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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ADAM JIMENEZ,  
CDCR #F-29610,

Plaintiff,

vs.

FOUR UNNAMED EMPLOYEES OF  
THE CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION,

Defendants,

Civil No. 15-cv-02493-BAS(KSC)

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
PURSUANT TO 28 U.S.C. § 1915(a)**

**AND**

**(2) SUA SPONTE DISMISSING  
CIVIL ACTION FOR FAILING TO  
STATE A CLAIM PURSUANT TO  
28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

Adam Jimenez (“Plaintiff”), a California state prisoner currently incarcerated at Lancaster State Prison (“Lancaster”) in Lancaster, California, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff alleges he was housed at the R.J. Donovan Correctional Facility (“Donovan”) in San Diego, California, from 2006 to 2008, where he had pre-existing medical conditions which placed him at a heightened risk of developing, and more susceptible to the effects of, Valley Fever, but Donovan prison officials transferred him to Kern Valley State Prison (“Kern Valley”) in Delano, California, despite his medical condition and the risk of contracting Valley Fever at Kern Valley. (Compl. at 3-4.) Plaintiff alleges he contracted

1 Valley Fever while at Kern Valley but did not receive medical treatment there, and was  
2 then transferred to Lancaster “as a ‘high-risk’ medical [inmate]” where he is currently  
3 not receiving treatment. (*Id.* at 4-5.)

4 Plaintiff claims that members of the Donovan Institutional Classification  
5 Committee (“ICC”) which transferred him to Kern Valley violated his Eighth  
6 Amendment rights because they were deliberately indifferent to his serious medical  
7 needs (Count 1), and subjected him to cruel and unusual punishment (Count 2), by  
8 transferring him “despite the knowledge of the serious risk of exposure to valley fever.”  
9 (*Id.* at 3-4.) He claims in Count 3 that he received negligent medical care in violation  
10 of the Eighth Amendment at Kern Valley and Lancaster because he did not receive  
11 treatment for Valley Fever. (*Id.* at 5.) He lists as Defendants four unnamed employees  
12 of the California Department of Corrections and Rehabilitation (“CDCR”), but does not  
13 identify which Defendants took which actions alleged in the Complaint. (*Id.* at 2.) He  
14 seeks an injunction requiring proper medication and prohibiting retaliation, as well as  
15 compensatory and punitive damages. (*Id.* at 7.)

16 Plaintiff has not paid the civil filing fees required by 28 U.S.C. § 1914(a) to  
17 commence a civil action; instead he has filed a Motion to Proceed In Forma Pauperis  
18 (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF No. 2.)

### 19 **I. MOTION TO PROCEED IFP**

20 All parties instituting any civil action, suit, or proceeding in a district court of the  
21 United States must pay a filing fee. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed  
22 despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed  
23 IFP pursuant to 28 U.S.C. § 1915(a). *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir.  
24 1999). However, if the plaintiff is a prisoner, as Plaintiff is here, even if he is granted  
25 leave to proceed IFP, he remains obligated to pay the full entire fee in “increments,” *see*

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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional  
28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a)-(c) (Judicial Conference Schedule  
of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50  
administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his  
2 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2).

3 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
4 (“PLRA”), prisoners seeking leave to proceed IFP must submit a “certified copy of the  
5 trust fund account statement (or institutional equivalent) for the . . . 6-month period  
6 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews*  
7 *v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement,  
8 the Court assesses an initial payment of 20 percent of (a) the average monthly deposits  
9 in the account for the past six months, or (b) the average monthly balance in the account  
10 for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28  
11 U.S.C. § 1915(b)(1) & (4). The institution having custody of the prisoner then collects  
12 subsequent payments, assessed at 20 percent of the preceding month’s income, in any  
13 month in which the prisoner’s account exceeds \$10, and forwards those payments to the  
14 Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

15 In support of his IFP Motion, Plaintiff has submitted a prison certificate attesting  
16 to his trust account balance and activity for the six-month period prior to the filing of his  
17 Complaint as required by 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. This  
18 certificate shows that Plaintiff has had no monthly deposits, has carried no balance, and  
19 had no available funds to his credit at the time of filing. Therefore, the Court **GRANTS**  
20 Plaintiff’s Motion to Proceed IFP (ECF No. 2), and assesses no initial partial filing fee  
21 per 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event  
22 shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal  
23 judgment for the reason that the prisoner has no assets and no means by which to pay the  
24 initial partial filing fee.”); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002)  
25 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a  
26 prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds available  
27 to him when payment is ordered.”) However, the entire \$350 balance of the filing fees  
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1 due for this case must be collected by the CDCR and forwarded to the Clerk of the Court  
2 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1) & (2).

3 **II. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) AND § 1915A**

4 “The court shall review, before docketing, if feasible or, in any event, as soon as  
5 practicable after docketing,” complaints filed by all persons proceeding IFP, and by  
6 those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of,  
7 convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or  
8 the terms and conditions of parole, probation, pretrial release, or diversionary program.”  
9 See 28 U.S.C. §§ 1915(e)(2) and 1915A. The Court must sua sponte dismiss complaints,  
10 or any portions thereof, which are frivolous, malicious, fail to state a claim, or which  
11 seek damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and  
12 1915A(b); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc).

13 All complaints must contain “a short and plain statement of the claim showing  
14 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
15 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported  
16 by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
17 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining  
18 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
19 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*  
20 at 679. The “mere possibility of misconduct” falls short of meeting the *Iqbal* plausibility  
21 standard. *Id.*; see also *Moss v. U. S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

22 “When there are well-pleaded factual allegations, a court should assume their  
23 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
24 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
25 (“Under § 1915A, when determining whether a complaint states a claim, a court must  
26 accept as true all allegations of material fact and must construe those facts in the light  
27 most favorable to the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.  
28 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil

1 Procedure 12(b)(6)"). However, while the court has an "obligation . . . where the  
2 petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally  
3 and to afford the petitioner the benefit of any doubt," *Hebbe v. Pliler*, 627 F.3d 338, 342  
4 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en  
5 banc)), it may not, in so doing, "supply essential elements of the claim that were not  
6 initially pled." *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.  
7 1982).

8 "Section 1983 creates a private right of action against individuals who, acting  
9 under color of state law, violate federal constitutional or statutory rights." *Devereaux*  
10 *v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 "is not itself a source of  
11 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
12 conferred." *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks  
13 and citations omitted). "To establish § 1983 liability, a plaintiff must show both  
14 (1) deprivation of a right secured by the Constitution and laws of the United States, and  
15 (2) that the deprivation was committed by a person acting under color of state law."  
16 *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

17 **A. Plaintiff's Allegations**

18 Plaintiff alleges that while housed at Donovan from 2006 to 2008, he suffered  
19 from Hepatitis C and other pre-existing "health problems" which increased his risk of  
20 developing Valley Fever and increased his susceptibility to its effects. (Compl. at 3.)  
21 He alleges that the members of the Donovan ICC, "in spite of" his pre-existing medical  
22 conditions, and "with knowledge of the serious risk of substantial harm posed by valley  
23 fever, unreasonably and with deliberate indifference exposed [him] to the risk of  
24 contraction by transferring [him] to Kern Valley State Prison in [November 2008], as a  
25 result, [he] contracted valley fever at Kern Valley State Prison." (*Id.* at 3-4.)

26 Plaintiff alleges that "[w]hile at Kern Valley State Prison [his] health was rapidly  
27 declining. [His] health problems consisted of difficulty in breathing, extreme spine joint  
28 and muscle pain. . . . [He] had severe bowel irritation and pain, mental anguish, distress,

1 agitation and frustration . . . [His] physical mobility was significantly impaired. . . . [his]  
2 right visual acuity was also compromised. . . . [his] left eye was then compromised.” (*Id.*  
3 at 4.) Plaintiff states that he was referred to various specialists at Kern Valley and  
4 eventually tested positive for Valley Fever. (*Id.*) He alleges that after he was diagnosed  
5 with Valley Fever he was told by his primary care provider at Kern Valley that he “was  
6 not going to be medicated because the coccidiomycosis titers were not that high on the  
7 reference range.” (*Id.* at 5.) He alleges he was thereafter transferred to Lancaster “as a  
8 ‘high-risk’ medical,” where he is “currently being denied Valley Fever medication.”  
9 (*Id.*) Finally, he alleges that “Lancaster has moderate levels of coccidiomycosis. This  
10 transfer did not cure [him] and it exposed [him] to even more cocci. [He is] still  
11 experiencing symptoms from the cocci.” (*Id.*)

## 12 **B Individual Liability and Causation**

13 The only Defendants identified in the Complaint are four unnamed employees of  
14 the CDCR. (Compl. at 2-3.) It is unclear whether these employees are persons who sat  
15 on the Donovan ICC which ordered Plaintiff’s transfer, or whether they are medical  
16 providers at Kern Valley or Lancaster. (*See id.* at 3-5.) Even if the Court could discern  
17 who Plaintiff intended to name as Defendants, Plaintiff merely alleges that the members  
18 of the Donovan ICC acted “despite the knowledge of the serious risk of exposure to  
19 valley fever to plaintiff,” and “in spite of the fact” that Plaintiff suffered from medical  
20 conditions which apparently increased his risk of acquiring or being affected by Valley  
21 Fever more than someone without those pre-existing conditions. (*Id.* at 3-4.) “Because  
22 vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each  
23 Government-official defendant, through the official’s own individual actions, has  
24 violated the Constitution.” *Iqbal*, 556 U.S. at 676. The Complaint contains no “further  
25 factual enhancement,” *id.*, which describes how, or to what extent, any of the individuals  
26 referenced in the Complaint became aware of, or were actually aware of, his alleged  
27 serious medical needs.

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1 “Causation is, of course, a required element of a § 1983 claim.” *Estate of Brooks*  
2 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). “The inquiry into causation must  
3 be individualized and focus on the duties and responsibilities of each individual  
4 defendant whose acts or omissions are alleged to have caused a constitutional  
5 deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*,  
6 423 U.S. 362, 370-71, 375-77 (1976)). Plaintiff includes no detail as to what the  
7 unnamed members of the Donovan ICC knew about his health conditions or the risk of  
8 sending him to Kern Valley, or how they came about that knowledge. Neither does he  
9 allege who at Kern Valley or Lancaster have denied him treatment for Valley Fever.  
10 Rather, Plaintiff purportedly seeks to sue Defendants based on the positions they hold  
11 and not because of any individually identifiable constitutional misconduct alleged to  
12 have caused him injury. As such, his allegations are insufficient to state a section 1983  
13 claim. *Iqbal*, 662 U.S. at 678 (noting that Fed. R. Civ. P. 8 “demands more than an  
14 unadorned, the-defendant-unlawfully-harmed-me accusation.”) “To survive a motion  
15 to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state  
16 a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

17 Accordingly, Plaintiff’s Complaint requires dismissal on this basis pursuant to 28  
18 U.S.C. § 1915(e)(2) and § 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Rhodes v.*  
19 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010).

### 20 **C. Inadequate Medical Care Claim**

21 Even if Plaintiff intended to name as Defendants the unnamed members of the  
22 Donovan ICC who transferred him, or his unnamed primary care providers at Kern  
23 Valley and Lancaster who have allegedly not provided him with medical care, he has still  
24 failed to state a plausible Eighth Amendment claim against any of those persons. Only  
25 “deliberate indifference to serious medical needs of prisoners constitutes the unnecessary  
26 and wanton infliction of pain proscribed by the Eighth Amendment.” *Estelle v. Gamble*,  
27 429 U.S. 97, 104 (1976) (citation and internal quotation marks omitted). “A  
28 determination of ‘deliberate indifference’ involves an examination of two elements: the

1 seriousness of the prisoner’s medical need and the nature of the defendant’s response to  
2 that need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on other  
3 grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

4 “Because society does not expect that prisoners will have unqualified access to  
5 health care, deliberate indifference to medical needs amounts to an Eighth Amendment  
6 violation only if those needs are ‘serious.’” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)  
7 (citing *Gamble*, 429 U.S. at 103-04). “A ‘serious’ medical need exists if the failure to  
8 treat a prisoner’s condition could result in further significant injury or the ‘unnecessary  
9 and wanton infliction of pain.’” *McGuckin*, 974 F.2d at 1059 (quoting *Gamble*, 429 U.S.  
10 at 104).

11 Plaintiff’s allegations regarding his contraction of Valley Fever and the effects it  
12 has had on his medical condition (Compl. at 3-5), are sufficient to plead an objectively  
13 serious medical need. *McGuckin*, 974 F.2d at 1059-60 (“The existence of an injury that  
14 a reasonable doctor or patient would find important and worthy of comment or treatment;  
15 the presence of a medical condition that significantly affects an individual’s daily  
16 activities; or the existence of chronic and substantial pain are examples of indications  
17 that a prisoner has a ‘serious’ need for medical treatment.”) However, even assuming  
18 Plaintiff’s medical needs are sufficiently serious, his Complaint still fails to include any  
19 further “factual content” to show that any Defendant acted with “deliberate indifference  
20 to [his] serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)  
21 (quoting *Gamble*, 429 U.S. at 104).

22 While Plaintiff concludes he is “currently being denied Valley Fever medication  
23 here at Lancaster State Prison,” and was “informed [by his primary care provider at Kern  
24 Valley] that I was not going to be medicated because the coccidiomycosis titers were  
25 not that high on the reference range,” his Complaint lacks any specific allegations that  
26 the failure to provide him with “medication for Valley Fever” was a result of indifference  
27 rather than negligence or a disagreement regarding proper treatment. *Iqbal*, 556 U.S. at  
28 678 (citing *Twombly*, 550 U.S. at 557). This is because to be deliberately indifferent, a



1 Defendant’s acts or omissions must involve more than an ordinary lack of due care, as  
2 “[a] difference of opinion” between a doctor and an inmate, or even between medical  
3 professionals, regarding what medical care is appropriate “does not amount to a  
4 deliberate indifference.” *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989) (citing  
5 *Gamble*, 429 U.S. at 107).

6 Plaintiff’s Complaint contains no facts sufficient to show that his “primary care  
7 provider” acted with deliberate indifference to his plight by “know[ing] of and  
8 disregard[ing] an[y] excessive risk to his health and safety.” *Farmer v. Brennan*, 511  
9 U.S. 825, 837 (1994). Indeed, the allegations describe “medical negligence” by failing  
10 to provide Plaintiff with treatment for Valley Fever and by transferring him to Lancaster  
11 (see Compl. at 5), but a § 1983 claim cannot sound merely in negligence. See *Toguchi*  
12 *v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in diagnosing or  
13 treating a medical condition, without more, does not violate a prisoner’s Eighth  
14 Amendment rights.”) (quoting *McGuckin*, 974 F.2d at 1059). “Deliberate indifference,”  
15 on the other hand, “is a high legal standard,” and claims of medical malpractice or  
16 negligence are insufficient to establish a constitutional deprivation. *Simmons v. Navajo*  
17 *Cnty.*, 609 F.3d 1011, 1019 (9th Cir. 2010) (citing *Toguchi*, 391 F.3d at 1060).  
18 Similarly, Plaintiff has failed to set forth specific allegations regarding what or how the  
19 members of the Donovan ICC knew about his medical condition, what and how they  
20 knew of the risk of contracting Valley Fever at Kern Valley, and what and how they  
21 knew of any potential risk to his health by transferring him there. See *Farmer*, 511 U.S.  
22 at 837 (prison officials must know of and act with deliberate indifference to medical  
23 needs in order to violate the Eighth Amendment); see also *Iqbal*, 556 U.S. at 678  
24 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
25 statements, do not suffice.”)

26 Accordingly, the Court finds that Plaintiff’s Complaint fails to state an Eighth  
27 Amendment inadequate medical care claim and is subject to *sua sponte* dismissal in its  
28 entirety pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). See *Lopez*, 203

1 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004. Because Plaintiff is proceeding without  
2 counsel, the Court has provided him “notice of the deficiencies in his complaint in order  
3 to ensure [he] uses the opportunity to amend effectively,” and will grant him an  
4 opportunity to amend his Complaint. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.  
5 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

### 6 **III. CONCLUSION AND ORDER**

7 Good cause appearing, the Court:

8 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C.  
9 § 1915(a) (ECF No. 2).

10 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from  
11 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing  
12 monthly payments from his account in an amount equal to twenty percent (20%) of the  
13 preceding month’s income and forwarding those payments to the Clerk of the Court each  
14 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL  
15 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
16 ASSIGNED TO THIS ACTION.


17 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott  
18 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

19 4. **DISMISSES** Plaintiff’s Complaint for failing to state a claim upon which  
20 relief may be granted pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and **GRANTS**  
21 Plaintiff forty-five (45) days leave from the date of this Order in which to file an  
22 Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff’s  
23 Amended Complaint must be complete in itself without reference to his original  
24 pleading. Defendants not named and any claims not re-alleged in the Amended  
25 Complaint will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios,*  
26 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended  
27 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.  
28 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an

1 amended pleading may be considered “waived if not replied.”) The Clerk of Court will  
2 send Petitioner a blank Southern District of California amended complaint form along  
3 with a copy of this Order.

4 **IT IS SO ORDERED.**

5 DATED: February 25, 2016

  
6 **Hon. Cynthia Bashant**  
7 **United States District Judge**

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