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WASHINGTON D.C. 20543.

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1.) EXHAUSTION OF RECEIVERSHIP ADMINISTRATIVE
REMEDIES. FORUMS. DOCUMENTS ON RECORDS
INFORMATION COMPLAINT (VALLEY FEVER) COCA.
PETITIONER PRO-SE. VS. SCHWARTZENEBER ET AL..
RE: ANIMATES ON PRISONERS PUBLIC ACCOMODATIONS
AREAS QUARANTINED CONTRACTION DISEASE INFECTION
SICKNESS DYINGS ON DEATHS. TOXIC POISONOUS.
MILITARY & BMD DANGEROUS AGENTS EXPOSURES.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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HO: (18-15262)

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 22 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDWARD DAVID JONES, Jr.,

No. 18-15262

Plaintiff-Appellant,

D.C. No. 1:16-cv-00469-DAD-
BAM

v.

ARNOLD SCHWARZENEGGER, Former
Governor of the State of CA; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

California state prisoner Edward David Jones Jr. appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging Eighth Amendment claims arising from his exposure to Valley Fever. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wilhelm v. Rotman*, 680

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

F.3d 1113, 1118 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We affirm.

The district court properly dismissed Jones's action because Jones failed to allege facts sufficient to link defendants to any constitutional violation. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (a plaintiff must allege facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

The district court did not abuse its discretion by dismissing Jones's action without providing a third opportunity to amend the complaint because further amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

To the extent Jones sought to bring claims on behalf of his deceased mother, as a pro se litigant Jones lacks authority to bring such claims. *See C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987).

Jones's "motion to augment documents" (Docket Entry No. 4) is denied.

AFFIRMED.

NO. 1:16-CV-00469-DAD-BAM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLERK OF THE COURT

ROOM 1501

UNITED STATES DISTRICT COURT
2500 TULARE STREET
FRESNO, CALIFORNIA 93721

APPENDIX B

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 EDWARD DAVID JONES, JR.

12 Plaintiff,

13 v.

14 SCHWARZENEGGER, et al.,

15 Defendants.
16

No. 1:16-cv-00469-DAD-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CASE FOR FAILURE TO STATE A CLAIM

(Doc. No. 27)

17 Plaintiff Edward David Jones, Jr. is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* in this civil action. On November 21, 2017, the assigned magistrate judge issued
19 findings and recommendations recommending that the action should be dismissed due to
20 plaintiff's failure to state a cognizable claim for relief. (Doc. No. 33.) The findings and
21 recommendations were served on plaintiff and contained notice that any objections thereto were
22 to be filed within fourteen days. (*Id.* at 1.) On December 7, 2017, plaintiff filed objections to the
23 findings and recommendations. (Doc. No. 34.)

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
25 conducted a *de novo* review of this case. Having carefully reviewed the entire file, including
26 plaintiff's objections, the undersigned concludes the findings and recommendations are supported
27 by the record and by proper analysis. In his objections plaintiff states that although he agrees
28 with the magistrate judge's findings and recommendations in part, he should be afforded another

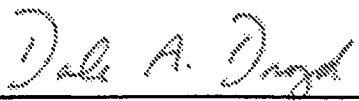
1 opportunity to amend his complaint. (Doc. No. 34 at 2.) Plaintiff has repeatedly been provided
2 the relevant pleadings and legal standards, as well as multiple opportunities to amend in this case
3 and has been unable to cure the deficiencies noted in the various screening orders. (See Doc.
4 Nos. 5, 23, 33.) Therefore, the undersigned also agrees with the magistrate judge assessment that
5 granting plaintiff further leave to amend would be futile and is not warranted under the
6 circumstances.

7 For all of these reasons:

- 8 1. The findings and recommendations issued on November 21, 2017 (Doc. No. 33) are
9 adopted in full;
- 10 2. This action is dismissed due to plaintiff's failure to state a cognizable claim for relief;
11 and
- 12 3. The Clerk of the Court is directed to close this case.

13 IT IS SO ORDERED.

14 Dated: January 24, 2018

15 
UNITED STATES DISTRICT JUDGE

1 **Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
4 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
5 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
6 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28
7 U.S.C. § 1915(e)(2)(B)(ii).

8 A complaint must contain "a short and plain statement of the claim showing that the
9 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
12 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
13 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
14 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
15 (internal quotation marks and citation omitted).

16 To survive screening, Plaintiff's claims must be facially plausible, which requires
17 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
18 for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);
19 *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility
20 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short
21 of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks
22 omitted); *Moss*, 572 F.3d at 969.

23 **Summary of Plaintiff's Allegations**

24 Plaintiff is currently housed at California State Prison, Solano. The events in the
25 complaint are alleged to have occurred primarily while Plaintiff was housed at California State
26 Prison, Corcoran ("Corcoran"). Plaintiff names the following defendants: Arnold
27 Schwarzenegger, Former Governor of the State of California; Susan Hubbard, Warden at
28 Corcoran; Correctional Counselor King, Chief Medical Doctor Dwight Winslow, Does 1 through

20, Chief Medical Officer Jeffery Wang, Dr. Agnes Wu, Dr. Huu Nguyen, Dr. Julian Kim, and RN Does.

Plaintiff's second amended complaint (including his supplemental complaint) totals more than 180 pages. As best as can be determined from the disjointed nature of his allegations, Plaintiff appears to allege that while housed within high risk areas in Kings County, including Corcoran, he was exposed to Valley Fever. However, he was not informed of potential dangers, health risks and likelihood of contracting the disease. Plaintiff contends that between January 2008 and December 2010, he contracted Valley Fever while at Corcoran.² Plaintiff alleges that various defendants denied him fair and adequate treatment for his condition.

In his supplemental second amended complaint, Plaintiff further alleges that on November 28, 2010, his mother, Geneva Jones, visited Plaintiff at Corcoran and entered areas classified as high risk. Plaintiff contends that CDCR failed to post medical advertisements warning of the high risk areas. Twenty-four (24) hours after the visit, Ms. Jones required emergency medical treatment. Plaintiff alleges that Ms. Jones unknowingly contracted Valley Fever. On December 3, 2010, Plaintiff contends that Ms. Jones died of injuries consistent with Valley Fever.

Discussion

A. Federal Rule of Civil Procedure 8

Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). As noted above, detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting

² According to exhibits attached to his complaint, Plaintiff contends that CDCR knew that he, as an African American, was especially susceptible to contracting Valley Fever and yet took no steps to exclude him from transfer to Corcoran in 2010 and minimize the risk of exposing him to dangerous cocci spores. In 2010, he was formally diagnosed with Valley Fever, and has been told that he will have the disease long term. (ECF No. 29 at p. 50.)

1 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
2 not. *Id.*; see also *Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

3 As with his previous complaints, Plaintiff's second amended complaint is neither short
4 nor plain. Despite being provided with the relevant pleading standard, Plaintiff's second
5 amended complaint, including the supplement, is difficult to read and understand. Plaintiff's
6 second amended complaint also fails to state the facts briefly and succinctly in this action.
7 Despite multiple opportunities, Plaintiff has been unable to cure this deficiency.

8 **B. Official Capacity**

9 To the extent Plaintiff seeks to bring claims for damages against defendants in their
10 official capacities, he may not do so.

11 The Eleventh Amendment prohibits suits for monetary damages against a State, its
12 agencies, and state officials acting in their official capacities. *Aholelei v. Dep't of Public Safety*,
13 488 F.3d 1144, 1147 (9th Cir. 2007). As such, the Eleventh Amendment bars any claim for
14 monetary damages against defendants acting in their official capacities.

15 **C. Linkage Requirement**

16 The Civil Rights Act under which this action was filed provides:

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

20 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
21 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
22 *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed. 2d 611 (1978);
23 *Rizzo v. Goode*, 423 U.S. 362, 96 S. Ct. 598, 46 L.Ed. 2d 561 (1976). The Ninth Circuit has held
24 that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning
25 of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits
26 to perform an act which he is legally required to do that causes the deprivation of which
27 complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).
28

1 Plaintiff has failed to link many of the named defendants to a constitutional violation.
2 Plaintiff does not identify any individual in the allegations of his complaint regarding the death
3 of his mother and does not attribute any specific conduct regarding his placement at Corcoran to
4 the named defendants. Plaintiff has been unable to cure this deficiency.

5 **D. Supervisory Liability**

6 To the extent Plaintiff seeks to hold numerous defendants liable based solely upon their
7 supervisory roles, such as the former Governor, the Warden and the Chief Medical Officer, he
8 may not do so. Liability may not be imposed on supervisory personnel for the actions or
9 omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676–
10 77; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of*
11 *Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.
12 2002). Supervisors may be held liable only if they “participated in or directed the violations, or
13 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045
14 (9th Cir. 1989); *accord Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v.*
15 *Bennett*, 567 F.3d 554, 570 (9th Cir. 2009).

16 **E. Representative Suit**

17 Insofar as Plaintiff is attempting to prosecute an action on behalf of his deceased mother
18 (or on behalf of her immediate family), he may not do so. Generally, *pro se* plaintiffs are
19 prohibited from pursuing claims on behalf of others in a representative capacity. *Simon v.*
20 *Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008); *Roll v. California Dep’t of Corr. and*
21 *Rehab.*, No. 1:08cv1716 LJO DLB, 2008 WL 5385968, *3 (E.D. Cal. Dec. 24, 2008) (prisoner
22 could not represent decedent’s estate in *pro se*). Rather, “in an action brought by a *pro se*
23 litigant, the real party in interest must be the person who ‘by substantive law has the right to be
24 enforced.’” *Id.* (quoting *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir.
25 1987)).

26 **F. Claim Preclusion**

27 According to exhibits attached to the second amended complaint, on May 30, 2015,
28 Plaintiff filed a petition for writ of habeas corpus in the Kings County Superior Court, Case No.

1 15W-0073A. In that action, Plaintiff alleged that “he contracted Valley Fever at Corcoran State
2 Prison and suffers from the severe physical effects of the same.” (ECF No. 29 at p. 85.) Plaintiff
3 also alleged that CDCR failed to provide him and other Black inmates with a safe living
4 environment thereby subjecting them to cruel and unusual punishment. *Id.* On July 1, 2015, the
5 Kings County Superior Court denied Plaintiff’s petition, reasoning that Plaintiff could not state
6 an Eighth Amendment claim and there was no support for his argument that “exposure to Valley
7 Fever spores presents an excessive risk to the health of African-American inmates.” (*Id.* at p.
8 86.) Following the Kings County Superior Court’s denial of his petition, Plaintiff filed writ
9 petitions in the state appellate court and California Supreme Court. Plaintiff’s petitions were
10 denied. (*Id.* at pp. 87-89.)

11 As Plaintiff previously pursued his claims regarding contraction of Valley Fever in state
12 court, his current claims appear to be barred by the doctrine of claim preclusion.³ Federal courts
13 are required to give state court judgments the preclusive effects they would be given by another
14 court of that state. *Brodheim v. Cry*, 584 F.3d 1262, 1268 (9th Cir. 2009). A state habeas
15 judgment may have preclusive effect on a later federal § 1983 action. *Gonzales v. Cal. Dep’t of*
16 *Corr.*, 739 F.3d 1226, 1230–31 (9th Cir. 2014) (reasoned denials of California habeas petitions
17 have claim-preclusive effect). Claim preclusion in California applies if (1) the second lawsuit
18 involves the same “cause of action” as the first, (2) the first lawsuit resulted in a final judgment
19 on the merits, and (3) the party claim preclusion is being asserted against was a party, or in
20 privity with a party, to the first lawsuit. *Bernhard v. Bank of Am. Nat. Trust & Sav. Ass’n*, 19
21 Cal.2d 807, 812 (1942); *Planning & Conservation League v. Castaic Lake Water Agency*, 180
22 Cal.App.4th 210, 226 (2009).

23 ///

24
25 ³ Plaintiff also pursued his wrongful death claims in a state habeas action. On December 26, 2014, Plaintiff
26 filed a petition for writ of habeas corpus in the Kings County Superior Court, Case No. 14W-0202A. In that action,
27 Plaintiff complained about certain hazardous conditions existing at three different prisons. Plaintiff claimed that
28 such conditions may have led to the illness and/or death of one of his visitors. On March 11, 2015, the Kings
County Superior Court denied Plaintiff’s petition, reasoning, in part, that a habeas corpus petition was not the
appropriate means to obtain relief for any unsafe prison condition impacting a third party. (ECF No. 31 at pp. 91-
92.) Plaintiff’s subsequent appeals were denied. (*Id.* at pp. 94-96.) It does not appear that the state court
addressed the merits of Plaintiff’s claims at any level.

1 Same Cause of Action or Primary Right

2 California courts employ the primary rights theory to determine what constitutes the same
3 cause of action for claim preclusion purposes, and under this theory, a cause of action is (1) a
4 primary right possessed by the plaintiff, (2) a corresponding primary duty devolving upon the
5 defendant, and (3) a harm done by the defendant which consists in a breach of such primary right
6 and duty. *Brodheim*, 584 F.3d at 1268 (citing *City of Martinez v. Texaco Trading & Transp.,*
7 *Inc.*, 353 F.3d 758, 762 (9th Cir. 2003)). “If two actions involve the same injury to the plaintiff
8 and the same wrong by the defendant, then the same primary right is at stake even if in the
9 second suit the plaintiff pleads different theories of recovery, seeks different forms of relief
10 and/or adds new facts supporting recovery.” *Id.* (quoting *Eichman v. Fotomat Corp.*, 147
11 Cal.App.3d 1170, 1174, 197 Cal.Rptr. 612 (1983)).

12 This action and Plaintiff’s state habeas action both arose out of Plaintiff’s placement at
13 Corcoran State Prison, his contraction of Valley Fever, and the failure of CDCR to provide
14 Plaintiff and other prisoners with a safe living environment. It is apparent that the two actions
15 involve the same injury to the Plaintiff and the same wrong. Therefore, Plaintiff’s claims in this
16 action involving the same primary right appear to be barred by the doctrine of claim preclusion.
17 Despite being provided with the relevant legal standards, Plaintiff has not included any
18 allegations suggesting that such claims are not barred.

19 Final Judgment on the Merits

20 “A judgment is on the merits for purposes of res judicata if the substance of the claim is
21 tried and determined.” *Johnson v. City of Loma Linda*, 24 Cal.4th 61, 77 (2000) (citation and
22 internal quotation marks omitted). In denying his habeas petition, the Kings County Superior
23 Court determined that no violation of the Eighth Amendment occurred in connection with
24 Plaintiff’s contraction of Valley Fever. Plaintiff’s subsequent appeals also were denied. Thus, a
25 final judgment was reached on the merits of Plaintiff’s Valley Fever claims.

26 Identity or Privity

27 Under California law, the only identity of parties required is the identity of the party
28 against whom preclusion is sought – here Plaintiff. *See San Diego Police Officers’ Ass’n*, 568

1 F.3d 725, 734 (9th Cir. 2009) (“the party to be precluded must itself have been a party; or in
2 privity with a party, to that first lawsuit”); *Furnace v. Junious*, No. 1:14-cv-01671-LJO-MJS
3 (PC), 2015 WL 2095301, at *4 (E.D. Cal. May 5, 2015) (finding that the fact that some or all of
4 the defendants are different irrelevant under California claim preclusion law); *Furnace v.*
5 *Giurbino*, No. C 12-0873 LHK (PR), 2013 WL 6157954, at *4 (N.D. Cal. Nov. 22, 2013)
6 (“under California claim preclusion rules, the only identity of parties required is the identity of
7 the party against whom preclusion is sought”). Here, Plaintiff was a party in both actions.

8 **Conclusion and Recommendation**

9 Plaintiff's second amended complaint fails to comply with Rule 8 and fails to state a
10 cognizable claim for relief. Plaintiff's claims regarding Valley Fever are barred by the doctrine
11 of claim preclusion and Plaintiff may not maintain a representative suit in pro se on his claims
12 involving the death of his mother. Despite being provided with the relevant pleading and legal
13 standards applicable to his claims, Plaintiff has been unable to cure the identified deficiencies
14 and further leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.
15 2000). Accordingly, for the reasons stated, it is HEREBY RECOMMENDED that Plaintiff's
16 second amended complaint be dismissed.

17 These Findings and Recommendations will be submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
19 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
20 file written objections with the Court. The document should be captioned “Objections to
21 Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that failure to file
22 objections within the specified time may result in the waiver of the “right to challenge the
23 magistrate's factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
24 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

25 IT IS SO ORDERED.

26 Dated: November 21, 2017

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**