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

CRAIG GARRETT MILLER,

No. 2:17-CV-1273-TLN-CMK

Plaintiff,

vs.

ORDER

NATIONAL RAILROAD
PASSENGER CORP., et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff's request for leave to proceed in forma pauperis (Doc. 2). Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security therefor. Plaintiff's request will be granted.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or

1 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief
2 from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and
3 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h)(3), this court
4 must dismiss an action if the court determines that it lacks subject matter jurisdiction. Because
5 plaintiff, who is not a prisoner, has been granted leave to proceed in forma pauperis, the court
6 will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h), the court will also
7 consider as a threshold matter whether it has subject-matter jurisdiction.

8 Plaintiff claims that he sustained injuries as a result of being struck by a
9 southbound Amtrak train on June 20, 2015, in Redding, California. According to plaintiff,
10 defendants' negligence caused the accident. Specifically, plaintiff alleges that defendants' train
11 exceeded the speed limit and that defendants failed to maintain vegetation and signs near the
12 train tracks.

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

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Plaintiff's request for leave to proceed in forma pauperis (Doc. 2) is
22 granted;

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
25 conference;

26 ///

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

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

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

11 5. Within 20 days of the date of this order, plaintiff shall file a notice
12 indicating that the documents described above have been submitted to the United States Marshal,
13 or a notice that plaintiff intends to serve the summons and complaint without assistance from the
14 United States Marshal;

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

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

22
23 DATED: August 8, 2017

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE