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

RICHARD EDWARD JACKSON,

Plaintiff,

vs.

BONNIE DUMANIS; WILLIAM D.
GORE; CAPTAIN PENA; DR.
NORANYO; COUNTY OF SAN DIEGO,

Defendants.

Civil No. 10cv2200 WQH (CAB)

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

Plaintiff, Richard Edward Jackson, proceeding pro se and in forma pauperis (“IFP”), has filed a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s Second Amended Complaint [ECF No. 12].

I.

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

A. Standard

The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP and by those who are “incarcerated or detained in any facility

1 [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
2 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
3 practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
4 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion
5 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from
6 defendants who are immune. See 28 U.S.C. § 1915(e)(2)(B) and § 1915A; *Lopez v. Smith*, 203
7 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443,
8 446 (9th Cir. 2000) (§ 1915A).

9 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
10 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is
11 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,
12 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing
13 an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting service of
14 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection
15 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint
16 that fails to state a claim.”); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
17 (discussing 28 U.S.C. § 1915A).

18 “[W]hen determining whether a complaint states a claim, a court must accept as true all
19 allegations of material fact and must construe those facts in the light most favorable to the
20 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
21 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s
22 duty to liberally construe a pro se’s pleadings, see *Karim-Panahi v. Los Angeles Police Dept.*,
23 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*
24 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

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1 The Court finds that Plaintiff's claims are now sufficiently pleaded to survive the sua
2 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is
3 entitled to U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at 1126-27; 28 U.S.C.
4 § 1915(d) ("The officers of the court shall issue and serve all process, and perform all duties in
5 [IFP] cases."); FED.R.CIV.P. 4(c)(3) ("[T]he court may order that service be made by a United
6 States marshal or deputy marshal ... if the plaintiff is authorized to proceed *in forma pauperis*
7 under 28 U.S.C. § 1915."). Plaintiff is cautioned, however, that "the sua sponte screening and
8 dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
9 motion that [a defendant] may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119
10 (S.D. Cal. 2007).

11 II.

12 CONCLUSION AND ORDER

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


14 1. The Clerk shall issue a summons as to Plaintiff's Second Amended Complaint
15 [ECF No. 12] upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal
16 Form 285 for each of these Defendants. In addition, the Clerk shall provide Plaintiff with a
17 certified copy of this Order, the Court's January 19, 2011 Order granting Plaintiff leave to
18 proceed IFP [ECF No. 9], and certified copies of his Second Amended Complaint and the
19 summons for purposes of serving each Defendant. Upon receipt of this "IFP Package," Plaintiff
20 is directed to complete the Form 285s as completely and accurately as possible, and to return
21 them to the United States Marshal according to the instructions provided by the Clerk in the
22 letter accompanying his IFP package. Thereafter, the U.S. Marshal shall serve a copy of the
23 Second Amended Complaint and summons upon each Defendant as directed by Plaintiff on each
24 Form 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d);
25 FED.R.CIV.P. 4(c)(3).

26 2. Plaintiff shall serve upon Defendants or, if appearance has been entered by
27 counsel, upon Defendants' counsel, a copy of every further pleading or other document
28 submitted for consideration of the Court. Plaintiff shall include with the original paper to be

1 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
2 of any document was served on Defendants, or counsel for Defendants, and the date of service.
3 Any paper received by the Court which has not been filed with the Clerk or which fails to
4 include a Certificate of Service will be disregarded.

5 **IT IS SO ORDERED.**

6 DATED: June 27, 2011

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8 **WILLIAM Q. HAYES**
9 United States District Judge

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