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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PERRY TALLEY,
CDCR #D-91162,

Plaintiff,

vs.

GEORGE NEOTTI; S. PAULEY;
RATHERFUR; J. WALKER; SPENCER;
JOHN DOE NURSE; JOHN DOE
PHYSICIAN

Defendants.

Civil No. 10cv0426 BTM (JMA)

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT SERVICE
OF SECOND AMENDED
COMPLAINT PURSUANT
TO FED.R.Civ.P. 4(c)(3)
& 28 U.S.C. § 1915(d)**

I.

PROCEDURAL HISTORY

On February 23, 2010, Plaintiff, Perry Talley, a state prisoner currently incarcerated at Kern Valley State Prison located in Delano, California and proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleged that his Eighth Amendment rights were violated when he was housed at the Richard J. Donovan Correctional Facility (“Donovan”). Plaintiff also filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). The Court has granted Plaintiff’s Motion to Proceed IFP but has also sua sponte dismissed his original and First Amended Complaint for failing to state a claim. *See* May 3, 2010 Order; *see also* August 3, 2010 Order.

1 On June 27, 2011, after receiving an extension of time. Plaintiff has now filed his Second
2 Amended Complaint.

3 II.

4 SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) AND § 1915A

5 A. Standard

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

16 The Court finds that Plaintiff’s claims are now sufficiently pleaded to survive the sua
17 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is
18 entitled to U.S. Marshal service on his behalf. See *Lopez*, 203 F.3d at 1126-27; 28 U.S.C.
19 § 1915(d); FED.R.CIV.P. 4(c)(3). Plaintiff is cautioned, however, that “the sua sponte screening
20 and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
21 motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119
22 (S.D. Cal. 2007).

23 III.

24 CONCLUSION AND ORDER

25 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

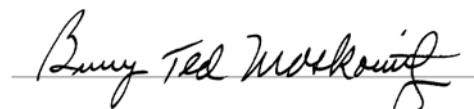
26 1. The Clerk shall issue a summons as to Plaintiff’s Second Amended Complaint
27 [ECF No.13] upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal
28 Form 285 for each of these Defendants. In addition, the Clerk shall provide Plaintiff with a

1 certified copy of this Order, the Court's May 3, 2010 Order granting Plaintiff leave to proceed
2 IFP [ECF No.4], and certified copies of his Second Amended Complaint and the summons for
3 purposes of serving each Defendant. Upon receipt of this "IFP Package," Plaintiff is directed
4 to complete the Form 285s as completely and accurately as possible, and to return them to the
5 United States Marshal according to the instructions provided by the Clerk in the letter
6 accompanying his IFP package. Thereafter, the U.S. Marshal shall serve a copy of the Second
7 Amended Complaint and summons upon each Defendant as directed by Plaintiff on each Form
8 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d);
9 FED.R.CIV.P. 4(c)(3).

10 2. Plaintiff shall serve upon Defendants or, if appearance has been entered by
11 counsel, upon Defendants' counsel, a copy of every further pleading or other document
12 submitted for consideration of the Court. Plaintiff shall include with the original paper to be
13 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
14 of any document was served on Defendants, or counsel for Defendants, and the date of service.
15 Any paper received by the Court which has not been filed with the Clerk or which fails to
16 include a Certificate of Service will be disregarded.

17 **IT IS SO ORDERED.**

18 DATED: September 6, 2011

19 

20 Honorable Barry Ted Moskowitz
21 United States District Judge