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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN GREGORY WILLIAMS,
CDCR #AA-2822,

Plaintiff,

vs.

S. RESLER; C. HERNANDEZ; E.
GARZA; D. SERVANTES; R. DIN; J.
JUAREZ; G. STRATTON; H. LIU

Defendants.

Case No.: 3:16-cv-2538-CAB-KSC

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT SERVICE
OF FIRST AMENDED COMPLAINT
UPON DEFENDANTS PURSUANT
TO Fed. R. Civ. P. 4(c)(3) AND
28 U.S.C. § 1915(d)**

Steven Gregory Williams (“Plaintiff”), currently incarcerated at the California Medical Facility located in Vacaville California, and proceeding pro se, has filed a civil action pursuant to 42 U.S.C. § 1983. Plaintiff claims his constitutional rights were violated when he was housed at the Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California in 2015 and 2016.

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1 **I. Procedural History**

2 On October 7, 2016, Plaintiff filed a civil rights complaint (“Compl.”) pursuant to
3 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff did not prepay the civil filing fee required by
4 28 U.S.C. § 1914(a) when he filed his Complaint; instead, he filed a Motion to Proceed *In*
5 *Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). On October 27,
6 2016, this Court conducted the required *sua sponte* screening pursuant to 28 U.S.C.
7 § 1915(e) & § 1915A. (ECF No. 4.) Plaintiff’s Motion to Proceed IFP was granted and
8 Plaintiff’s Complaint was dismissed for failing to state a claim upon which relief may be
9 granted. *See id.* at 11-12. Plaintiff was given leave to file an amended pleading in order
10 to correct the deficiencies of pleading identified in the Court’s Order. *Id.* Plaintiff filed
11 his First Amended Complaint (“FAC”) on December 2, 2016. (ECF No. 4.)

12 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

13 A. Standard of Review

14 The Prison Litigation Reform Act (“PLRA”) requires the Court to review
15 complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are
16 “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
17 delinquent for, violations of criminal law or the terms or conditions of parole, probation,
18 pretrial release, or diversionary program,” “as soon as practicable after docketing.” *See*
19 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these statutes, the Court must *sua sponte*
20 dismiss complaints, or any portions thereof, which are frivolous, malicious, fail to state a
21 claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.
22 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
23 banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
24 (discussing 28 U.S.C. § 1915A(b)).

25 All complaints must contain “a short and plain statement of the claim showing that the
26 pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are not
27 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
28 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

1 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether
2 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires
3 the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
4 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
5 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

6 “When there are well-pleaded factual allegations, a court should assume their veracity,
7 and then determine whether they plausibly give rise to an entitlement to relief.” *Iqbal*,
8 556 U.S. at 679; *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (“[W]hen
9 determining whether a complaint states a claim, a court must accept as true all allegations
10 of material fact and must construe those facts in the light most favorable to the
11 plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
12 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

13 In addition, the court “ha[s] an obligation where the petitioner is pro se, particularly in
14 civil rights cases, to construe the pleadings liberally and to afford the petitioner the
15 benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing
16 *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)). However, it may not “supply
17 essential elements of claims that were not initially pled.” *Ivey v. Board of Regents of the*
18 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 Based on the allegations contained in Plaintiff’s FAC, the Court now finds Plaintiff’s
20 FAC sufficient to survive the “low threshold” for proceeding past the sua sponte
21 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).¹ *Wilhelm v. Rotman*, 680
22 F.3d 1113, 1123 (9th Cir. 2012); *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (prison
23 officials may be held liable under the Eighth Amendment if they act with deliberate
24 indifference to serious medical needs); *id.* at 104-05 (deliberate indifference may be
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27 ¹ Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is
28 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a
defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.
Cal. 2007).

1 shown if prison officials “intentionally deny[] or delay[] access to medical care or
2 intentionally interfer[e] with the treatment once prescribed.”).

3 Accordingly, the Court will direct U.S. Marshal service on Plaintiff’s behalf. *See*
4 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and
5 perform all duties in [IFP] cases.”); FED. R. CIV. P. 4(c)(3) (“[T]he court may order that
6 service be made by a United States marshal or deputy marshal . . . if the plaintiff is
7 authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.”).

8 **III. Conclusion and Order**

9 Good cause appearing, the Court:

10 1. **DIRECTS** the Clerk of Court to issue a summons as to Plaintiff’s Amended
11 Complaint (ECF Doc. No. 4) upon Defendants and forward it to Plaintiff along with a
12 blank U.S. Marshal Form 285 for each of these Defendants. In addition, the Court
13 **DIRECTS** the Clerk to provide Plaintiff with a certified copy of the October 27, 2016
14 Order Granting Plaintiff’s Motion for Leave to Proceed IFP (ECF No. 3), a certified copy
15 of his Amended Complaint (ECF Doc. No. 4), and the summons so that he may serve
16 Defendants. Once he receives this “IFP Package,” the Court **ORDERS** Plaintiff to
17 complete the USM Form 285s as completely and accurately as possible, and to return
18 them to the United States Marshal according to the instructions provided by the Clerk in
19 the letter accompanying his IFP package.

20 2. **ORDERS** the U.S. Marshal, upon receipt of Plaintiff’s completed USM
21 Form 285s, to timely serve a copy of Plaintiff’s Amended Complaint and summons upon
22 each Defendant as directed by Plaintiff. All costs of that service will be advanced by the
23 United States. *See* 28 U.S.C. § 1915(d); FED. R. CIV. P. 4(c)(3).

24 3. **ORDERS** Defendants, once they have been served, to reply to Plaintiff’s
25 Amended Complaint within the time provided by the applicable provisions of Federal
26 Rule of Civil Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may
27 occasionally be permitted to “waive the right to reply to any action brought by a prisoner
28 confined in any jail, prison, or other correctional facility under section 1983,” once the

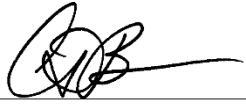
1 Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and
2 § 1915A(b), and thus, has made a preliminary determination based on the face on the
3 pleading alone that Plaintiff has a “reasonable opportunity to prevail on the merits,” the
4 defendant is required to respond).

5 4. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
6 serve upon Defendants or, if appearance has been entered by counsel, upon Defendants’
7 counsel, a copy of every further pleading, motion, or other document submitted for the
8 Court’s consideration. Plaintiff must include with every original document he seeks to file
9 with the Clerk of the Court, a certificate stating the manner in which a true and correct
10 copy of that document has been was served on Defendants, or counsel for Defendants, and
11 the date of that service.

12 Any document received by the Court which has not been properly filed with the Clerk
13 or which fails to include a Certificate of Service upon the Defendants may be disregarded.

14 **IT IS SO ORDERED.**

15 Dated: March 6, 2017

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18 Hon. Cathy Ann Bencivengo
19 United States District Judge
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