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 CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT SCOFIELD,
 CDCR #P-14570,

 Plaintiff,

 vs.

 K. BALL; C. GRAY; MD. RENNER;
 JOSEPH M. SHERMAN; M.D. O.
 DICKERSON; M.D. J. ANDERSON; R.N. J.
 HALSETH; M.D. KUMAR; C. HALL;
 N. GRANNIS; M. PENNER,

 Defendants.

Civil No. 11cv0378 BEN (WMC)

ORDER:
 (1) GRANTING DEFENDANTS' "MOTION THAT THE COURT SCREEN PLAINTIFF'S COMPLAINT UNDER 28 U.S.C. § 1915A"; AND
 (2) ORDERING DEFENDANTS TO FILE A RESPONSIVE PLEADING PURSUANT TO FED.R.CIV.P. 12(a)

**I.
 PROCEDURAL HISTORY**

On June 10, 2010, Plaintiff, an inmate currently incarcerated at California State Prison located in Corcoran, California and proceeding pro se, filed a Complaint in Monterey Superior Court. Defendants filed a "Notice of Removal" on November 5, 2010 [Doc. No. 1] in the Northern District of California. On February 22, 2011, United States District Judge Jeremy Fogel determined that a "substantial part of the events or omissions giving rise to the claim

1 occurred” in the Southern District of California and transferred the matter to the Southern
2 District. *See* Feb. 22, 2011 Transfer Order at 1-2.

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4 **II.**

5 **DEFENDANT’S NOTICE OF REMOVAL [Doc. No. 1]**

6 **A. Legal Standard**

7 The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of New*
8 *York*, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits of any dispute until
9 it confirms its own subject matter jurisdiction. *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S.
10 83, 94 (1998). “Jurisdiction is power to declare the law, and when it ceases to exist, the only
11 function remaining to the court is that of announcing the fact and dismissing the cause.” *Id.*
12 *(quoting Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 614 (1868)). District courts must construe
13 the removal statutes strictly against removal and resolve any uncertainty as to removability in
14 favor of remanding the case to state court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
15 *(per curiam)*; *Boggs v. Lewis*, 863 F.2d 662, 663 (9th Cir. 1988).

16 Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.* A state court action can
17 only be removed if it could have originally been brought in federal court. *Caterpillar, Inc. v.*
18 *Williams*, 482 U.S. 386, 392 (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).
19 Thus, for an action to be removed on the basis of federal question jurisdiction, the complaint
20 must establish either that federal law creates the cause of action or that the plaintiff’s right to
21 relief necessarily depends on the resolution of substantial questions of federal law. *Franchise*
22 *Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10-11
23 (1983). Whether federal jurisdiction exists is governed by the well-pleaded complaint rule.
24 *Caterpillar*, 482 U.S. at 392. Under this rule, the federal question must be “presented on the
25 face of plaintiff’s properly pleaded complaint.” *Id.*; *accord Wayne v. DHL Worldwide Express*,
26 294 F.3d 1179, 1183 (9th Cir. 2002).

27 Defendants seek removal of this action on the grounds that Plaintiff’s Complaint arises
28 under 42 U.S.C. § 1983. While Plaintiff has not filed a reply to Defendants’ notice of removal,

1 a district court may remand an action sua sponte if it concludes that it lacks jurisdiction. *See*
2 *Franklin v. Murphy*, 745 F.2d 1221 (9th Cir. 1984); FED.R.CIV.P. 12(h)(3) (district court may
3 sua sponte dismiss an action, regardless of whether the plaintiffs are proceeding *in forma*
4 *pauperis*, if the court concludes that it lacks subject matter jurisdiction).

5 Here, Plaintiff's Complaint rests on allegations that he has been denied adequate medical
6 care and claims that Defendants' actions were deliberately indifferent to his serious medical
7 needs in violation of his Eighth Amendment rights. Because Plaintiff's federal claims appears
8 on the face and throughout his Complaint, the Court finds that his cause of action arises under
9 federal law, and thus, is removable. *See* 28 U.S.C. §§ 1331, 1441(b).

10 III.

11 Screening Pursuant to 28 U.S.C. §§ 1915A(b)

12 Now that the Court has found the removal of this action to be proper, the Court will
13 **GRANT** Defendants' Motion to Screen Plaintiff's Complaint and conduct a sua sponte review
14 of Plaintiff's Complaint because he is "incarcerated or detained in any facility [and] is accused
15 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
16 conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C.
17 § 1915A(a), (c). Section 1915A, enacted as part of the Prison Litigation Reform Act ("PLRA"),
18 requires sua sponte dismissal of prisoner complaints, or any portions thereof, which are
19 frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C.
20 § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000). A similar screening
21 provision of the PLRA would apply to Plaintiff's Complaint even if he elected to initiate this
22 action in federal court and successfully moved to proceed *in forma pauperis* ("IFP"). *See* 28
23 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

24 "Under § 1915A, when determining whether a complaint states a claim, a court must
25 accept as true all allegations of material fact and must construe those facts in the light most
26 favorable to the plaintiff." *Resnick*, 213 F.3d at 447 (citing *Cooper v. Pickett*, 137 F.3d 616, 623
27 (9th Cir. 1997)). The rule of liberal construction is "particularly important in civil rights cases."
28 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

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

8 DATED: _____

3/04/2011

[Signature]
9 HON. ROGER T. BENITEZ
United States District Judge

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