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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RAY DEERE, Sr.,  
Plaintiff,  
v.  
UNKNOWN CDC EMPLOYEES, et al.,  
Defendants.

No. 2:16-cv-1694 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff’s complaint is before the court for screening. In his complaint, plaintiff alleges the air quality at Mule Creek State Prison (“MCSP”) was so poor that it worsened his Chronic Obstructive Pulmonary Disease (“COPD”) and his overall health. For the reasons set forth below, the court grants plaintiff’s application to proceed in forma pauperis and dismisses his complaint with leave to amend.

**IN FORMA PAUPERIS**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
2 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
6 1915(b)(2).

## 7 **SCREENING**

### 8 **I. Legal Standards**

9 The court is required to screen complaints brought by prisoners seeking relief against a  
10 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
11 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
12 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
20 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
25 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
26 than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
27 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550  
28 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the

1 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
2 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
3 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

4 The Civil Rights Act under which this action was filed provides as follows:

5 Every person who, under color of [state law] . . . subjects, or causes  
6 to be subjected, any citizen of the United States . . . to the  
7 deprivation of any rights, privileges, or immunities secured by the  
8 Constitution . . . shall be liable to the party injured in an action at  
9 law, suit in equity, or other proper proceeding for redress.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
13 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
14 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
15 omits to perform an act which he is legally required to do that causes the deprivation of which  
16 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
18 their employees under a theory of respondeat superior and, therefore, when a named defendant  
19 holds a supervisory position, the causal link between him and the claimed constitutional  
20 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
21 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
22 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
23 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

## 24 **II. Allegations of the Complaint**

25 Plaintiff alleges that he suffered worsening of his COPD and other health problems due to the  
26 poor air quality in his cell and in the day room at MCSP.<sup>1</sup> Plaintiff identifies as defendants  
27 "Unknown CDC Employees" and the Prison Law Office ("PLO"). Plaintiff states that he is  
28 uncertain who to name in the prison system and asks whether the governor, director of the

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<sup>1</sup> According to notices filed by plaintiff on February 27, 2017, he is currently incarcerated at the California Institution for Men in Chino. (ECF Nos. 10, 11.)

1 California Department of Corrections and Rehabilitation (“CDCR”), or warden are proper  
2 defendants. Plaintiff states that he has named the PLO because, as counsel for the plaintiff class  
3 in Plata v. Brown, the PLO had an obligation to bring the air quality problems at MCSP to the  
4 attention of the courts.

5 For relief, plaintiff seeks injunctive relief in the form of: (1) an order requiring MCSP to be  
6 compliant with federal air quality standards; (2) a 30-day monitor of MCSP for “water, air,  
7 medical, food service areas;” and (3) the assignment of new attorneys for the Plata plaintiffs.  
8 Plaintiff also states that the court should decide if plaintiff is due damages.

### 9 **III. Does Plaintiff State a Cognizable Claim?**

#### 10 **A. Unidentified Defendants**

11 There is no provision in the Federal Rules of Civil Procedure for including unnamed  
12 defendants, also called “Doe” defendants, in a complaint. The use of Does in pleading practice is  
13 generally disfavored – but it is not prohibited. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th  
14 Cir. 1980); Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999); Lopes v. Viera, 543 F.  
15 Supp.2d 1149, 1152 (E.D. Cal. 2008). However, plaintiff must allege facts showing when, where,  
16 and how each Doe defendant violated his constitutional rights. See Addis v. Ariz. Dept. of  
17 Corrs., No. CV14-1115-PHX-DGC, 2015 WL 875233, at \*3 (D. Ariz. Mar. 2, 2015). Under  
18 Section 1983, plaintiff must demonstrate that each defendant personally participated in the  
19 deprivation of his rights. See Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). In other  
20 words, there must be an actual connection or link between the actions of the defendants and the  
21 deprivation alleged to have been suffered by plaintiff. See Monell, 436 U.S. at 691, 695.

22 Plaintiff fails to identify any specific action, or inaction, by any specific unnamed  
23 defendant. Plaintiff fails to plead facts supporting a claim that he was exposed to a known risk,  
24 that a defendant knowingly and purposefully declined to act to prevent his exposure to it, and that  
25 such a failure caused actual harm to plaintiff. Plaintiff will be given leave to amend his complaint  
26 to specify what defendants have done.

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1           **B. Prison Law Office**

2           Plaintiff contends the PLO is not properly representing the plaintiffs in the Plata v. Brown  
3 class action. The Plata class action deals with the constitutional adequacy of CDCR's inmate  
4 medical health care, and the class consists of “all prisoners in the custody of the [CDCR] with  
5 serous medical needs.” See Lopez v. Ndo, No. 16-cv-0011-AWI-JLT, 2016 WL 3418432, at \*1  
6 (E.D. Cal. June 22, 2016) (citing Stip. for Inj. Relief 5, No. 24, No. 01-cv-01351 THE (N.D.  
7 Cal.)). Plaintiff’s claim against the PLO is not cognizable in this case.

8           To the extent plaintiff is seeking rights under the remedial order issued in Plata, plaintiff  
9 does not indicate that he is, in fact, a member of the Plata class. Moreover, it is well-settled that  
10 the remedial order issued in Plata does not provide an independent cause of action under § 1983  
11 as the order does not create or expand on a plaintiff’s constitutional rights. Coleman v. CDCR,  
12 No. 09-cv-02192-SKO PC, 2011 WL 2619569, at \*4 (E.D. Cal. July 1, 2011) (citing Cagle v.  
13 Sutherland, 334 F.3d 980, 986-87 (9th Cir. 2003) (consent decrees often go beyond constitutional  
14 minimum requirements, and do not create or expand rights)); see also Green v. McKaskle, 788  
15 F.2d 1116, 1123 (5th Cir. 1986) (remedial decrees remedy constitutional violations but do not  
16 create or enlarge constitutional rights and cannot serve as a substantive basis for damages).  
17 Finally, if plaintiff has concerns about the actions of class counsel in Plata, he should express  
18 those concerns to the class representative or court in that case.

19           Plaintiff’s claims against the PLO will be dismissed without leave to amend because, as  
20 stated above, plaintiff has no viable claim here against the PLO for enforcement of the Plata  
21 remedial order. See Hartmann v. Cal. Dept. of Corrs. and Rehab., 707 F.3d 1114, 1130 (9th Cir.  
22 2013) (“A district court may deny leave to amend when amendment would be futile.”); Jones v.  
23 Bernanke, 685 F. Supp. 2d 31, 35 (D. D.C. 2010).

24           **C. Legal Claim**

25           Plaintiff appears to be alleging that the conditions of his confinement constituted cruel and  
26 unusual punishment, a violation of his Eighth Amendment rights. “[A] prison official may be  
27 held liable under the Eighth Amendment for denying humane conditions of confinement only if  
28 he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to

1 take reasonable measures to abate it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994). To state a  
2 claim for threats to safety, an inmate must allege facts to support that he was incarcerated under  
3 conditions posing a substantial risk of harm and that prison officials were “deliberately  
4 indifferent” to those risks. Id. at 834; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). To  
5 adequately allege deliberate indifference, a plaintiff must set forth facts to support that a  
6 defendant knew of, but disregarded, an excessive risk to inmate safety. Farmer, 511 U.S. at 837.  
7 That is, “the official must both be aware of facts from which the inference could be drawn that a  
8 substantial risk of serious harm exists, and he must also draw the inference.” Id.

9 Plaintiff’s complaint currently identifies no conduct by any defendant that states a claim  
10 under this Eighth Amendment standard. Plaintiff must identify at least one person who was  
11 aware of the air quality problems plaintiff alleges, knew those air quality issues could or did  
12 affect inmate health, had the authority to take action to remedy the problem, and failed to take  
13 that action. Plaintiff will be given an opportunity to amend his complaint to identify defendants  
14 and state a cognizable Eighth Amendment claim.

#### 15 **D. Relief Sought**

16 Because plaintiff is no longer incarcerated at MCSP, his requests for injunctive relief will  
17 be dismissed as moot. Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995) (citing Preiser v.  
18 Newkirk, 422 U.S. 395, 402-03 (1975)). Plaintiff has not specifically sought damages. If he  
19 wishes to proceed with this action, and if plaintiff believes he is entitled to compensatory or  
20 punitive damages as a result of the alleged violation of his constitutional rights, he should so state  
21 in a clear fashion in the space provided on the form complaint and indicate the specific amount in  
22 damages that he seeks.

#### 23 **IV. Conclusion**

24 Plaintiff’s complaint will be dismissed with leave to amend. Plaintiff is advised that in an  
25 amended complaint he must clearly identify each defendant and the action that defendant took  
26 that violated his constitutional rights. The court is not required to review exhibits to determine  
27 what plaintiff’s charging allegations are as to each named defendant. Therefore, plaintiff’s  
28 attachments to his fourth amended complaint were not considered part of his claims. If plaintiff

1 wishes to add a claim, he must include it in the body of the complaint. The charging allegations  
2 must be set forth in the amended complaint so defendants have fair notice of the claims plaintiff is  
3 presenting. That said, plaintiff need not provide every detailed fact in support of his claims.

4 Rather, plaintiff should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

5 Any amended complaint must show the federal court has jurisdiction, the action is brought  
6 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
7 contain a request for particular relief. Plaintiff must identify as a defendant only persons who  
8 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
9 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
10 of a constitutional right if he does an act, participates in another's act or omits to perform an act  
11 he is legally required to do that causes the alleged deprivation).

12 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
13 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
14 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
15 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

16 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
17 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
18 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
19 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
20 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
21 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,  
22 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8.

23 An amended complaint must be complete in itself without reference to any prior pleading.  
24 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.

25 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and  
26 has evidentiary support for his allegations, and for violation of this rule the court may impose  
27 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
2. Plaintiff’s claims against the Prison Law Office are dismissed without leave to amend; in all other respects, plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend.
3. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled “First Amended Complaint.” Plaintiff must file an original and two copies of the amended complaint. Failure to file an amended complaint in accordance with this order may result in dismissal of this action.
4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

Dated: March 27, 2017

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:9  
DLB1/prisoner-civil rights/deer1694.scrn