v. Yousseff*, 2015 U.S. Dist. LEXIS 65441, *12–*28 (E.D. Cal. May 18,
28 2015). *See also Jimenez v. Rothchild*, No. 15-CV-02493-BAS-AGS, 2017 WL 4003769, at *2

1 (S.D. Cal. Sept. 12, 2017) (no a clearly established constitutional right for exposure to Valley
2 Fever). This is because, as these cases make clear, the law with respect to exposure to and
3 contraction of Valley Fever was unsettled and therefore, no liability can be imposed.

4 Plaintiff fails to allege facts to indicate that the risk of exposure to Valley Fever at
5 Pleasant Valley State Prison is any higher than the surrounding community. Plaintiff cannot state
6 a claim upon which relief may be granted based solely on the mere exposure to Valley Fever
7 spores. Merely being confined in an area in which Valley Fever spores are present does not state
8 a claim under the Eighth Amendment.

9 However, even if such a claim could be asserted, such officials are entitled to qualified
10 immunity regarding exposure to and contraction of Valley Fever. The law was not sufficiently
11 developed between 2000 and 2013 regarding exposure to and contraction of Valley Fever for the
12 Defendants in this case to be aware of an Eighth Amendment violation. They are entitled to
13 qualified immunity.

14 Education Regarding Valley Fever

15 Plaintiff alleges, broadly, that the Defendants should have known he faced a heightened
16 risk of developing Valley Fever because of his own individual characteristics, African American,
17 and the PVSP environment. He alleges Defendants nevertheless took no steps to protect him
18 from that risk and that he developed the very disease caused by exposure to that risk. They did
19 not educate him on Valley Fever and did not attempt to alert him to the risk of exposure.

20 Plaintiff also fails to state a cognizable Eighth Amendment claim regarding the purported
21 failure of Defendants to educate Plaintiff, and thereby preventing him from contracting Valley
22 Fever. As a preliminary matter, Plaintiff's claim regarding the lack of education does not rise to
23 the level of an Eighth Amendment violation as there is no indication that prison officials
24 deprived him of the minimal civilized measure of life's necessities. *Toguchi*, 391 F.3d at 1057.
25 Further, Plaintiff fails to adequately allege that any of the defendants knew of and disregarded an
26 excessive risk to his health or safety by failing to educate him about Valley Fever. *Farmer*, 511
27 U.S. at 834. Plaintiff merely alleges, in conclusory fashion, that "staff" knew or should have
28 known that Plaintiff was at higher risk and failed to education on how to prevent catching Valley

1 Fever. (ECF No. 18, p. 9 of 12.) He does not allege, in anything other than conclusory
2 statements, that any Defendant knew of a potential higher risk of exposure to Plaintiff. Despite
3 being provided the requisite legal standards, Plaintiff has been unable to cure this defect.

4 Medical Care

5 Plaintiff has not stated an Eighth Amendment claim regarding inadequate care and
6 treatment for his Valley Fever. A prisoner's claim of inadequate medical care does not constitute
7 cruel and unusual punishment in violation of the Eighth Amendment unless the mistreatment
8 rises to the level of "deliberate indifference to serious medical needs." *Jett v. Penner*, 439 F.3d
9 1091, 1096 (9th Cir.2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50
10 L.Ed.2d 251 (1976)). The two part test for deliberate indifference requires the plaintiff to show
11 (1) "a 'serious medical need' by demonstrating that failure to treat a prisoner's condition could
12 result in further significant injury or the 'unnecessary and wanton infliction of pain,'" and (2)
13 "the defendant's response to the need was deliberately indifferent." *Jett*, 439 F.3d at 1096.
14 "Deliberate indifference is a high legal standard," *Simmons v. Navajo County Ariz.*, 609 F.3d
15 1011, 1019 (9th Cir. 2010); *Toguchi*, 391 F.3d at 1060, and is shown where there was "a
16 purposeful act or failure to respond to a prisoner's pain or possible medical need" and the
17 indifference caused harm, *Jett*, 439 F.3d at 1096.

18 Plaintiff alleges that once he saw defendants for treatment of his symptoms, he was tested
19 for Valley Fever. Once it was determined that Plaintiff had contracted Valley Fever, defendants
20 started treating him with medication. There are no allegations suggesting that defendants failed
21 to respond to any medical need. Rather, than deliberately indifferent medical care, Plaintiff
22 alleges that "at no time did any prison staff, including the named defendants, inform or warn him
23 about Valley Fever or ways to protect him from contracting the illness." As explained above, no
24 such claim for education of a potential medical condition exists, and even if it does, the
25 Defendant doctors are entitled to qualified immunity. Despite being provided the requisite legal
26 standards and multiple opportunities, Plaintiff has been unable to cure this defect.

1 **3. State Law Claims**

2 Plaintiff appears to assert negligence—specifically, medical malpractice—under
3 California law by Defendants Drs. Hung, Neubarth and Peterson for the failure to educate him of
4 the high risk of Valley Fever. Plaintiff further asserts that he filed a claim in compliance with
5 Government Claim Act in connection with this claim.

6 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
7 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the
8 action within such original jurisdiction that they form part of the same case or controversy under
9 Article III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under §
10 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is
11 discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). “The district
12 court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if...the
13 district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. §
14 1367(c)(3); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013); *Herman*
15 *Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001); see also *Watison v.*
16 *Carter*, 668 F.3d 1108, 1117–18 (9th Cir. 2012) (even in the presence of cognizable federal
17 claim, district court has discretion to decline supplemental jurisdiction over novel or complex
18 issue of state law of whether criminal statutes give rise to civil liability).

19 Plaintiff has not stated a cognizable federal claim, and therefore, the Court declines to
20 exercise supplemental jurisdiction over any state law claim.

21 **CONCLUSION AND ORDER**

22 Plaintiff’s amended complaint fails to state a cognizable claim for relief. Despite being
23 provided with the relevant pleading and legal standards, Plaintiff has been unable to cure the
24 deficiencies in his complaint, and further leave to amend is not warranted. *Lopez v. Smith*, 203
25 F.3d 1122, 1130 (9th Cir. 2000).

26 The Court HEREBY ORDERS the Clerk of the Court to randomly assign a district judge
27 to this action.

28 ///

1 For the reasons explained above, the Court HEREBY RECOMMENDS that Plaintiff's
2 federal claims be dismissed, with prejudice, for the failure to state a claim upon which relief may
3 be granted.

4 The Court FURTHER RECOMMENDS that the state law claims be dismissed, without
5 prejudice.

6 These Findings and Recommendation will be submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
8 **fourteen (14) days** after being served with these Findings and Recommendation, Plaintiff may
9 file written objections with the Court. The document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendation." Plaintiff is advised that failure to file
11 objections within the specified time may result in the waiver of the "right to challenge the
12 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
13 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
14

15 IT IS SO ORDERED.

16 Dated: May 23, 2018

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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