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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
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13 GERALD L. MILLER, JR.,
14 CDCR #C-92075,

15 Plaintiff,

16 vs.

17 O. RUFION; MOONGA, R.N.,
18

19 Defendants.
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Civil No. 08-1233 BTM (WMc)

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT SERVICE
OF FIRST AMENDED 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, an inmate currently incarcerated at Kern Valley State
25 Prison located in Delano, California and proceeding pro se, filed a civil rights Complaint
26 pursuant to 42 U.S.C. § 1983. Plaintiff later filed a First Amended Complaint which is
27 permissible pursuant to FED.R.CIV.P. 15(a)(1)(A). Plaintiff has not prepaid the \$350 filing fee
28 mandated by 28 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to

1 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

2 The Court granted Plaintiff’s Motion to Proceed *IFP* on August 21, 2008 [Doc. No. 4].
3 On November 26, 2008, this matter was reassigned to District Judge Barry Ted Moskowitz for
4 all further proceedings [Doc. No. 9].

5 II.

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

7 The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints
8 filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained
9 in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
10 criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
11 program,” “as soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
12 Under these provisions of the PLRA, the Court must sua sponte dismiss complaints, or any
13 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages
14 from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*,
15 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d
16 443, 446 (9th Cir. 2000) (§ 1915A); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
17 Cir. 1998) (discussing § 1915A).

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

1 Here, the Court finds that the allegations in Plaintiff's First Amended Complaint are
2 sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
3 Therefore, Plaintiff is entitled to U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at
4 1126-27; 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and
5 perform all duties in [IFP] cases."); FED.R.CIV.P. 4(c)(3) (providing that "service be effected by
6 a United States marshal, deputy United States marshal, or other officer specially appointed by
7 the court ... when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C.
8 § 1915."). Plaintiff is cautioned, however, that "the sua sponte screening and dismissal
9 procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that
10 [a defendant] may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal.
11 2007).

12 III.

13 CONCLUSION AND ORDER

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

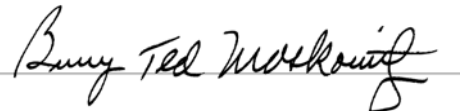
15 1. The Clerk shall issue a summons as to Plaintiff's First Amended Complaint [Doc.
16 No. 8] upon Defendants and shall and forward it to Plaintiff along with a blank U.S. Marshal
17 Form 285 for each Defendant. In addition, the Clerk shall provide Plaintiff with a certified copy
18 of this Order and certified copies of his First Amended Complaint and the summons for
19 purposes of serving each Defendant. Upon receipt of this "IFP Package," Plaintiff is directed
20 to complete the Form 285s as completely and accurately as possible, and to return them to the
21 United States Marshal according to the instructions provided by the Clerk in the letter
22 accompanying his IFP package. Thereafter, the U.S. Marshal shall serve a copy of the First
23 Amended Complaint and summons upon each Defendant as directed by Plaintiff on each Form
24 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d);
25 FED.R.CIV.P. 4(c)(3).

26 2. Plaintiff shall serve upon Defendants or, if appearance has been entered by
27 counsel, upon Defendants' counsel, a copy of every further pleading or other document
28 submitted for consideration of the Court. Plaintiff shall include with the original paper to be

1 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
2 of any document was served on Defendants, or counsel for Defendants, and the date of service.
3 Any paper received by the Court which has not been filed with the Clerk or which fails to
4 include a Certificate of Service will be disregarded.

5 3. Prior to filing any motion, Counsel for Defendants shall contact the chambers of
6 the assigned judge to obtain a hearing date and time.

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8 DATED: December 31, 2008

9 
10 Honorable Barry Ted Moskowitz
11 United States District Judge
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