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

DORIAN DAVIS aka  
WALI AL-TAQI,  
CDCR #K-78041,  
  
Plaintiff,  
  
vs.  
  
E.G. FLORES; J. CASTRO; T.  
BILLINGS; A. HEDGPETH,  
  
Defendants.

Civil No. 08-1197 JTM (JMA)

**ORDER:**

- (1) DISMISSING DEFENDANT MARTA FROM THIS ACTION; AND**
- (2) ORDERING DEFENDANTS TO FILE RESPONSE TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

On August 15, 2008, Plaintiff, an inmate currently incarcerated at Kern Valley State Prison located in Delano, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].


1 The Court granted Plaintiff's Motion to Proceed *IFP* on August 21, 2008 [Doc.  
2 No. 4]. On November 26, 2008, this matter was reassigned to District Judge Jeffrey  
3 Miller for all further proceedings [Doc. No. 8].

4 This Court issued an Order directing the United States Marshal to effect service  
5 on the named Defendants on December 29, 2009. Defendants then filed two motions for  
6 extension of time to file a response to Plaintiff's Complaint. [Doc. Nos. 14, 17]. On June  
7 2, 2009, Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to  
8 FED.R.CIV.P. 12(b) and 12(b)(6). Before the Court could rule on Defendants' Motion,  
9 Plaintiff sought leave to file a First Amended Complaint. The Court granted Plaintiff's  
10 request for leave to file a First Amended Complaint and denied Defendants' Motion as  
11 moot. *See* Aug. 4, 2009 Order at 2. On September 25, 2009, Plaintiff filed his First  
12 Amended Complaint ("FAC").

13 First, the Court takes judicial notice that Plaintiff has not renamed Defendant R.  
14 Marta in his First Amended Complaint. Defendants who are not named and all claims  
15 not re-alleged in an amended Complaint are considered waived. *See King v. Atiyeh*, 814  
16 F.2d 565, 567 (9th Cir. 1987). Accordingly, Defendant Marta is hereby **DISMISSED**  
17 from this action.

18 Second, Defendants have failed to file a response to Plaintiff's First Amended  
19 Complaint. Thus, the Court **ORDERS** Defendants to file a response to Plaintiff's First  
20 Amended Complaint no later than **Monday, January 4, 2010**. No further extensions of  
21 time will be granted.

22 DATED: November 23, 2009

23   
24 Hon. Jeffrey T. Miller  
United States District Judge