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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 LUIS DURAN,

12 Plaintiff,

13 v.

14 GAIL LEWIS, et al.,

15 Defendants.

Case No. 1:16-cv-00468-AWI-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, (Doc. No. 15),
DISMISSING THIS ACTION FOR
FAILURE TO STATE A COGNIZABLE
CLAIM FOR RELIEF

ORDER THAT THIS DISMISSAL COUNT
AS A STRIKE PURSUANT TO 28 U.S.C. §
1915(g)

ORDER DIRECTING CLERK OF COURT
TO TERMINATE CASE

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20 Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* pursuant to 42 U.S.C.
21 § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
22 636(b)(1)(B) and Local Rule 302.

23 On September 19, 2016, the assigned magistrate judge issued findings and
24 recommendations recommending that this matter be dismissed for the failure to state a claim
25 upon which relief may be granted. (Doc. No. 15.) Plaintiff was provided an opportunity to file
26 objections to the findings and recommendations within thirty days. On October 5, 2016, Plaintiff
27 timely filed objections to the findings and recommendations. (Doc. No. 16.)

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1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
2 court has conducted a de novo review of this case. Having carefully reviewed the entire file,
3 including Plaintiff's objections, the court finds the findings and recommendations to be
4 supported by the record and proper analysis.

5 Plaintiff's objections merely re-allege the allegations of his complaint that he was housed
6 at Pleasant Valley State Prison from 2004 to 2014, and was exposed to Valley Fever spores,
7 which Defendants never advised the risk of, and that he was at a greater risk of contracting
8 Valley Fever due to this race. As the magistrate judge correctly found, Plaintiff cannot state a
9 claim upon which relief may be granted based solely on the mere exposure to Valley Fever
10 spores. See King v. Avenal State Prison, 2009 WL 546212, at *4 (E.D. Cal. Mar. 4, 2009);
11 Tholmer v. Yates, 2009 WL 174162, at *3 (E.D. Cal. Jan. 26, 2009); Hines v. Yousseff, 2015
12 WL 164215, at *5 (E.D. Cal. Jan. 13, 2015).

13 Accordingly, THE COURT HEREBY ORDERS that:

- 14 1. The findings and recommendations filed by the assigned magistrate judge on
15 September 19, 2016 (Doc. No. 15), are ADOPTED IN FULL;
- 16 2. This action is dismissed for the failure to state a claim upon which relief could be
17 granted;
- 18 3. The Clerk of the Court is directed to close this case; and
- 19 4. This dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g).

20 IT IS SO ORDERED.

21 Dated: June 27, 2017

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23 SENIOR DISTRICT JUDGE
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