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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

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9 ADRIAN ALEXANDER WOODARD) Case No.: 1:16-cv-01089-SAB (PC)
10 Plaintiff,)
11 v.) ORDER DENYING DEFENDANT’S
12) REQUEST FOR RE-SCREENING, AND
13 DR. WANG,) REQUIRING RESPONSE TO FIRST
14 Defendant.) AMENDED COMPLAINT
15) [ECF No. 22]

16 Plaintiff Adrian Alexander Woodard is a state prisoner appearing pro se in this civil
17 rights action pursuant to 42 U.S.C. § 1983. On January 25, 2017, Plaintiff consented to
18 magistrate judge jurisdiction. (ECF No. 6.) On June 30, 2017, Defendant Dr. Wang consented to
19 United States Magistrate Judge jurisdiction. (ECF No. 12.)

20 Currently before the Court is Defendant’s request for re-screening, waiver of reply, and
21 demand for a jury trial, filed on December 15, 2017. (ECF No. 22.) Plaintiff has not filed a
22 response, but the Court finds that none is necessary, and that Plaintiff will not be prejudiced by
23 the consideration of Defendant’s request. Local Rule 230(l).

24 **I.**

25 **BACKGROUND**

26 On March 20, 2017, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. §
27 1915A and found that it stated a cognizable claim against Defendant Wang in his individual
28 capacity for deliberate indifference to a serious medical need in violation of the Eighth

1 Amendment. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic
2 Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).
3 Following Plaintiff's notification that he agreed to proceed only on the claim identified as
4 cognizable, (ECF No. 8), on April 6, 2017, the Court ordered service to be initiated against Dr.
5 Wang and further ordered that the remaining claims were dismissed, (ECF No. 9).

6 On October 6, 2017, Plaintiff filed a motion for leave to file an amended complaint,
7 including a proposed amended complaint. (ECF No. 19.) Defendant made no response to the
8 motion.

9 On November 30, 2017, the Court granted Plaintiff's motion for leave to amend, ordered
10 the Clerk of the Court to file Plaintiff's first amended complaint, and screened the First Amended
11 Complaint pursuant to 28 U.S.C. § 1915A. (ECF No. 20.) The Court ordered that this case would
12 proceed on Plaintiff's first amended complaint against Defendant Wang in his individual
13 capacity for deliberate indifference to a serious medical need in violation of the Eighth
14 Amendment, and required Defendant Wang to respond to the first amended complaint within
15 fourteen (14) days. (Id. at 7.) Defendant was further ordered to respond to Plaintiff's request for
16 preliminary injunctive relief. (Id. at 8.)

17 Defendant has not filed any response to the first amended complaint. Instead, as noted
18 above, on December 15, 2017, Defendant filed the instant request for re-screening, waiver of
19 reply, and demand for jury trial.

20 **II.**
21 **DISCUSSION**

22 Defendant first requests re-screening of the first amended complaint on the basis that
23 some of Plaintiff's allegations have been substantially revised, including the relief requested in
24 the prayer, and that the Court dismiss any claims that it believes are not cognizable, or that are
25 frivolous or malicious. Further, Defendant waives his right to reply to the first amended
26 complaint pursuant to 42 U.S.C. § 1997e(g). Finally, Defendant demands a jury trial pursuant to
27 Federal Rule of Civil Procedure 38(b) and Local Rule 3-6.

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1 As noted above, in its November 30, 2017 order, the Court considered whether Plaintiff's
2 claim for deliberate indifference to serious medical needs against Defendant Wang in his
3 individual capacity, as alleged in the first amended complaint, was frivolous, malicious, fails to
4 state a claim, or seeks solely monetary relief from a defendant who is immune. (ECF No. 20) See
5 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). The Court has also considered whether Plaintiff has a
6 reasonable opportunity to prevail on the merits of these claims. See 42 U.S.C. § 1997e(g). The
7 Court has determined that dismissal of Plaintiff's claim is not appropriate at this time, and
8 Defendant must respond to these claims. See 42 U.S.C. § 1997e(g)(2) (while a defendant may
9 occasionally be permitted to "waive the right to reply to any action brought by a prisoner
10 confined in any jail, prison, or other correctional facility under section 1983," once the Court has
11 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus,
12 has made a preliminary determination based on the face on the pleading alone that plaintiff has a
13 "reasonable opportunity to prevail on the merits," a defendant is required to respond).

14 Defendant specifically noted that Plaintiff altered his requests for relief. To clarify any
15 confusion for Defendant, as described in the November 30, 2017 order, the Court found that
16 Plaintiff's new claim for declaratory relief is not cognizable in this action as it is subsumed by
17 his claim for damages for the same conduct, and therefore that claim was dismissed. (ECF No.
18 20, at p. 7.) The Court also noted that Plaintiff seeks preliminary and permanent injunctive relief,
19 and ordered that Defendant must respond to Plaintiff's request for a preliminary injunction. (Id.
20 at 8.) The Court finds no grounds have been presented to re-screen the first amended complaint.

21 Defendant's notice of demand for a jury trial is noted for the record.

22 III.

23 CONCLUSION

24 Accordingly, it is HEREBY ORDERED that:

- 25 1. Defendant's request to re-screen the complaint is DENIED;
- 26 2. Defendant Wang shall respond to Plaintiff's first amended complaint within
27 **fourteen (14) days** of service of this order. Fed. R. Civ. P. 15(a)(3); and

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1 3. Defendant Wang shall respond to Plaintiff's request for a preliminary injunction
2 within **fourteen (14) days** of service of this order. Plaintiff may file a reply to Defendant's
3 response within **seven (7) days** of service of the response.

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5 IT IS SO ORDERED.

6 Dated: December 19, 2017


UNITED STATES MAGISTRATE JUDGE