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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
11

13 CESAR URIBE,
14 CDCR #K-12001,

Plaintiff,

16 vs.

17 J. McKESSON; MARTINEZ;
18 ZARAGOSA; A. TUZON,

19 Defendants.
20

Civil No. 08-1285 DMS (NLS)

**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)**

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22 **I.**

23 **PROCEDURAL HISTORY**

24 On August 29, 2008, Plaintiff, an inmate currently incarcerated at the California State
25 Prison located in Corcoran, California and proceeding pro se, filed a civil rights Complaint
26 pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28
27 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to Proceed *In Forma*
28 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

1 The Court granted Plaintiff's Motion to Proceed *IFP* on September 4, 2008 [Doc. No. 4].
2 On November 26, 2008, this matter was reassigned to District Judge Dana M. Sabraw for all
3 further proceedings [Doc. No. 6].

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

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

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

11 III.

12 CONCLUSION AND ORDER

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

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

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

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

4 3. Plaintiff shall serve upon Defendants or, if appearance has been entered by
5 counsel, upon Defendants’ counsel, a copy of every further pleading or other document
6 submitted for consideration of the Court. Plaintiff shall include with the original paper to be
7 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
8 of any document was served on Defendants, or counsel for Defendants, and the date of service.
9 Any paper received by the Court which has not been filed with the Clerk or which fails to
10 include a Certificate of Service will be disregarded.

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

13 DATED: 1-7-07


14 **HON. DANA M. SABRAW**
15 **United States District Judge**