



1 raised claims that are legally “frivolous, malicious,” or that fail “to state a claim upon  
2 which relief may be granted,” or that “seek monetary relief from a defendant who is  
3 immune from such relief.” 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,  
4 or any portion thereof, that may have been paid, the court shall dismiss the case at any  
5 time if the court determines that . . . the action or appeal . . . fails to state a claim on  
6 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

## 7 **II. Pleading Standard**

8 Section 1983 “provides a cause of action for the ‘deprivation of any rights,  
9 privileges, or immunities secured by the Constitution and laws’ of the United States.”  
10 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).  
11 Section 1983 “‘is not itself a source of substantive rights,’ but merely provides ‘a method  
12 for vindicating federal rights conferred elsewhere.’” Graham v. Connor, 490 U.S. 386,  
13 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144, n. 3 (1979)).

14 To state a claim under Section 1983, a plaintiff must allege two essential  
15 elements: (1) that a right secured by the Constitution and laws of the United States was  
16 violated and (2) that the alleged violation was committed by a person acting under the  
17 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); see also Ketchum v.  
18 Cnty. of Alameda, 811 F.2d 1243, 1245 (9th Cir. 1987).

19 A complaint must contain “a short and plain statement of the claim showing that  
20 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
21 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
22 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
23 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff  
24 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
25 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility  
26 that a defendant committed misconduct and, while factual allegations are accepted as  
27 true, legal conclusions are not. Id.

1 **III. Plaintiff's Allegations**

2 At all times relevant to this suit, Plaintiff was housed at Pleasant Valley State  
3 Prison ("PVSP") in Coalinga, California. He names the following Defendants: "California";  
4 Paul D. Brazelton, Warden of PVSP; J. Lewis, Deputy Director of Policy and Risk  
5 Management Services for the California Correctional Health Care Services; and  
6 John/Jane Does 1 through 9, employees of the California Department of Corrections and  
7 Rehabilitation. All Defendants are sued in both their official and individual capacities.

8 Plaintiff's allegations may be summarized as follows.

9  
10 Plaintiff has Valley Fever, a disease caused by inhaling the soil-born spores of the  
11 Cocci fungus. Between the years of 2007 and 2011 Plaintiff was housed at PVSP, which  
12 is located in a region known to be hyper-endemic for Valley Fever. Despite knowledge  
13 that the area surrounding PVSP was hyper-endemic for Valley Fever, Defendants  
14 authorized the construction of a state hospital complex a few hundred yards from PVSP.  
15 This major construction project, which lasted several years, churned up the soil and  
16 released Cocci spores into the air. Defendants failed or refused to take reasonable  
17 measures to protect Plaintiff and other high risk inmates from exposure to the spores,  
18 such as by transferring them to a different prison, improving the prison ventilation  
19 system, or implementing soil control measures such as paving, landscaping, and soil  
20 stabilization.

21 After Plaintiff contracted Valley Fever, he was treated with antifungal medications,  
22 but was later found to have vertebral osteomyelitis, possibly caused by the Cocci spores.

23 Plaintiff seeks monetary and injunctive relief in the form of monetary  
24 compensation, punitive damages, and an order that Defendants provide Plaintiff with  
25 "rehabilitative treatment."

26 **IV. Analysis**

27 **A. Linkage**

28 Under § 1983, in order to state a claim against an official in his personal capacity,

1 a plaintiff must demonstrate that each named defendant *personally* participated in the  
2 deprivation of his rights. Id., 556 U.S. at 676-77; Simmons, 609 F.3d 1011, 1020-  
3 21(9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones  
4 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff may not attribute liability to a  
5 group of defendants, but must “set forth specific facts as to each individual defendant’s”  
6 deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); see also  
7 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Liability may not be imposed on  
8 supervisory personnel under the theory of *respondeat superior*, as each defendant is  
9 only liable for his or her own misconduct. Id., 556 U.S. at 676-77; Ewing, 588 F.3d at  
10 1235. Supervisors may only be held liable if they “participated in or directed the  
11 violations, or knew of the violations and failed to act to prevent them.” Lemire v. Cal.  
12 Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013) (“A prison  
13 official in a supervisory position may be held liable under § 1983 . . . ‘if he or she was  
14 personally involved in the constitutional deprivation or a sufficient causal connection  
15 exists between the supervisor’s unlawful conduct and the constitutional violation.’”)  
16 (quoting Lolli v. Cty. of Orange, 351 F.3d 410, 418 (9th Cir. 2003)); Starr v. Baca, 652  
17 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir.  
18 2009); Preschooler II v. Clark Cty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007);  
19 Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997). Where a plaintiff alleges a  
20 defendant failed to intervene to stop the abuses of subordinate staff, he must allege that  
21 the supervisor defendant failed to intervene after being placed on notice of ongoing  
22 constitutional violations by subordinate staff. Starr, 652 F.3d at 1205-08.

23 Plaintiff complaint includes no facts indicating what he believes each Defendant  
24 personally did or failed to do to violate his rights. Indeed, beyond the caption, Plaintiff  
25 does not refer to any Defendant by name. He simply groups Defendants, all high-ranking  
26 CDCR officials and unidentified employees, together as individuals who “knew” of the  
27 risk Plaintiff faced but failed to take steps to abate it. Plaintiff must include more than that  
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1 blanket allegation. He must link each Defendant to the alleged violation by setting forth  
2 what each knew of the risk to Plaintiff and what each could have, but failed to, do to  
3 abate it.

4 **B. Official Capacity Suits**

5 Plaintiff sues all named Defendants in both their personal and official capacities.  
6 Plaintiff cannot recover money damages from individuals sued in their official capacities,  
7 Aholelei v. Dept. of Pub. Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted),  
8 because official capacity suits may seek only prospective or injunctive relief. See  
9 Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010). Therefore, to the extent  
10 Plaintiff seeks monetary damages against all Defendants in their official capacities, those  
11 claims are barred by the Eleventh Amendment, and will be dismissed. Plaintiff cannot  
12 cure this deficiency and will not be given leave to amend this claim.

13 In addition to being limited to prospective relief, a plaintiff pursuing defendants in  
14 their official capacities must demonstrate that a policy or custom of the governmental  
15 entity of which the official is an agent was the moving force behind the violation. See  
16 Hafer v. Melo, 502 U.S. 21, 25 (1991); Kentucky v. Graham, 473 U.S. 159, 166 (1985).  
17 That is, the plaintiff must establish an affirmative causal link between the policy at issue  
18 and the alleged constitutional violation. See City of Canton, Ohio v. Harris, 489 U.S. 378,  
19 385, 391-92 (1989); Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996);  
20 Oviatt v. Pearce, 954 F.2d 1470, 1473-74 (9th Cir. 1992). Furthermore, although Plaintiff  
21 is permitted to pursue claims for injunctive relief against state actors in their official  
22 capacities, “[a] plaintiff seeking injunctive relief against the State is not required to allege  
23 a named official’s personal involvement in the acts or omissions constituting the alleged  
24 constitutional violation.” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114,  
25 1127 (9th Cir. 2013) (citing Hafer, 502 U.S. at 25.) “Rather, a plaintiff need only identify  
26 the law or policy challenged as a constitutional violation and name the official within the  
27 entity who can appropriately respond to injunctive relief.” Hartmann, 707 F.3d at 1127  
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1 (citing Los Angeles County v. Humphries, 562 U.S. 29, 35-36 (2010)).

2 Here, Plaintiff has not alleged the existence of any policy or custom that led to his  
3 injuries. All claims against Defendants in their official capacities will therefore be  
4 dismissed with leave to amend.

5 **C. Allegations Against the State of California**

6 Plaintiff names “California” as a defendant. To the extent Plaintiff intends to sue  
7 the state of California, the Eleventh Amendment erects a general bar against federal  
8 lawsuits brought against the state and its agencies. Wolfson v. Brammer, 616 F.3d  
9 1045, 1065-66 (9th Cir. 2010) (citation and quotation marks omitted). While “[t]he  
10 Eleventh Amendment does not bar suits against a state official for prospective relief,”  
11 Wolfson, 616 F.3d at 1065-66, suits against the state or its agencies are barred  
12 absolutely, regardless of the form of relief sought. See, e.g., Pennhurst State School &  
13 Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Buckwalter v. Nevada Bd. of Medical  
14 Examiners, 678 F.3d 737, 740 n.1 (9th Cir. 2012). Thus, Plaintiff may not maintain a  
15 claim against the state of California. This defect is not capable of being cured by  
16 amendment.

17 Plaintiff may be able to proceed against individual agents of the state. However, to  
18 do so, he must link each agent to the alleged unconstitutional conduct. If he is not able  
19 to identify state agents by name, he may proceed against them as Does.

20 **D. Doe Defendants**

21 Plaintiff names Does 1-9, employees of the CDCR, as Defendants. He does not  
22 state the positions they are employed in, their duties and responsibilities, or how they are  
23 in any way connected to Plaintiff.

24 Generally, the use of Doe defendants is disfavored in federal court. Wakefield v.  
25 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (quoting Gillespie v. Civiletti, 629 E.2d  
26 637, 642 (9th Cir. 1980)). The Court cannot order the Marshal to serve process on any  
27 Doe defendants until such defendants have been identified. See, e.g., Castaneda v.  
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1 Foston, No. 1:12-cv-00026 WL 4816216, at \*3 (E.D. Cal. Sept. 6, 2013). Plaintiff may,  
2 under certain circumstances, be given the opportunity to identify unknown defendants  
3 through discovery prior to service. Id. (plaintiff must be afforded an opportunity to identify  
4 unknown defendants through discovery unless it is clear that discovery would not  
5 uncover their identities). However, in order to proceed to discovery, Plaintiff must first  
6 state a cognizable claim. Additionally, Plaintiff must distinguish between Doe  
7 defendants by, for example, referring to them as “John Doe 2,” “John Doe 3,” and so on,  
8 and describe what each did or failed to do to violate Plaintiff’s rights. See Ingram v.  
9 Brewer, No. 1:07-cv-00176-OWW-DLB, 2009 WL 89189 (E.D. Cal. January 12, 2009)  
10 (“In order to state a claim for relief under section 1983, Plaintiff must link each named  
11 defendant with some affirmative act or omission that demonstrates a violation of  
12 Plaintiff’s federal rights.”). Plaintiff’s amended complaint must describe these Doe  
13 Defendants at a higher level of specificity than simply “employees.”

14 **E. Eighth Amendment Conditions of Confinement**

15 **1. Legal Standard**

16 The Eighth Amendment protects prisoners from inhumane conditions of  
17 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).

18 Extreme deprivations are required to make out a conditions of confinement claim,  
19 and only those deprivations denying the minimal civilized measure of life’s necessities  
20 are sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v.  
21 McMillian, 503 U.S. 1, 9 (1992) (citations and quotations omitted). To maintain an Eighth  
22 Amendment claim, a prisoner must show that prison officials were deliberately indifferent  
23 to a substantial risk of harm to his health or safety. See, e.g., Farmer v. Brennan, 511  
24 U.S. 825, 847 (1994); Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster  
25 v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson,  
26 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). The requisite  
27 state of mind is one of subjective recklessness, which entails more than ordinary lack of  
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1 due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), *overruled in part on*  
2 *other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014) (citation and  
3 quotation marks omitted); Wilhelm, 680 F.3d at 1122. Subjective deliberate indifference  
4 involves two parts. Lemire v. Cal. Dept. of Corr. & Rehab., 726 F.3d 1062, 1078 (9th Cir.  
5 2013). Plaintiff must demonstrate first that the risk was obvious or provide other  
6 circumstantial evidence that Defendants were aware of the substantial risk to his health  
7 or safety, and second that there was no reasonable justification for exposing him to that  
8 risk. Id. (citing Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)) (quotation  
9 marks omitted). “Deliberate indifference is a high legal standard.” Toguchi v. Chung,  
10 391 F.3d 1051, 1060 (9th Cir. 2004). “Under this standard, the prison official must not  
11 only ‘be aware of the facts from which the inference could be drawn that a substantial  
12 risk of serious harm exists,’ but that person ‘must also draw the inference.’” Id. at 1057  
13 (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)).

## 14 2. Analysis

15 It is uncontroverted that Valley Fever can pose a serious risk to human health.  
16 See Edison v. United States, 822 F.3d 510, 514 (9th Cir. May 20, 2016) (citing *Morbidity*  
17 *and Mortality Weekly Report: Coccidioidomycosis—California, 1991-1993*, Ctr. for  
18 Disease Control & Prevention (Jun. 17, 1994),  
19 <http://www.cdc.gov/mmwr/preview/mmwrhtml/00031453.htm>); Zurich Ins. Co. v.  
20 Sigourney, 278 F.2d 826, 828 (9th Cir. 1960) (“There seems to be no doubt that  
21 appellee Sigourney is now totally disabled from a disease known as  
22 coccidioidomycosis— called on the West Coast ‘San Joaquin Valley Fever,’ since it is  
23 endemic to that area of California.”); see also Crim v. Int’l Harvester Co., 646 F.2d 161,  
24 162 (5th Cir. May 21, 1981).

25 Neither the Supreme Court nor the Ninth Circuit have decided whether housing  
26 inmates in areas endemic for Valley Fever, a potentially life-threatening illness caused  
27 by a soil-borne fungus, constitutes an Eighth Amendment violation. See Jackson v.  
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1 Brown, 134 F. Supp. 3d 1237, 1240 (E.D. Cal. Sept. 28, 2015) (citing Jones v. Hartley,  
2 No. 1:13-cv-1590-AWI-GSA, 2015 WL 1276708, at \*2-3 (E.D. Cal. Mar. 19, 2015)  
3 (collecting cases)). However, this Court proceeds on the presumption that, where a  
4 plaintiff demonstrates the defendants knew of but were deliberately indifferent to a  
5 substantial risk that Plaintiff would contract Valley Fever if housed at PVSP, he has  
6 sufficiently alleged a cognizable Eighth Amendment claim. See Allen v. Kramer, No. 15-  
7 cv-01609-DAD-MJS, 2016 WL 4613360, at \*6 (E.D. Cal. Aug. 17, 2016) (“Plaintiff has a  
8 right to be free from exposure to an environmental hazard that poses an unreasonable  
9 risk of serious damage to his health whether because the levels of that environmental  
10 hazard are too high for anyone or because Plaintiff has a particular susceptibility)  
11 *findings and recommendations adopted*, Order Adopting, Allen v. Kramer, No. 15-cv-  
12 01609-DAD-MJS, E.D. Cal. Nov. 23, 2016, ECF No. 13.

13           However, for the reasons set forth below, the Court will recommend Plaintiff’s  
14 deliberate indifference claim be dismissed but that he be given leave to amend.

15           Plaintiff alleges, broadly, that all Defendants should have known he faced a  
16 heightened risk of developing Valley Fever because of his own (unspecified) individual  
17 characteristics, the PVSP environment, and the construction activity nearby. He alleges  
18 Defendants nevertheless took no steps to protect him from that risk and that he  
19 developed the very disease caused by exposure to that risk. However, he has not pled  
20 with sufficient specificity how each Defendant was in a position to protect Plaintiff from  
21 that risk and failed to do so. As pled, it is unclear whether Plaintiff is suing them  
22 because they placed him at PVSP knowing he was at risk and knowing construction was  
23 underway, because they approved the nearby construction, because they could have,  
24 but failed to, move him when the risk became apparent, because they could have but  
25 failed to implement precautionary measures at PVCP, or for some other reason. Plaintiff  
26 will be given leave to amend to plead such facts linking each Defendant to the violation  
27 of his rights. He must however state the bases for his beliefs as to each Defendant, not  
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1 just the conclusion that each Defendant was aware and could have acted but did not.

2 **V. Conclusion and Order**

3 Plaintiff's complaint will be dismissed for failure to state a claim upon which relief  
4 may be granted. He will be given thirty days from the date of this order to amend his  
5 complaint if he believes, in good faith, he can cure the identified deficiencies. Akhtar v.  
6 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130-31  
7 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In the  
8 alternative, Plaintiff may file a notice of voluntary dismissal with the Court. If Plaintiff  
9 amends, he may not change the nature of this suit by adding new, unrelated claims in  
10 his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

11 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but  
12 under section 1983, it must state what each named defendant did that led to the  
13 deprivation of Plaintiff's constitutional rights and liability may not be imposed on  
14 supervisory personnel under the theory of *respondeat superior*. Iqbal, 556 U.S. at 676-  
15 77; Starr, 652 F.3d at 1205-07. Although accepted as true, the "[f]actual allegations  
16 must be [sufficient] to raise a right to relief above the speculative level. . . ." Twombly,  
17 550 U.S. at 555 (citations omitted).

18 Finally, an amended complaint supersedes the original complaint, Lacey v.  
19 Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be  
20 "complete in itself without reference to the prior or superseded pleading," Local Rule  
21 220.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend.  
24 2. The Clerk of Court shall send Plaintiff a blank civil rights amended complaint  
25 form and a copy of his April 20, 2017 complaint.  
26 3. Within thirty (30) days from the date of service of this order, Plaintiff must  
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- a. File an amended complaint curing the deficiencies identified by the Court in this order, or
  - b. File a notice of voluntary dismissal; and
4. If Plaintiff fails to file an amended complaint or notify the Court in writing that he wishes to voluntarily dismiss this lawsuit, the undersigned will dismiss the action for failure to obey a Court order and failure to state a claim.

IT IS SO ORDERED.

Dated: August 26, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE