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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC STRATFORD,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
et al.,

Defendants.

Case No. 1:17-cv-00766-JDP

SCREENING ORDER

ORDER THAT PLAINTIFF:

- (1) NOTIFY THE COURT THAT HE IS WILLING TO PROCEED ONLY ON THE CLAIM SANCTIONED BY THIS ORDER AND VOLUNTARILY DISMISS ALL OTHER CLAIMS AND DEFENDANTS;
- OR
- (2) NOTIFY THE COURT THAT HE WISHES TO STAND ON HIS COMPLAINT, SUBJECT TO DISMISSAL OF CLAIMS AND DEFENDANTS CONSISTENT WITH THIS ORDER

ECF No. 17

Plaintiff Eric Stratford is a former state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983.<sup>1</sup> Plaintiff’s first amended complaint, ECF No. 17,

<sup>1</sup> While plaintiff was incarcerated when he filed his initial complaint, he no longer appears in California’s inmate directory and lists his current address as a resident in Los Angeles. See ECF No. 19.

1 is before the court for screening under 28 U.S.C. § 1915A. I find that plaintiff has stated an  
2 Eighth Amendment claim against defendant Schwarzenegger, but no other claims. Plaintiff must  
3 choose between (1) proceeding only on the claims against Schwarzenegger and voluntarily  
4 dismissing other claims and defendants; and (2) standing on the current complaint subject to  
5 dismissal of claims and defendants consistent with this order.<sup>2</sup>

6 **I. SCREENING AND PLEADING REQUIREMENTS**

7 A district court is required to screen a prisoner’s complaint seeking relief against a  
8 governmental entity, officer, or employee. See 28 U.S.C. § 1915A(a). The court must identify  
9 any cognizable claims and dismiss any portion of a complaint that is frivolous or malicious, fails  
10 to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who  
11 is immune from such relief. See 28 U.S.C. §§ 1915A(b)(1), (2).

12 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
13 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
14 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
15 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S.  
16 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
17 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
18 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
19 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what  
20 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to  
21 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)  
22 (citations omitted).

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24  
25 <sup>2</sup> Plaintiff’s initial complaint was screened in 2017, and plaintiff was put on notice of pleading  
26 deficiencies similar to those identified in this order. See ECF No. 9 at 4 (“Plaintiff[’s] complaint  
27 includes no facts indicating what he believes each Defendant personally did or failed to do to  
28 violate his rights.”). Because Stratford has already been notified of the defects in his pleading  
and had an opportunity to amend, I do not offer additional leave to amend, as I do not believe the  
deficiencies can be cured by amendment. See *Franklin v. Murphy*, 745 F.2d 1221, 1228 & n.9  
(9th Cir. 1984).

1           The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404  
2 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint only “if it  
3 appears beyond doubt that the plaintiff can prove no set of facts in support of her claim which  
4 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017)  
5 (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

## 6           **II. THE COMPLAINT**<sup>3</sup>

7           Plaintiff names eleven defendants: the California Department of Corrections and  
8 Rehabilitation (“CDCR”); California Governor Jerry Brown; California Governor Arnold  
9 Schwarzenegger; Susan Hubbard, director of adult prisons; CDCR Secretary Matthew Cate;  
10 CDCR unit chief Tanya Rothchild; CDCR executive secretary Deborah Hysen; CDCR medical  
11 officer Dwight Winslow; James A. Yates, warden of the Pleasant Valley State Prison; and Dr.  
12 Felix Igbiosa, a medical officer at Pleasant Valley. ECF No. 17 at 3-4. Plaintiff alleges that he  
13 contracted valley fever in December 2007 and has, as a result, suffered a variety of injuries in  
14 violation the Eighth Amendment. Stratford alleges that valley fever spores entered his right lung  
15 and that he now suffers from pneumonia-like symptoms and anxiety related to his condition. See  
16 *id.* at 11. Plaintiff seeks declaratory, injunctive, and monetary relief. See *id.* at 22-23.

## 17           **III. DISCUSSION**

### 18           **A. Threshold Requirements Under 42 U.S.C. § 1983**

19           Section 1983 allows a private citizen to sue for the deprivation of a right secured by  
20 federal law. See 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To  
21 state a claim under § 1983, a plaintiff must allege that a “person,” while acting under color of  
22 state law, personally participated in the deprivation of a right secured by federal law. See *Soo*  
23 *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017). A defendant personally participates in a  
24 deprivation “if he does an affirmative act, participates in another’s affirmative acts or omits to  
25 perform an act which he is legally required to do that causes the deprivation of which complaint is  
26 made.” *Atayde v. Napa State Hosp.*, 255 F. Supp. 3d 978, 988 (E.D. Cal. 2017) (quoting *Lacey v.*

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27           <sup>3</sup> The court draws the facts of this section from plaintiff’s amended complaint and accepts them as  
28 true for purposes of screening.

1 Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012)). Vague and conclusory allegations of  
2 personal involvement in an alleged deprivation do not suffice. *Id.*

3 Plaintiff’s complaint does not adequately link the acts or omissions of most named  
4 defendants to the harm he claims to have suffered. Most of the defendants are either unmentioned  
5 or mentioned only in passing in Stratford’s description of relevant events. Leaving defendants  
6 unmentioned—or mentioning them only glancingly to note that they “were aware, or should have  
7 been aware” of increased valley fever risks, see, for example, ECF No. 17 at 10 and 17—is  
8 insufficient to state a claim under 42 U.S.C. § 1983, see *Hines v. Youseff*, 914 F.3d 1218, 1228  
9 (9th Cir. 2019) (noting, in the context of valley fever claims under § 1983, that “inmates must  
10 show that each defendant personally played a role in violating the Constitution” (emphasis  
11 added)). In addition, the CDCR is not a “person” for the purposes of 42 U.S.C. § 1983 and is not  
12 subject to this suit. See *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Coleman v. California Dep’t*  
13 *of Corr. & Rehab.*, No. 06-2606, 2009 WL 648987, at \*3 (C.D. Cal. Mar. 10, 2009) (“There is no  
14 dispute that the California Department of Corrections and Rehabilitation is a state agency. As  
15 such, it is not amenable to suit under § 1983.”).

16 Stratford’s complaint does satisfy the threshold requirements for one defendant: Governor  
17 Schwarzenegger. Stratford’s complaint contains sufficiently detailed allegations of Governor  
18 Schwarzenegger’s acts and omissions such that they can be linked the deprivation of a right.  
19 Several recent cases, while ultimately concluding that defendants were entitled to qualified  
20 immunity, have proceeded on a similar threshold theory. See *Hines*, 914 F.3d 1218; *Smith v.*  
21 *Schwarzenegger*, 137 F. Supp. 3d 1233 (E.D. Cal. 2015).

### 22 **B. Eighth Amendment Deliberate Indifference**

23 The Eighth Amendment’s prohibition against cruel and unusual punishment forbids  
24 officials from wantonly exposing prisoners to certain objectively serious deprivations and safety  
25 risks. See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To establish a violation of this right, a  
26 prisoner must show that officials were “deliberately indifferent” to a serious safety threat.

27 Here, accepting plaintiff’s allegations as true, I find that he has stated an Eighth  
28 Amendment deliberate indifference claim against Governor Schwarzenegger. Stratford alleges,

1 among other things, that Governor Schwarzenegger received a 2005 informational briefing about  
2 the risks of valley fever but failed to act on it, ECF No. 17 at 3-B; that the Governor proposed  
3 constructing new dormitories at Pleasant Valley and stated that he was “not concerned” about the  
4 risk of valley fever there, id. at 3-D; and that the Governor acknowledged the much higher rate of  
5 infections at Pleasant Valley but failed to take steps to ameliorate it, id. at 3-A.

6 **IV. CONCLUSION AND ORDER**

7 I have screened plaintiff’s complaint and conclude that he has stated an Eighth  
8 Amendment claim against defendant Schwarzenegger. He has stated no other claims. In light of  
9 this conclusion and the law cited above, plaintiff must choose between (1) proceeding only on the  
10 Eighth Amendment claim against Schwarzenegger and voluntarily dismissing the other claims  
11 and defendants, and (2) standing on the current complaint subject to dismissal of claims and  
12 defendants consistent with this order.

13 Accordingly,

- 14 1. Within thirty (30) days from the date of service of this order, plaintiff must either:
- 15 a. Notify the court in writing that he is willing to proceed only on the Eighth  
16 Amendment claim against defendant Schwarzenegger, voluntarily dismissing  
17 all other claims and defendants CDCR, Brown, Hubbard, Cate, Rothchild,  
18 Hysen, Winslow, Yates, and Igbinosa;
- 19 b. Notify the court in writing that he does not agree to go forward on only the  
20 claim found cognizable by this order, in which case I will recommend the  
21 dismissal of claims and defendants consistent with this order.
- 22 2. Failure to comply with this order will result in the dismissal of this action.

23  
24 IT IS SO ORDERED.

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26 Dated: October 11, 2019

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UNITED STATES MAGISTRATE JUDGE