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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

ORDER DISCHARGING THE ORDER TO  
SHOW CAUSE

ECF No. 21

FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF BE PERMITTED TO  
PROCEED ON COGNIZABLE CLAIM AND  
THAT NON-COGNIZABLE CLAIMS BE  
DISMISSED WITHOUT PREJUDICE

ECF No. 17

ORDER THAT THIS CASE BE ASSIGNED  
TO A DISTRICT JUDGE

Plaintiff Eric Stratford is a former state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges that the defendants exposed him to Valley Fever at Pleasant Valley State Prison in violation of the Eighth Amendment. On October 15, 2019, the court screened plaintiff’s first amended complaint, ECF No. 17, and found that it stated an Eighth Amendment claim against defendant Schwarzenegger, but no other claims. That order gave plaintiff a choice between voluntarily dismissing the defendants and standing by his

1 complaint, subject to the involuntary dismissal of claims.<sup>1</sup> Plaintiff did not initially respond to  
2 the court’s screening order but, on April 6, 2020, filed a short notice that did not agree to dismiss  
3 any defendants and argued that his case was meritorious. *See* ECF No. 22. In the interest of  
4 expeditious justice, the court will discharge the recent order to show cause and issue findings and  
5 recommendations to dismiss the non-cognizable claims. Much of the analysis below will track  
6 that of the court’s screening order.

## 7 **SCREENING AND PLEADING REQUIREMENTS**

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

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

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25 <sup>1</sup> Plaintiff’s initial complaint was screened in 2017, and plaintiff was put on notice of pleading  
26 deficiencies that are similar to those that appear in his first amended complaint. *See* ECF No. 9 at  
27 4 (“Plaintiff[’s] complaint includes no facts indicating what he believes each Defendant  
28 personally did or failed to do to violate his rights.”). Because Stratford had already been notified  
of the defects in his pleading and had an opportunity to amend, the court did not believe that the  
deficiencies would or could be cured by further 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 **THE COMPLAINT**

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

## 17 **DISCUSSION**

### 18 ***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.*  
27 *Maricopa County*, 693 F.3d 896, 915 (9th Cir. 2012)). Vague and conclusory allegations of  
28 personal involvement in an alleged deprivation do not suffice. *Id.*

1 Plaintiff's complaint does not adequately link the acts or omissions of most named  
2 defendants to the harm he suffered. Most of the defendants are either completely unmentioned or  
3 mentioned only in passing in Stratford's description of the events. Leaving defendants  
4 unmentioned—or mentioning them only glancingly to note that they “were aware, or should have  
5 been aware” of increased valley fever risks, *see*, for example, ECF No. 17 at 10 and 17—is  
6 insufficient to state a claim under 42 U.S.C. § 1983, *see Hines v. Youseff*, 914 F.3d 1218, 1228  
7 (9th Cir. 2019) (noting, in the context of valley fever claims under § 1983, that “inmates must  
8 show that *each defendant personally played a role* in violating the Constitution” (emphasis  
9 added)).<sup>2</sup>

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

### 16 ***Eighth Amendment Deliberate Indifference***

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

21 Here, accepting plaintiff's allegations as true, the court finds that he has stated an Eighth  
22 Amendment deliberate indifference claim against Governor Schwarzenegger. Stratford alleges,  
23 among other things, that Schwarzenegger received a 2005 informational briefing about the risks  
24 of valley fever but failed to act on it, ECF No. 17 at 3-B; that Schwarzenegger proposed

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26 <sup>2</sup> In addition, the CDCR is not a “person” for the purposes of 42 U.S.C. § 1983 and is not  
27 amenable to suit. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Coleman v. California Dep't of*  
28 *Corr. & Rehab.*, No. 06-2606, 2009 WL 648987, at \*3 (C.D. Cal. Mar. 10, 2009) (“There is no  
dispute that the California Department of Corrections and Rehabilitation is a state agency. As  
such, it is not amenable to suit under § 1983.”).

1 constructing new dormitories at Pleasant Valley and stated that he was “not concerned” about the  
2 risk of valley fever there, *id.* at 3-D; and that Schwarzenegger acknowledged the much higher rate  
3 of infections at Pleasant Valley but failed to take steps to ameliorate it, *id.* at 3-A.

4 **FINDINGS AND RECOMMENDATIONS**

5 The court finds that plaintiff has stated an Eighth Amendment claim against defendant  
6 Schwarzenegger, but no other claims. The undersigned thus submits the following  
7 recommendations under 28 U.S.C. § 636(b)(1):

8 1. Plaintiff states a cognizable Eighth Amendment claim against defendant  
9 Schwarzenegger.

10 2. Plaintiff’s remaining claims should be dismissed without prejudice.

11 The undersigned submits these findings and recommendations to the district judge under  
12 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Eastern District’s Local Rules. Within 14 days of  
13 the service of these findings and recommendations, plaintiff may file written objections with the  
14 court. Such a filing should be captioned “Objections to Magistrate Judge’s Findings and  
15 Recommendations.” The district judge will then review the findings and recommendations under  
16 28 U.S.C. § 636(b)(1)(C).

17 **ORDER**

18 The clerk’s office shall assign this case to a district judge to review the findings and  
19 recommendations above.

20  
21 IT IS SO ORDERED.

22 Dated: April 14, 2020

23   
24 UNITED STATES MAGISTRATE JUDGE