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

ADAM JIMENEZ,  
  
Plaintiff,  
  
v.  
  
TONYA ROTHCHILD, *et al.*,  
  
Defendants.

Case No.: 15-cv-02493-BAS-AGS  
**ORDER:**  
**(1) ADOPTING REPORT AND RECOMMENDATION (ECF No. 45);**  
**(2) GRANTING DEFENDANTS' MOTION TO DISMISS (ECF No. 24); AND**  
**(3) DENYING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE SECOND AMENDED COMPLAINT (ECF No. 61)**

**I. BACKGROUND**

On November 13, 2015, Plaintiff Adam Jimenez filed a Complaint alleging wrongful transfer to Kern Valley State Prison, which caused him to contract Valley Fever, and medical negligence, claiming prison doctors failed to properly medicate him once he contracted the Valley Fever. (ECF No. 1.) The Court granted Mr.

1 Jimenez’s request to proceed in forma pauperis, but sua sponte dismissed the  
2 Complaint. (ECF No. 3.)

3 On the issue of medical negligence, the Court noted that “only ‘deliberate  
4 indifference to serious medical needs of prisoners constitutes the unnecessary and  
5 wanton infliction of pain proscribed by the Eight Amendment’” and that Mr.  
6 Jimenez’s Complaint “lacks any specific allegations that the failure to provide him  
7 with medication for Valley Fever was a result of indifference rather than negligence  
8 or a disagreement regarding proper treatment.” (ECF No. 3 (quoting *Estelle v.*  
9 *Gamble*, 429 U.S. 97, 104 (1976)).) Nonetheless, the Court gave Mr. Jimenez leave  
10 to file an amended Complaint.

11 Mr. Jimenez filed a First Amended Complaint (“FAC”) again alleging a  
12 wrongful transfer to a prison where he contracted Valley Fever, as well as medical  
13 negligence. (ECF No. 13.) As to the latter cause of action, Mr. Jimenez alleges that  
14 at Lancaster State Prison he has “been denied Valley Fever medications by Dr. Ha,  
15 Dr. Lee, Dr. Bailey who all work as medical doctors here at Lancaster.” (*Id.*) None  
16 of these doctors is currently named in the FAC. Neither Lancaster nor Kern Valley  
17 State Prisons is in the Southern District of California.

18 On July 14, 2017, Magistrate Judge Schopler issued a Report and  
19 Recommendation (“R&R”) recommending that the Court grant the Motion to  
20 Dismiss, dismissing the claims relating to Mr. Jimenez’s transfer to a prison where  
21 he was more likely to contract Valley Fever on the grounds of qualified immunity.  
22 (ECF No. 45.) On the issue of medical negligence, Judge Schopler concluded that  
23 while “the denial of medication alone does not necessarily demonstrate constitutional  
24 ‘deliberate indifference,’ Jimenez should be allowed to amend his complaint one last  
25 time, as to this sole claim.” (ECF No. 45.)

26 Mr. Jimenez requested additional time to object to the R&R, twice, and filed  
27 his Objections to the R&R (“Objections”) on September 29, 2017 (ECF No. 58),  
28 which the Court deemed timely (ECF No. 59). Interestingly, Defendants J. Silva, E.

1 Ravelo, K. Reid and T. Rothchild, who are not currently named as individuals  
2 responsible for the alleged denial of medication, also objected to the Magistrate  
3 Judge’s recommendation to allow Mr. Jimenez to amend one last time. (ECF No.  
4 46.)

## 6 **II. LEGAL STANDARD**

7 The Court reviews *de novo* those portions of a Magistrate Judge’s R&R to  
8 which objections are made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject,  
9 or modify, in whole or in part, the findings or recommendations made by the  
10 magistrate judge.” *Id.* “The statute [28 U.S.C. § 636(b)(1)(c)] makes it clear,”  
11 however, “that the district judge must review the magistrate judge’s findings and  
12 recommendations *de novo if objection is made*, but not otherwise.” *United States v.*  
13 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original);  
14 *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003)  
15 (concluding that where no objections were filed, the district court had no obligation  
16 to review the magistrate judge’s report). “Neither the Constitution nor the statute  
17 requires a district judge to review, *de novo*, findings and recommendations that the  
18 parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121. This rule of  
19 law is well-established in the Ninth Circuit and this district. *See Wang v. Masaitis*,  
20 416 F.3d 992, 1000 n.13 (9th Cir. 2005) (“Of course, *de novo* review of a R & R is  
21 only required when an objection is made to the R & R.”); *Nelson v. Giurbino*, 395 F.  
22 Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopting report in its entirety  
23 without review because neither party filed objections to the report despite the  
24 opportunity to do so).

25 Objections must be written and specific. *See, e.g.*, Fed. R. Civ. Pr. 72(b)(2)  
26 (“[A] party may serve and file specific written objections to the proposed findings  
27 and recommendations” of the magistrate judge). “Numerous courts have held that a  
28 general objection to the entirety of a Magistrate Judge’s [report and recommendation]

1 has the same effect as a failure to object.” *Alcantara v. McEwen*, No. 12-cv-401,  
2 2013 WL 4517861, at \*1 (S.D. Cal. August. 15, 2013) (citing cases). In the absence  
3 of specific objection, the clear weight of authority indicates that the court need only  
4 satisfy itself that there is no “clear error” on the face of the record before adopting  
5 the magistrate judge’s recommendation. *See, e.g.*, Fed. R. Civ. P. 72(b) Advisory  
6 Comm. Notes (1983) (citing *Campbell v. United States Dist. Court*, 501 F.3d 5, 7  
7 (9th Cir. 1974)).

### 8 9 **III. ANALYSIS**

#### 10 **A. Qualified Immunity**

11 Mr. Jimenez objects only to Magistrate Judge Schopler’s analysis on qualified  
12 immunity in the R&R. (ECF No. 58 at 1.) Therefore, the Court turns to the  
13 Magistrate Judge’s reasons for recommending dismissal with respect to qualified  
14 immunity.

15 Under the qualified immunity doctrine, government officials acting in their  
16 official capacities are immunized from civil liability unless their actions “violate  
17 clearly establish statutory or constitutional rights of which a reasonable person would  
18 have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citations omitted).  
19 The qualified immunity analysis includes two prongs: (1) the facts must allege or  
20 show “a violation of a constitutional right”; and (2) the right must be “‘clearly  
21 established’ at the time of defendant’s alleged misconduct.” *Id.* (citations omitted).  
22 “[P]laintiff bears the burden of proof that the right allegedly violated was clearly  
23 established.” *Tarabochia v. Adkins*, 766 F.3d 1115, 1125 (9th Cir. 2014) (citation  
24 omitted).

25 Magistrate Judge Schopler recommends granting the Motion to Dismiss on the  
26 grounds of qualified immunity with respect to the issue of the transfer to a prison  
27 where Mr. Jimenez may have been more likely to contract Valley Fever. (ECF No.  
28 45.) While he recognizes that inmates “certainly have a right to be free from

1 concentrated exposure to serious diseases,” he also explains that this right is less clear  
2 when applies to a “*generalized* disease exposure,” which is at issue here. (ECF No.  
3 45 at 3.) The Magistrate Judge further recognizes that many federal courts have  
4 failed to establish a clear right in Valley Fever cases, including those cases where the  
5 prisoner is more susceptible to contracting the disease, and that “many courts have  
6 found no such clearly established right.” (*Id.*) Judge Schopler concludes that the  
7 Court should “not hold prison officials acting in 2008 to a higher standard of  
8 constitutional clairvoyance than the many federal judges who—even today—do not  
9 discern a clearly established constitutional right in similar Valley Fever cases.” (*Id.*  
10 at 4.)

11 Mr. Jimenez objects to this reasoning, and largely focuses on what Defendants  
12 knew, or should have known, when transferring Mr. Jimenez to Kern Valley State  
13 Prison. He argues that, through multiple memoranda and other sources, Defendants  
14 “knew of the Valley Fever epidemic” and knew that he was a member of a “high risk  
15 group.” (ECF No. 58 at 11.) Thus, Defendants knew they were increasing Mr.  
16 Jimenez’s risk to contracting Valley Fever when they transferred him. Mr. Jimenez  
17 argues that this “reckless exposure to dangerous conditions and deliberate  
18 indifference to serious medical needs” violates the Eighth Amendment. (ECF No. 58  
19 at 9.) Mr. Jimenez cites to case law supporting that a violation may occur if prison  
20 officials are aware of an increased risk (ECF No. 58 at 9), but otherwise does not  
21 address the lack of a clearly established Eighth Amendment right.

22 This Court agrees with the Magistrate Judge’s reasoning. While the Court  
23 does not disagree with Mr. Jimenez that an inmate has a right not to be exposed to  
24 serious diseases, the Court recognizes, as the Magistrate Judge does, that it cannot  
25 hold prison officials in this case to a higher standard than exists today for Valley  
26 Fever cases. Whether Defendants knew, or should have known, they were increasing  
27 Mr. Jimenez’s risk of contracting Valley Fever does not change this analysis.  
28

1 Because there was no clearly established Eighth Amendment right, qualified  
2 immunity applies.

3 **B. Leave To Amend and Improper Venue**

4 The Magistrate Judge further concludes that, although Mr. Jimenez’s  
5 allegations of failure to provide him with medications to treat his Valley Fever are  
6 not sufficient to constitute an Eighth Amendment violation, he should be given one  
7 last opportunity to amend this cause of action. Defendants object on two grounds.  
8 First, Defendants point out that Mr. Jimenez has already been given one opportunity  
9 to amend, and he has failed to do so successfully. Second, Defendants argue that any  
10 medical negligence claim stemming from treatment at Lancaster or Kern Valley State  
11 Prisons would not be proper in the Southern District of California and would  
12 necessitate a transfer. The Court overrules both objections.

13 First, federal jurisprudence is rife with directions to the federal courts to  
14 liberally construe the pleadings of pro se litigants. *See, e.g., Ferdik v. Bonzelet*, 963  
15 F.2d 1258, 1281 (9th Cir. 1992) (citing *Boag v. Macdougall*, 454 U.S. 364 (1997) (per  
16 curiam)). Furthermore, “[w]hile Fed. R. Civ. P. 15 places leave to amend within the  
17 sound discretion of the trial court, . . . a court must remain guided by ‘the underlying  
18 purpose of Rule 15 . . . to facilitate decision on the merits, rather than on the pleadings  
19 or technicalities.’” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (quoting  
20 *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)), superseded on other  
21 grounds by statute, as recognized in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).  
22 Thus, “a pro se litigant must be given leave to amend his or her complaint unless it  
23 is ‘absolutely clear that the deficiencies of the complaint could not be cured by  
24 amendment.’” *Noll*, 809 F.2d at 1448 (quoting *Broughton v. Cutter Labs.*, 622 F.2d  
25 458, 460 (9th Cir. 1980) (per curiam)); *see also Lopez v. Smith*, 203 F.3d 1122, 1130  
26 (9th Cir. 2000) (“[A] district court should grant leave to amend even if no request to  
27 amend the pleading was made, unless it determines that the pleading could not  
28 possibly be cured by the allegations of other facts.” (quotation omitted)).

1           In this case, Mr. Jimenez has largely been focused on his allegations that he  
2 was improperly transferred to Kern Valley State Prison and that this transfer caused  
3 him to contract Valley Fever. The Court has dismissed these claims without leave to  
4 amend. However, Mr. Jimenez also protests the medical care he received for his  
5 Valley Fever. As the Court has previously noted, if Mr. Jimenez wishes to proceed  
6 on these allegations, he will need to assert more than just medical negligence. He  
7 will need to allege facts that support his claim that the doctors who provided care for  
8 his Valley Fever were deliberately indifferent to his medical needs and not just  
9 negligent. Mr. Jimenez may not proceed on claims that he disagreed with the  
10 treatment that the medical professionals found was appropriate. Although the FAC  
11 is insufficient, the Court agrees with the Magistrate Judge that Mr. Jimenez should  
12 be given one last opportunity to assert these allegations. He is cautioned, however,  
13 that any failure to adequately allege this cause of action in the future is likely to result  
14 in dismissal with prejudice.

15           The Court further agrees with Defendants that, as currently alleged, it does not  
16 appear the venue is proper in the Southern District of California. In the FAC, Mr.  
17 Jimenez is unclear about where the deliberate indifference occurred. Mr. Jimenez  
18 claims in his Objections that the “‘deliberate indifference’ of medical needs”  
19 occurred, at least in part, at the Richard J. Donovan Correctional Facility. (ECF No.  
20 58 at 17.) If these allegations are included in the Second Amended Complaint, the  
21 Court will reassess venue based on those allegations. Otherwise, if Mr. Jimenez  
22 alleges deliberate indifference to his medical needs at Kern Valley or Lancaster  
23 Prisons only, the complaint should be brought in the district where these prisons are  
24 located. As Mr. Jimenez recognizes in his Objections, should Mr. Jimenez file a  
25 Second Amended Complaint in the Southern District of California, and should this  
26 Court determine that he alleges sufficient facts to proceed but that venue is improper  
27 in this district, the Court could transfer the case at that point in time. *See* 28 U.S.C.  
28 § 1631.


1 **IV. CONCLUSION & ORDER**

2 Having reviewed the R&R, Plaintiff's objections, and Defendants' objections,  
3 the Court concludes that, under a *de novo* review of the R&R's reasoning, Judge  
4 Schopler's reasoning is sound. Accordingly, the Court **OVERRULES** Defendants'  
5 objections (ECF No. 46) and Plaintiff's objections (ECF No. 58), **APPROVES** and  
6 **ADOPTS** the R&R in its entirety (ECF No. 45), and **GRANTS** Defendants' Motion  
7 to Dismiss (ECF No. 24).

8 The allegations that Mr. Jimenez was transferred to a prison where he  
9 contracted Valley Fever are dismissed with prejudice. Mr. Jimenez may not refile  
10 these claims. The claim that Mr. Jimenez was given inadequate medical care once  
11 he contracted Valley Fever is dismissed without prejudice. If Mr. Jimenez can allege  
12 sufficient facts to support a claim that prison officials were deliberately indifferent to  
13 his medical needs, he may refile a Second Amended Complaint one last time.  
14 However, Mr. Jimenez is cautioned that if he fails to allege sufficient facts on any  
15 future attempt, the Court is likely to dismiss the claims without leave to amend. If  
16 Mr. Jimenez chooses to file a Second Amended Complaint on the issue of deliberate  
17 indifference to his medical needs once he contracted Valley Fever, he must do so by  
18 **November 8, 2017**. Accordingly, Plaintiff's motion for extension of time to file  
19 second amended complaint is **DENIED** as moot. (ECF No. 61.)

20 **IT IS SO ORDERED.**

21  
22 **DATED: October 18, 2017**

23   
24 **Hon. Cynthia Bashant**  
**United States District Judge**