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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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| RAYMOND ALFORD BRADFORD, |) | Case No.: 1:17-cv-01128-SAB (PC) |
| Plaintiff, |) | ORDER DIRECTING CLERK OF COURT TO |
| v. |) | ASSIGN DISTRICT JUDGE |
| C. OGBUEHI, et al. |) | FINDINGS AND RECOMMENDATIONS TO |
| Defendants. |) | DISMISS CERTAIN CLAIMS AND |
| |) | DEFENDANTS |
| |) | (ECF Nos. 13, 17, 18) |
| |) | THIRTY (30) DAY DEADLINE |

**I.
INTRODUCTION**

Plaintiff Raymond Alford Bradford is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On January 18, 2018, the Court issued an order granting Plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a), and screening his complaint. (ECF No. 9.) Plaintiff was found not to state any cognizable claim, but was granted leave to amend his complaint within thirty days. (Id. at 11.)

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1 Plaintiff filed a first amended complaint, on extension, on April 9, 2018. (ECF No. 13.) On
2 August 28, 2018, the Court screened his complaint and found his first amended complaint states a
3 cognizable claim against Defendants Usher, Rimbach, German, Ulit, Spaeth and Sao for violation of
4 the Eighth Amendment based on Plaintiff's allegations related to Valley Fever. However, he did not
5 state a cognizable claim related to lack of adequate medical care for his DVT. (*Id.* at 5.) Therefore, he
6 was ordered to notify the Court whether he wished to proceed on the claim found to be cognizable, or
7 to file a second amended complaint, within thirty days. (*Id.* at 6.)

8 Currently before the Court is Plaintiff's objection to the Court's August 28, 2018 screening
9 order, filed on September 19, 2018. (ECF No. 18.) In his objection, Plaintiff argues that he has
10 sufficiently stated a cognizable claim against all named Defendants.

11 As Plaintiff has elected to stand upon his first amended complaint, the Court issues these
12 findings and recommendations that certain claims and defendants be dismissed from this action for the
13 failure to state a cognizable claim.

14 II.

15 SCREENING REQUIREMENT

16 The Court is required to screen complaints brought by prisoners seeking relief against a
17 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
18 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
19 "frivolous or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[]
20 monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

21 A complaint must contain "a short and plain statement of the claim showing that the pleader is
22 entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
23 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
24 do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*,
25 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally
26 participated in the deprivation of Plaintiff's rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.
27 2002).

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1 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
2 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121
3 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible,
4 which requires sufficient factual detail to allow the Court to reasonably infer that each named
5 defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
6 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not
7 sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying
8 the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

9 III.

10 COMPLAINT ALLEGATIONS

11 Plaintiff is currently incarcerated at R.J. Donovan Correctional Facility, in San Diego,
12 California. His allegations concern events while he was incarcerated at Kern Valley State Prison
13 (“KVSP”), in Delano, California. Plaintiff names the following defendants: (1) I. Usher, a
14 Correctional Counselor at KVSP; (2) S. Rimbach, the Acting Warden at KVSP; (3) K. Brown, the
15 Chief Executive Officer at KVSP; (4) S. Lopez, the Chief Medical Officer at KVSP; (5) M. Spaeth, a
16 physician at KVSP; (6) J. Wong, a physician at KVSP; (7) J. Sao, a physician at KVSP; (8) L. Gant,
17 an LVN-RN at KVSP; (9) J. German, a RN at KVSP; (10) W. Ulit, a physician at KVSP; and (11) C.
18 Ogbuehi, a physician at KVSP. Plaintiff sues these defendants in their individual and official
19 capacities.

20 Plaintiff alleges that he was classified as a high-risk inmate, and was exposed to cocci/Valley
21 Fever. Plaintiff was later diagnosed with Valley Fever and pneumonia in his lungs. Separately,
22 Plaintiff alleges that his sick call slip requesting treatment for his Deep Vein Thrombosis (“DVT”)
23 was not processed. Plaintiff brings a claim under the Eighth Amendment.

24 IV.

25 DISCUSSION

26 A. Official Capacity Claims

27 As noted above, Plaintiff seeks to sue all defendants in their official and individual capacities.
28 He seeks compensatory and punitive damages, and no prospective relief. The Eleventh Amendment

1 bars federal suits for violations of federal law against state officials sued in their official capacities for
2 damages and other retroactive relief. Quern v. Jordan, 440 U.S. 332, 337 (1979); Peralta v. Dillard,
3 744 F.3d 1076, 1084 (9th Cir. 2014) (en banc); Pena v. Gardener, 976 F.2d 469, 472 (9th Cir. 1992).

4 **B. Eighth Amendment – Medical Care**

5 The Eighth Amendment protects against cruel and unusual punishment. U.S. Const. amend.
6 VIII. To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
7 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452
8 U.S. 337, 347 (1981). Under the Eighth Amendment, “prison officials are . . . prohibited from being
9 deliberately indifferent to policies and practices that expose inmates to a substantial risk of serious
10 harm.” Parsons v. Ryan, 754 F.3d 657, 677 (9th Cir. 2014); see also Hellings v. McKinney, 509 U.S.
11 25, 35 (1993); Farmer v. Brennan, 511 U.S. 825, 847 (1994) (prison official violates Eighth
12 Amendment if he or she knows of a substantial risk of serious harm to an inmate and fails to take
13 reasonable measures to avoid the harm).

14 1. Valley Fever

15 Plaintiff first alleges that Defendants Usher, Rimbach, Brown, Ulit, German, Lopez, Spaeth,
16 Sao, Wong, and Ogbuehi were deliberately indifferent with respect to Plaintiff’s exposure to Valley
17 Fever. Where an inmate is challenging the conditions of confinement, he must show there was a
18 deprivation “sufficiently serious” to form the basis of a violation and “the prison official acted “with a
19 sufficiently culpable state of mind.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)_(quoting
20 Wilson v. Seiter, 501 U.S. 294, 298 (1991)). The circumstances, nature, and duration of the
21 deprivations are critical in determining whether the conditions complained of are grave enough to
22 form the basis of a viable Eighth Amendment claim. Johnson, 217 F.3d at 731.

23 Plaintiff alleges that an auditor, M. Escobar, issued a CDCR-128-C3 medical classification
24 chrono, dated October 2, 2014, indicating that Plaintiff is a high medical risk with specialized
25 outpatient (“SOP”) and Cocci Area 2 ineligible. Defendant Usher and Defendant Rimbach had access
26 to Plaintiff’s C-file with this information, and possessed the information pertaining to the Cocci Area 2
27 ineligibility. Knowing this, they nevertheless subjected Plaintiff to Cocci exposure in his housing
28 conditions. On or about September 6, 2015, Plaintiff complained to Defendant German, an RN, about

1 his flu-like symptoms, chest pains, and severe weight loss, but was not given any treatment.
2 Defendant German also failed to process Plaintiff's sick call slips to see the doctor. Defendants Ulit,
3 Spaeth and Sao also denied Plaintiff's emergency medical appeals and 602 appeals requesting
4 treatment for severe weight loss, chest pain, and for preventative measures to prevent Valley Fever. It
5 was not until after submitting several additional sick call slips that Plaintiff was finally taken to a
6 hospital on November 16, 2015, and was diagnosed with Valley Fever and pneumonia in his lungs.

7 At the pleading stage, the Court finds that Plaintiff's amended complaint is sufficient to state
8 cognizable claim against Defendants Usher, Rimbach, German, Ulit, Spaeth and Sao for violation of
9 the Eighth Amendment based on Plaintiff's allegations. He has demonstrated facts showing their
10 knowledge of serious risks to his health and the failure to act.

11 However, Plaintiff has not stated any claim against Defendants Brown, Lopez, Wong, or
12 Ogbuehi. Although Plaintiff alleges that Defendant Brown knew of his Cocci Area 2 ineligibility
13 when he denied Plaintiff's emergency medical appeal seeking to prevent the contraction of Valley
14 Fever, he does not allege facts showing how Defendant Brown knew of his condition. Plaintiff also
15 does not explain how Defendants Lopez, Wong, and Ogbuehi knew about Plaintiff's condition or how
16 they failed to protect him. Conclusory allegations without facts in support are insufficient. In order to
17 form a basis for liability, the plaintiff must demonstrate that each defendant "participated in or directed
18 the violations, or knew of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d
19 1040, 1045 (9th Cir. 1989).

20 2. Deep Vein Thrombosis and Ulcers

21 Plaintiff also alleges that from February 2016 to March 2017, he was suffering from swelling,
22 soreness, and pain from DVT. Defendant Gant knew about Plaintiff's condition, but failed obtain him
23 treatment.

24 It is not clear that Plaintiff's claim against Defendant Gant is properly related to his other
25 allegations in this case. Plaintiff may not bring unrelated claims against unrelated parties in a single
26 action. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George
27 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants
28 so long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and

1 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); Coughlin v.
2 Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity
3 in the factual background of a claim. Id. at 1349.

4 Here, Plaintiff’s other claims all involve his exposure to and contraction of Valley Fever, and
5 the resulting lack of treatment for his symptoms from that illness before he was diagnosed. This claim
6 regarding his DVT does not appear to involve the same facts or circumstances. The mere fact that
7 Plaintiff has multiple medical issues does not mean that all claims regarding his medical issues
8 involving different Defendants are sufficiently related to bring in a single action. This claim appears
9 to belong in a separate action.

10 Also, Plaintiff has not sufficiently stated facts to state a claim against Defendant Gant.
11 Assuming that his swelling, soreness, and pain from DVT presented a serious medical need, Plaintiff
12 does not allege facts showing how Defendant Gant knew of his condition.

13 **C. Retaliation**

14 Plaintiff alleges that Defendant Ulit also denied and delayed treatment to inflict pain and/or
15 punish Plaintiff for filing 602 appeals. Such a conclusory sentence is insufficient to state any claim for
16 retaliation in violation of the First Amendment. “Within the prison context, a viable claim of First
17 Amendment retaliation entails five basic elements: (1) [a]n assertion that a state actor took some
18 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such
19 action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
20 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
21 Cir. 2005). Plaintiff has not pleaded facts to support these elements.

22 **D. Declaratory Judgment**

23 Plaintiff seeks a declaration that his rights were violated. As Plaintiff has been previously
24 informed, if this action reaches trial and a trier of fact returns a verdict in his favor, that will be a
25 finding that his constitutional rights were violated. No declaratory judgment is necessary here. See
26 Eccles v. Peoples Bank of Lakewood Village, 333 U.S. 426, 431 (1948) (equitable relief should only
27 be granted as a matter of judicial discretion and in the public interest); United States v. Washington,

1 759 F.2d 1353, 1357 (9th Cir. 1985) (declaratory relief should be denied when it will serve no useful
2 purpose).

3 **V.**

4 **SANCTIONABLE CONDUCT**

5 As discussed above, Plaintiff filed an objection to the Court’s screening order. (ECF No. 18.)
6 In that order, Plaintiff used inappropriate language, referring to the Court as a “bonehead.” (Id. at 1.)

7 Inappropriate language and harassing conduct will not be tolerated, and is sanctionable. The
8 Court has had issues with Plaintiff making similar comments in other actions. See Raymond Alford
9 Bradford v. E. Kvichko, Case No. 1:16-cv-01077-LJO-SAB (PC) (E.D. Cal.). This will be Plaintiff’s
10 only warning that he must conduct himself respectfully and with decorum, or his action will be
11 dismissed.

12 **VI.**

13 **CONCLUSION**

14 Accordingly, the Clerk of the Court is **HEREBY DIRECTED** to randomly assign a Fresno
15 District Judge to this action.

16 Further, for the reasons discussed above, **IT IS HEREBY RECOMMENDED** that:

- 17 1. This action proceed on Plaintiff’s claim against Defendants Usher, Rimbach, German,
18 Ulit, Spaeth and Sao for violation of the Eighth Amendment, in their individual capacities; and
19 2. All other claims and defendants be dismissed for failure to state a claim upon which
20 relief could be granted.

21 These findings and recommendations will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within **thirty (30) days**
23 after being served with these Finding and Recommendations, Plaintiff may file written objections with
24 the Court. The document should be captioned “Objections to Findings and Recommendations.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: September 21, 2018


UNITED STATES MAGISTRATE JUDGE