



1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 **C. Pleading Requirements**

4 **1. Federal Rule of Civil Procedure 8(a)**

5 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
6 exceptions,” none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534  
7 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain “a short and plain  
8 statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. Pro. 8(a).  
9 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and  
10 the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512.

11 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs  
12 when a pleading says too little -- the baseline threshold of factual and legal allegations required  
13 was the central issue in the *Iqbal* line of cases. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678,  
14 129 S.Ct. 1937 (2009). The Rule is also violated, though, when a pleading says *too much*.  
15 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e  
16 have never held -- and we know of no authority supporting the proposition -- that a pleading may  
17 be of unlimited length and opacity. Our cases instruct otherwise.”) (citing cases); *see also*  
18 *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8,  
19 and recognizing that “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case  
20 impose unfair burdens on litigants and judges”).

21 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a  
22 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at  
23 678, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff must set forth  
24 “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*,  
25 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual allegations are accepted as true, but  
26 legal conclusions are not. *Iqbal*, 556 U.S. at 678; *see also Moss v. U.S. Secret Service*, 572 F.3d  
27 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

1           While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,  
2 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally  
3 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).  
4 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,”  
5 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights  
6 complaint may not supply essential elements of the claim that were not initially pled,” *Bruns v.*  
7 *Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*,  
8 673 F.2d 266, 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences,  
9 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and  
10 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient,  
11 and “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the  
12 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

13           Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short  
14 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),  
15 when the opportunity to correct the pleadings has been afforded and there has been no  
16 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.  
17 2013).

18           If he chooses to file a second amended complaint, Plaintiff should make it as concise as  
19 possible and simply state which of his constitutional rights he believes were violated by each  
20 Defendant and the factual basis. Plaintiff need not and should not cite legal authority for his  
21 claims as his factual allegations are accepted as true.

## 22                           **2.     Linkage and Causation**

23           Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
24 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d  
25 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);  
26 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of  
27 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
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1 conferred.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012)  
2 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation  
3 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,  
4 or causal connection, between each defendant’s actions or omissions and a violation of his federal  
5 rights. *Lemire v. California Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);  
6 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

7 Plaintiff’s allegations must demonstrate that each defendant personally participated in the  
8 deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This requires the  
9 presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*, 556 U.S.  
10 at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility  
11 of misconduct falls short of meeting this plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572  
12 F.3d at 969. Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings  
13 liberally construed and to have any doubt resolved in their favor. *Hebbe*, 627 F.3d at 342.

## 14 DISCUSSION

### 15 **A. Plaintiff’s Allegations**

16 Plaintiff is currently incarcerated at California State Prison, Solano (“CSP-Sol”), but his  
17 allegations are based on circumstances that allegedly occurred while he was housed at Pleasant  
18 Valley State Prison (“PVSP”). Plaintiff names Secretary Scott Kernan, Dr. Adinwumi Ola, and  
19 “Does A-Z” as the defendants in this action and seeks monetary damages.

20 Plaintiff alleges that when he was housed at PVSP, he contracted Valley Fever. Plaintiff  
21 alleges that Sect. Kernan was aware of the threat Valley Fever posed to Plaintiff’s health and  
22 should not have housed him at PVSP. Plaintiff alleges that when he began to have symptoms, he  
23 presented to Dr. Ola who misdiagnosed him as having a cold, gave him medication, and sent  
24 him away. When Plaintiff again presented to Dr. Ola and demanded a test to see if he had Valley  
25 Fever, Dr. Ola and other medical staff misinterpreted the test results and wrongly diagnosed  
26 Plaintiff with bronchitis. A month later, Plaintiff was disoriented on the prison yard and was  
27 rushed for emergency surgery at an outside hospital where a permanent shunt was placed in his  
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1 brain.

2 As discussed in detail below, Plaintiff fails to state any cognizable claims. However, he is  
3 provided the applicable legal standards and an opportunity to file an amended complaint.

4 **B. Legal Standards**

5 **1. Eighth Amendment**

6 **a. Conditions of Confinement**

7 Plaintiff's allegations against Sect. Kernan are based solely on his placement at PVSP.  
8 The Eighth Amendment protects prisoners from inhumane methods of punishment and from  
9 inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Morgan v.*  
10 *Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Thus, no matter where they are housed, prison  
11 officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing,  
12 sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.  
13 2000) (quotation marks and citations omitted). To establish a violation of the Eighth  
14 Amendment, the prisoner must "show that the officials acted with deliberate indifference. . . ."  
15 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v.*  
16 *County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002).

17 In the context of exposure to disease, the objective element asks whether prison officials  
18 have exposed the prisoner to a serious medical risk of disease. To determine whether the medical  
19 risk to which Plaintiff was exposed is serious, the Court considers whether the "risk the prisoner  
20 complains of [is] so grave that it violates contemporary standards of decency to expose anyone  
21 unwillingly to such a risk. In other words, the prisoner must show that the risk of which he  
22 complains is not one that today's society chooses to tolerate." *Helling v. McKinney*, 509 U.S. 25,  
23 36 (1993).

24 The subjective element of an Eighth Amendment Violation asks whether the prison  
25 official acted with "deliberate indifference" in denying medical care or exposing the prisoner to  
26 the risk of disease. For conduct to qualify as "deliberately indifferent" in the context of  
27 conditions of confinement, the conduct must be shown to be "wanton." "[T]he constraints facing  
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1 the *official*” must be considered when determining whether conduct is wanton. *Wilson v. Seiter*,  
2 501 U.S. 294, 303 (1991). A deprivation of treatment or the exposure to a hazard may be wanton  
3 only if the official was *able* to avoid the exposure to risk or deprivation of care at the time.  
4 “Wantonness consist[s] of acting sadistically and maliciously for the purpose of causing harm.”  
5 *Id.*, quoting *Whitley v. Albers*, 475 U.S. 312, 321-322 (1986).

6 As to the objective component, Plaintiff alleges no facts to indicate that the risk of  
7 exposure to *Coccidioides immitis* spores (which can develop into Valley Fever) at PVSP is any  
8 higher than in the surrounding community. The attention of courts and official policy-makers  
9 regarding the risk of Valley Fever has focused on PVSP and Avenal State Prison -- which are  
10 both in Kern County. These facilities have drawn particular state and district court attention  
11 because, although eight California correctional facilities are located in the endemic area, these  
12 two facilities account for 85% of the occurrence of reported cases of Valley Fever in California.  
13 *See Plata v. Brown*, 2013 WL 3200587 (N.D. Cal. 2013) at \*2. However, an individual who lives  
14 out of custody anywhere in the Southern San Joaquin Valley, also runs a relatively high risk of  
15 exposure to *Coccidioides immitis* spores. Unless there is something regarding a prisoner’s  
16 conditions of confinement that raises the risk of exposure substantially above the risk experienced  
17 by the surrounding community, the court cannot conclude that the prisoner is forcibly and  
18 knowingly exposed to a risk that society would not tolerate, as is required by the objective  
19 component.

20 Plaintiff also fails to set forth allegations to meet the subjective component of an Eighth  
21 Amendment claim. Plaintiff has not shown that Sect. Kernan acted *wantonly* in formulating the  
22 policies and procedures which resulted in Plaintiff’s placement at PVSP. As noted above, eight  
23 of the State of California’s correctional facilities -- and therefore a substantial proportion of its  
24 inmate capacity -- are located in the Southern San Joaquin Valley. If Plaintiff’s allegations that  
25 he was transferred to PVSP where Valley Fever is known to be endemic and contracted Valley  
26 Fever, with nothing more, were cognizable, the State of California would not be able to house any  
27 inmates at PVSP or Avenal State Prison, and might not be able to house any inmates in any of the  
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1 eight facilities located in the endemic area.

2 Plaintiff has also failed to allege any facts from which to infer that Sect. Kernan was  
3 deliberately indifferent to Plaintiff's the risk of exposure to the spores that cause Valley Fever.  
4 Not only has Plaintiff failed to allege any facts from which a finding of deliberate indifference  
5 can be inferred, the factual background presented in *Plata* and other cases since 2005, following  
6 placement of the CDCR's medical care facilities in receivership, demonstrates that California  
7 policy makers have been struggling for years to accommodate constitutional requirements within  
8 State means. Thus, Plaintiff fails to state a cognizable claim against Sect. Kernan as a result of  
9 the policies and/or procedures that led to his housing at PVSP.

10 **b. Serious Medical Needs**

11 Plaintiff's allegations against Dr. Ola and Does A-Z are based solely on the failure to  
12 properly diagnosis and treat him for Valley Fever. Prison officials violate the Eighth Amendment  
13 if they are "deliberate[ly] indifferen[t] to [a prisoner's] serious medical needs." *Estelle v.*  
14 *Gamble*, 429 U.S. 97, 104 (1976). "A medical need is serious if failure to treat it will result in '  
15 "significant injury or the unnecessary and wanton infliction of pain." ' ' ' *Peralta v. Dillard*, 744  
16 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.2006) (quoting  
17 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1992), overruled on other grounds by *WMX*  
18 *Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir.1997) (en banc)).

19 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must  
20 first "show a serious medical need by demonstrating that failure to treat a prisoner's condition  
21 could result in further significant injury or the unnecessary and wanton infliction of pain. Second,  
22 the plaintiff must show the defendants' response to the need was deliberately indifferent."  
23 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096  
24 (quotation marks omitted)).

25 As to the first prong, indications of a serious medical need "include the existence of an  
26 injury that a reasonable doctor or patient would find important and worthy of comment or  
27 treatment; the presence of a medical condition that significantly affects an individual's daily  
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1 activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060,  
2 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); *accord Wilhelm*, 680 F.3d at  
3 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). For screening purposes, Plaintiff’s  
4 Valley Fever is accepted as a serious medical need.

5 As to the second prong, deliberate indifference is “a state of mind more blameworthy than  
6 negligence” and “requires ‘more than ordinary lack of due care for the prisoner’s interests or  
7 safety.’ ” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319).  
8 Deliberate indifference is shown where a prison official “knows that inmates face a substantial  
9 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”  
10 *Id.*, at 847. In medical cases, this requires showing: (a) a purposeful act or failure to respond to a  
11 prisoner’s pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680  
12 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). “A prisoner need not show his harm was  
13 substantial; however, such would provide additional support for the inmate’s claim that the  
14 defendant was deliberately indifferent to his needs.” *Jett*, 439 F.3d at 1096, citing *McGuckin*, 974  
15 F.2d at 1060.

16 Deliberate indifference is a high legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060  
17 (9th Cir.2004). “Under this standard, the prison official must not only ‘be aware of the facts from  
18 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person  
19 ‘must also draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison  
20 official should have been aware of the risk, but was not, then the official has not violated the  
21 Eighth Amendment, no matter how severe the risk.’ ” *Id.* (quoting *Gibson v. County of Washoe,*  
22 *Nevada*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

23 Plaintiff’s allegations that Dr. Ola initially misdiagnosed Plaintiff’s Valley Fever as a cold  
24 and that Dr. Ola and other medical staff subsequently misinterpreted the test results and wrongly  
25 diagnosed Plaintiff with bronchitis, are not cognizable. At most, such allegations may equate to  
26 negligence or medical malpractice. To be actionable under the Eighth Amendment, “the  
27 indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or  
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1 ‘medical malpractice’ will not support this cause of action.” *Broughton v. Cutter Laboratories*,  
2 622 F.2d 458, 460 (9th Cir.1980) (citing *Estelle*, 429 U.S. at 105-06); *Toguchi v. Chung*, 391 F.3d  
3 1051, 1060 (9th Cir.2004).

4 Plaintiff fails to state a cognizable claim against Dr. Ola and Does A-Z as he fails to show  
5 that they knowingly disregarded a substantial risk of serious harm to his health. Ineptitude, no  
6 matter how devastating its affect, is not deliberate indifference.

### 7 **ORDER**

8 For the reasons set forth above, Plaintiff’s First Amended Complaint is dismissed with  
9 leave to file a second amended complaint within **thirty (30) days**. If Plaintiff needs an extension  
10 of time to comply with this order, Plaintiff shall file a motion seeking an extension of time no  
11 later than **thirty (30) days** from the date of service of this order.

12 Plaintiff must demonstrate in any second amended complaint how the conditions  
13 complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See Ellis v.*  
14 *Cassidy*, 625 F.2d 227 (9th Cir. 1980). The second amended complaint must allege in specific  
15 terms how each named defendant is involved. There can be no liability under section 1983 unless  
16 there is some affirmative link or connection between a defendant’s actions and the claimed  
17 deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir.  
18 1980); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19 Plaintiff’s second amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short  
20 and plain statement must “give the defendant fair notice of what the . . . claim is and the grounds  
21 upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*  
22 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the “[f]actual allegations must be  
23 [sufficient] to raise a right to relief above the speculative level . . . .” *Twombly*, 550 U.S. 127, 555  
24 (2007) (citations omitted).

25 Plaintiff is cautioned that an amended complaint supercedes the original, *Lacey v.*  
26 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at \*1 n.1 (9th Cir. Aug. 29,  
27 2012) (en banc), and must be “complete in itself without reference to the prior or superceded  
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