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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JESSE SANCHEZ,  
Plaintiff,

v.

CLIFF ALLENBY,  
Defendant.

Case No. 1:15-cv-01868-DAD-SAB

FINDINGS AND RECOMMENDATION  
THAT THIS ACTION BE DISMISSED FOR  
FAILURE TO STATE A COGNIZABLE  
CLAIM FOR RELIEF

OBJECTIONS DUE IN THIRTY DAYS

THIRTY-DAY DEADLINE

Plaintiff is a civil detainee proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Currently before the Court is Plaintiff’s first amended complaint, filed February 29, 2016.

**I.**

**SCREENING REQUIREMENT**

The Court is required to screen complaints brought by individuals 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 individual has raised claims that are legally “frivolous or malicious,” that “fail to state a claim on which relief may be granted,” or that “seek monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

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 (2009)(citing Bell  
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate  
6 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.  
7 Williams, 297 F.3d 930, 934 (9th Cir.2002).

8 Plaintiffs in pro se in civil rights actions are entitled to have their pleadings liberally  
9 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113,  
10 1121 (9th Cir. 2012)(citations omitted). To survive screening, Plaintiff’s claims must be facially  
11 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each  
12 named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S.  
13 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has  
14 acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s  
15 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572  
16 F.3d at 969.

## 17 II.

### 18 COMPLAINT ALLEGATIONS

19 The February 29, 2016, first amended complaint is filed in response to the February 1,  
20 2016, order dismissing the original complaint and granting Plaintiff leave to file an amended  
21 complaint. Plaintiff is a civil detainee in the custody of the Department of State Hospitals at  
22 Coalinga State Hospital. Plaintiff brings this action against former Director of State Hospitals  
23 Cliff Allenby.

24 In the order dismissing the original complaint, the Court noted that Plaintiff alleged that  
25 he is an African American male, and as such, is identified as a member of a class of individuals  
26 who are highly susceptible to Valley Fever. Plaintiff alleged Defendants knowingly subjected  
27 him to Valley Fever, such that it constituted a violation of Plaintiff’s constitutional rights. In his  
28 first amended complaint, Plaintiff simply alleges that Defendant has subjected him to a

1 dangerous condition due to the presence of Valley Fever spores. Plaintiff argues that the original  
2 complaint stated a claim for relief “because the Ninth Circuit has affirmed there is good claims  
3 against defendant Allenby.” (ECF No. 8 at 5.) Plaintiff refers the Court to unpublished  
4 decisions from the Ninth Circuit. Plaintiff does not allege any new or different facts in the first  
5 amended complaint.

6 **III.**  
7 **DISCUSSION**

8 **A. Valley Fever**

9 As a civil detainee, Plaintiff is entitled to treatment more considerable than that afforded  
10 pretrial detainees or convicted criminals. Jones v. Blanas, 393 F.3d 918, 931-32 (9th Cir. 2004).  
11 Plaintiff’s right to constitutionally adequate conditions of confinement is protected by the  
12 substantive component of the Due Process Clause. Youngberg v. Romero, 457 U.S. 307, 315  
13 (1982).

14 A determination whether Plaintiff’s rights were violated requires “balancing of his liberty  
15 interests against the relevant state interests.” Youngberg, 457 U.S. at 321. Plaintiff is “entitled  
16 to more considerate treatment and conditions of confinement than criminals whose conditions of  
17 confinement are designed to punish,” but the Constitution requires only that courts ensure that  
18 professional judgment was exercised. Youngberg, 457 U.S. at 321-22. A “decision, if made by a  
19 professional, is presumptively valid; liability may be imposed only when the decision by the  
20 professional is such that a substantial departure from accepted professional judgment, practice, or  
21 standards as to demonstrate that the person responsible actually did not base the decision on such  
22 a judgment.” Id. at 322-23; compare Clouthier v. County of Contra Costa, 591 F.3d 1232-1243-  
23 44 (9th Cir. 2010)(rejecting the Youngberg standard and applying the deliberate indifference  
24 standard to a pretrial detainee’s right to medical care, and noting that pretrial detainees, who are  
25 confined to ensure presence at trial, are not similarly situated to those who are civilly  
26 committed). The professional judgment standard is an objective standard and it equates “to that  
27 required in ordinary tort cases for a finding of conscious indifference amounting to gross  
28 negligence.” Ammons v. Washington Dep’t of Soc. & Health Servs., 648 F.3d 1020, 1029 (9th

1 Cir. 2011), 132 S. Ct. 2379 (2012).

2 The Court finds that Plaintiff's dangerous condition claim fails for two reasons. First, the  
3 claim is premised on Coalinga State Hospital being so inherently dangerous due to the presence  
4 of Valley Fever spores in the soil that his transfer there amounts to a constitutional violation. No  
5 court has held that exposure to Valley Fever spores presents an excessive risk to inmate health."  
6 King v. Avenal State Prison, 2009 WL 546212, 4 (E.D. Cal. Mar. 4, 2009); see also Tholmer v.  
7 Yates, 2009 WL 174162, 3 (E.D. Cal. Jan. 26, 2009)("To the extent Plaintiff seeks to raise a  
8 challenge to the general conditions of confinement at Coalinga State Hospital, Plaintiff fails to  
9 come forward with evidence that [the Warden] is responsible for the conditions of which  
10 Plaintiff complains.") More recently, in addressing a claim that CDCR officials are responsible  
11 for the contraction of valley fever by knowingly housing an African American inmate with a  
12 history of asthma in an endemic area, it has been held that "unless there is something about a  
13 prisoner's conditions of confinement that raises the risk of exposure substantially above the risk  
14 experienced by the surrounding communities, it cannot be reasoned that the prisoner is  
15 involuntarily exposed to a risk that society would not tolerate." Hines v. Yousseff, 2015 WL  
16 164215, \*5 (E.D. Cal. Jan. 13, 2015). Plaintiff cannot state a claim for relief based on mere  
17 exposure to valley fever.

18 Further, even assuming transfer to Coalinga State Hospital might suffice to underpin a  
19 constitutional claim, Plaintiff's allegations regarding the named Defendant's involvement  
20 remains speculative at best. Section 1983 does not permit respondeat superior, or vicarious,  
21 liability and Plaintiff's claim must be premised on Defendant's personal involvement or other  
22 specific causal connection; speculative allegations regarding knowledge, actions, and/or  
23 omissions do not suffice. Crowley v. Bannister, 734 F.3d 1062, 1074-75 (9th Cir. 2013). For  
24 these reasons, the Court finds that Plaintiff fails to state a claim under section 1983.

#### 25 IV.

#### 26 CONCLUSION AND RECOMMENDATION

27 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may  
28 be granted. Plaintiff was previously notified of the applicable legal standard and the deficiencies

1 in his pleading, and despite guidance from the Court, Plaintiff's first amended complaint is  
2 largely identical to the original complaint. Plaintiff does not allege any new or different facts.  
3 Plaintiff indicates his disagreement with the Court's ruling that the original complaint failed to  
4 state a claim for relief. Plaintiff's sole allegation is that his civil rights are being violated because  
5 he is housed in an area where valley fever spores are present in the soil. Based upon the  
6 allegations in Plaintiff's original and first amended complaint, the Court is persuaded that  
7 Plaintiff is unable to allege any additional facts that would support a claim for deliberate  
8 indifference by Defendant Allenby, and further amendment would be futile. See Hartmann v.  
9 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when  
10 amendment would be futile.") Based on the nature of the deficiencies at issue, the Court finds  
11 that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.  
12 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9<sup>th</sup> Cir. 1987).

13 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
14 Plaintiff's failure to state a claim upon which relief could be granted.

15 These findings and recommendations will be submitted to the United States District  
16 Judge assigned to the case, pursuant to the provision of Title 28 U.S.C. §636 (b)(1)(B). Within  
17 **thirty (30)** days after being served with these Finding and Recommendations, the parties may  
18 file written objections with the Court. The document should be captioned "Objections to  
19 Findings and Recommendations." The parties are advised that failure to file objections within  
20 the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d  
21 F.3d 834, 838-39 (9th Cir. 2014)(citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9<sup>th</sup> Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: May 20, 2016

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26 UNITED STATES MAGISTRATE JUDGE  
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