

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BART A. GARBER, No. CIV S-09-3168-MCE-CMK

Plaintiff,

VS.

## ORDER

DALE T MERICLE, et al.,

## Defendants.

Plaintiff, a former state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's complaint (Doc. 1).

17                   The court is required to screen complaints brought by prisoners seeking relief  
18 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.  
19 § 1915A(a). The court is also required to screen complaints brought by litigants who have been  
20 granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening  
21 provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or  
22 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief  
23 from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and  
24 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must  
25 dismiss an action “[w]henever it appears . . . that the court lacks jurisdiction of the subject matter  
26 . . .” Because plaintiff, who is no longer a prisoner, has been granted leave to proceed in forma

1 pauperis, the court will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h),  
2 the court will also consider as a threshold matter whether it has subject-matter jurisdiction.

3 On May 7, 2010, the court issued an order identifying some defects in Plaintiff's  
4 complaint, and noting the complaint was only sufficient to state a claim against defendant  
5 Dickenson. Plaintiff was provided an opportunity to file an amended complaint to cure the  
6 defects. He was informed that if he did not file an amended complaint within the time provided,  
7 the court would issue findings and recommendations<sup>1</sup> to dismiss the defective claims, and a  
8 service order for the cognizable claims.

9 The cognizable claim in the complaint stems from a surgery Plaintiff had on his  
10 leg. It appears that after numerous delays, apparently due to several transfers between different  
11 facilities, Plaintiff had surgery on his leg. Following the surgery, defendant Dickenson failed to  
12 follow physician instructions regarding changing the dressing causing damage to Plaintiff's new  
13 skin graft.

14 The court concludes that it has subject matter jurisdiction and that the complaint is  
15 appropriate for service by the United States Marshal without pre-payment of costs. If Plaintiff  
16 desires service of process by the United States Marshal without pre-payment of costs, Plaintiff  
17 must comply with the requirements outlined below. Plaintiff is warned that failure to comply  
18 with this order, or otherwise effect service pursuant to Federal Rule of Civil Procedure 4, may  
19 result in dismissal of the action for lack of prosecution and failure to comply with court rules and  
20 orders. See Local Rule 110.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. The court authorizes service on defendant Dickenson only;  
23 2. The Clerk of the Court shall issue a summons in a civil case, the  
24 undersigned's new case documents, and an order setting this matter for an initial scheduling

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26 <sup>1</sup> The findings and recommendations are issued separately.

1 conference;

2           3. The Clerk of the Court shall send plaintiff the summons, one USM-285  
3 forms, and a copy of the complaint;

4           4. Within 15 days from the date of this order, plaintiff shall complete the  
5 summons by indicating the addresses of the named defendant and shall submit to the United  
6 States Marshal at the address indicated below the following documents:

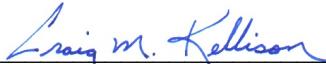
7           a. The completed summons;  
8           b. One completed USM-285 form for defendant Dickenson;  
9           c. Two copies of the complaint; and  
10           d. One copy of the court's initial scheduling conference order issued  
11 herewith;

12           5. Within 20 days of the date of this order, plaintiff shall file a notice  
13 indicating that the documents described above have been submitted to the United States Marshal;

14           6. The United States Marshal is directed to serve all process without pre-  
15 payment of costs not later than 60 days from the date of this order, such service of process to be  
16 completed by serving a copy of the summons, complaint, and initial scheduling conference order  
17 on the defendants at the addresses provided by plaintiff; and

18           7. The Clerk of the Court is directed to serve a copy of this order on the  
19 United States Marshal at 501 "I" Street, Sacramento, CA, 95814.

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21           DATED: June 22, 2010

22             
23           CRAIG M. KELLISON  
24           UNITED STATES MAGISTRATE JUDGE  
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