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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
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13 JACKIE ROBINSON,

14 Plaintiff,

15 vs.

16 MIRIAM JOYA, et al.,

17 Defendants.
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Civil No. 08-1339 JLS (BLM)

**ORDER SUA SPONTE DISMISSING
FIRST AMENDED COMPLAINT FOR
FAILING TO STATE A CLAIM
PURSUANT TO
28 U.S.C. § 1915(e)(2)**

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21 **I.**

22 **PROCEDURAL HISTORY**

23 On September 8, 2008, Plaintiff, a civil detainee currently housed at Coalinga State
24 Hospital and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983.
25 Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil
26 action; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C.
27 § 1915(a) [Doc. No. 2]. The Court granted Plaintiff’s Motion to Proceed *IFP* on September 12,
28 2008 [Doc. No. 4]. On November 3, 2008, Plaintiff filed a First Amended Complaint (“FAC”).

1 On November 26, 2008, this matter was reassigned to District Judge Janis L. Sammartino
2 for all further proceedings [Doc. No. 7].

3 II.

4 SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2)

5 The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints
6 filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained
7 in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
8 criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
9 program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2). Under these
10 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion
11 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from
12 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122,
13 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)).

14 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
15 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is
16 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,
17 324 (1989). However 28 U.S.C. §§ 1915(e)(2) now mandates that the court reviewing an IFP
18 or prisoner’s suit make and rule on its own motion to dismiss before effecting service of the
19 Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection
20 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint
21 that fails to state a claim.”). The Court’s duty to liberally construe a pro se’s pleadings,
22 *see Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988), is
23 “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.
24 1992).

25 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
26 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
27 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
28 United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on*

1 other grounds by *Daniels v. Williams*, 474 U.S. 327, 328 (1986).

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3 **A. Fourteenth Amendment Equal Protection claims**

4 In his First Amended Complaint, Plaintiff alleges he has been denied his right to equal
5 protection under the Fourteenth Amendment. (FAC at 7.) Specifically, Plaintiff claims that the
6 computer policy adopted by Coalinga State Hospital creates a “disparity problem” by denying
7 inmates the right to purchase a computer. (*Id.*) Plaintiff does not identify any other group that
8 is permitted to purchase personal computers.

9 The “Equal Protection Clause of the Fourteenth Amendment commands that no State
10 shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is
11 essentially a direction that all persons similarly situated should be treated alike.” *City of*
12 *Cleburne v. Cleburne Living Center, Inc.* 473 U.S. 432, 439 (1985). In order to state a claim
13 under § 1983 alleging violations of the equal protection clause of the Fourteenth Amendment,
14 Plaintiff must allege facts which demonstrate that he is a member of a protected class. *See*
15 *Harris v. McRae*, 448 U.S. 297, 323 (1980) (indigents); *see also City of Cleburne v. Cleburne*
16 *Living Ctr.*, 473 U.S. 432, 440-41 (1985) (listing suspect classes). Plaintiff has not alleged that
17 he is a member of a protected class, nor has he plead facts to demonstrate that the Defendants
18 acted with an intent or purpose to discriminate against him based upon his membership in a
19 protected class. *See Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998), *cert. denied*,
20 525 U.S. 1154 (1999). Plaintiff has also failed to allege sufficient facts which may prove
21 invidious discriminatory intent. *Village of Arlington Heights v. Metropolitan Housing*
22 *Development Corp.*, 429 U.S. 252, 265 (1977). Accordingly, the Court dismisses Plaintiff’s
23 Fourteenth Amendment equal protection claims for failing to state a claim upon which § 1983
24 relief can be granted.

25 **B. Conspiracy Claims**

26 Plaintiff “invokes jurisdiction under 42 U.S.C. section 1985” and claims that officials at
27 Coalinga State Hospital “conspired to deprive plaintiff of his First Amendment right to free
28 speech by illegally seizing his correspondence.” (FAC at 4.) Here, the Court finds that

1 Plaintiff's First Amended Complaint fails to state a claim under 42 U.S.C. § 1985(3). "To state
2 a cause of action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to deprive any
3 person or a class of persons the equal protection of the laws, or of equal privileges and
4 immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy,
5 and (4) a personal injury, property damage or a deprivation of any right or privilege of a citizen
6 of the United States." *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980); *see also Griffin*
7 *v. Breckenridge*, 403 U.S. 88, 102-03 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536
8 (9th Cir. 1992). "[T]he language requiring intent to deprive *equal* protection . . . means that
9 there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus
10 behind the conspirators' action." *Griffin*, 403 U.S. at 102; *see also Sever*, 978 F.2d at 1536.

11 Here, Plaintiff fails to allege membership in a protected class and fails to allege that any
12 Defendant acted with class-based animus, both of which are essential elements of a cause of
13 action under 42 U.S.C. § 1985(3). *See Griffin*, 403 U.S. at 101-02; *Schultz v. Sundberg*, 759
14 F.2d 714, 718 (9th Cir. 1985) (holding that conspiracy plaintiff must show membership in a
15 judicially-designated suspect or quasi-suspect class); *Portman v. County of Santa Clara*, 995
16 F.2d 898, 909 (9th Cir. 1993).

17 Accordingly, Plaintiff's First Amended Complaint is dismissed for failing to state a claim
18 upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(b). *See Lopez*, 203 F.3d
19 at 1126-27. However, Plaintiff is hereby granted an opportunity to amend. *Lopez*, 203 F.3d at
20 1127 (leave to amend is generally appropriate unless the court has determined, "that the pleading
21 could not possibly be cured by the allegation of other facts.").

22 III.

23 CONCLUSION AND ORDER

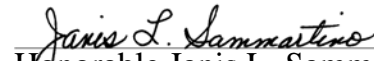
24 Good cause appearing, **IT IS HEREBY ORDERED** that:

25 Plaintiff's First Amended Complaint [Doc. No. 6] is **DISMISSED** without prejudice for
26 failing to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(b).
27 However, Plaintiff is **GRANTED** forty five (45) days leave from the date this Order is "Filed"
28 in which to file a Second Amended Complaint which cures all the deficiencies of pleading noted

1 above. Defendants not named and all claims not re-alleged in the Amended Complaint will be
2 deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

3 Further, if Plaintiff's Amended Complaint still fails to state a claim upon which relief
4 may be granted, it may be dismissed without further leave to amend and may hereafter be
5 counted as a "strike" under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79
6 (9th Cir. 1996).

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8 DATED: January 26, 2009

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10 Honorable Janis L. Sammartino
11 United States District Judge
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