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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
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13 TOM STEVE CORIC,

14 Plaintiff,

15 vs.
16

17 MARGRET MIMS, COUNTY OF
18 FRESNO,

19 Defendants.
20

Civil 08-1225 JTM (BLM)
No.

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT
SERVICE OF COMPLAINT
PURSUANT TO FED.R.CIV.P.
4(c)(3) & 28 U.S.C. § 1915(d)**

21
22 **I.**

23 **PROCEDURAL HISTORY**

24 On August 20, 2008, Plaintiff, a detainee formerly housed at the Fresno County Jail located in
25 Fresno, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983.
26 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action;
27 instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc.
28 No. 2].

1 The Court granted Plaintiff's Motion to Proceed *IFP* on August 22, 2008 [Doc. No. 4]. On
2 November 26, 2008, this matter was reassigned to District Judge Jeffrey T. Miller for all further
3 proceedings [Doc. No. 7].

4 II.

5 SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)

6 The Prison Litigation Reform Act ("PLRA") obligates the Court to review complaints filed by
7 all persons proceeding *IFP* and by those, like Plaintiff, who are "incarcerated or detained in any facility
8 [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms
9 or conditions of parole, probation, pretrial release, or diversionary program," "as soon as practicable after
10 docketing." *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions of the PLRA, the Court
11 must sua sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail to state
12 a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and
13 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v.*
14 *Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A); *see also Barren v. Harrington*, 152 F.3d 1193,
15 1194 (9th Cir. 1998) (discussing § 1915A).

16 "[W]hen determining whether a complaint states a claim, a court must accept as true all
17 allegations of material fact and must construe those facts in the light most favorable to the plaintiff."
18 *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2) "parallels the language of
19 Federal Rule of Civil Procedure 12(b)(6)"). In addition, the Court's duty to liberally construe a pro se's
20 pleadings, *see Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988), is
21 "particularly important in civil rights cases." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).
22 However, in giving liberal interpretation to a pro se civil rights complaint, the court may not "supply
23 essential elements of claims that were not initially pled." *Ivey v. Board of Regents of the University of*
24 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). "Vague and conclusory allegations of official participation
25 in civil rights violations are not sufficient to withstand a motion to dismiss." *Id.*

26 Here, the Court finds that the allegations in Plaintiff's Complaint are sufficient to survive the sua
27 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is entitled to
28 U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d) ("The officers

1 of the court shall issue and serve all process, and perform all duties in [IFP] cases.”); FED.R.CIV.P.
2 4(c)(3) (providing that “service be effected by a United States marshal, deputy United States marshal,
3 or other officer specially appointed by the court ... when the plaintiff is authorized to proceed *in forma*
4 *pauperis* pursuant to 28 U.S.C. § 1915.”). Plaintiff is cautioned, however, that “the sua sponte screening
5 and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion
6 that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal.
7 2007).

8 III.

9 CONCLUSION AND ORDER

10 Good cause appearing, **IT IS HEREBY ORDERED** that:

11 1. The Clerk shall issue a summons as to Plaintiff’s Complaint [Doc. No. 1] upon Defendants
12 and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each Defendant. In
13 addition, the Clerk shall provide Plaintiff with a certified copy of this Order and certified copies of his
14 Complaint and the summons for purposes of serving Defendants. Plaintiff is directed to complete the
15 Form 285s as completely and accurately as possible, and to return them to the United States Marshal
16 according to the instructions. Thereafter, the U.S. Marshal shall serve a copy of the Complaint and
17 summons upon Defendants as directed by Plaintiff on each Form 285. All costs of service shall be
18 advanced by the United States. See 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).


19 2. Plaintiff shall serve upon Defendants or, if appearance has been entered by counsel, upon
20 Defendants’ counsel, a copy of every further pleading or other document submitted for consideration of
21 the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a
22 certificate stating the manner in which a true and correct copy of any document was served on
23 Defendants, or counsel for Defendants, and the date of service. Any paper received by the Court which
24 has not been filed with the Clerk or which fails to include a Certificate of Service will be disregarded.

25 3. Defendants are thereafter **ORDERED** to reply to Plaintiff’s Complaint within the time
26 provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). See 42 U.S.C. §
27 1997e(g)(2) (while Defendants may occasionally be permitted to “waive the right to reply to any action
28 brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983,” once

1 the Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
2 and thus, has made a preliminary determination based on the face on the pleading alone that Plaintiff has
3 a “reasonable opportunity to prevail on the merits,” Defendants are required to respond).

4 4. Prior to filing any motion, Counsel for Defendants shall contact the law clerk of the
5 assigned judge to obtain a hearing date and time.

6 DATED: February 10, 2009

7 
8 Hon. Jeffrey T. Miller
United States District Judge