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

HOANG MINH TRAN,
CDCR # AA-5994

Plaintiff,

vs.

WILLIAM GORE; SCHROEDER;
ESPINOZA; JOHN GILL; CARDOZA;
JOHN DOES,

Defendants.

Civil 10cv1751 JAH (WVG)
No.

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*;
AND**

**(2) DISMISSING ACTION FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

Plaintiff, a state inmate currently incarcerated at California Men’s Colony in San Luis Obispo, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

I. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is

1 granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493
2 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).
3 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in
4 installments, regardless of whether the action is ultimately dismissed for any reason. *See* 28
5 U.S.C. § 1915(b)(1) & (2).

6 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.
7 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to
8 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement shows that
9 he has insufficient funds from which to pay an initial partial filing fee.

10 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 2] and
11 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the Court further
12 orders the Secretary of the California Department of Corrections and Rehabilitation ("CDCR")
13 to garnish the entire \$350 balance of the filing fees owed in this case, collect and forward them
14 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
15 § 1915(b)(1).

16 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

17 The Prison Litigation Reform Act ("PLRA")'s amendments to 28 U.S.C. § 1915 also
18 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like
19 Plaintiff, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or
20 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
21 probation, pretrial release, or diversionary program," "as soon as practicable after docketing."
22 *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua
23 sponte dismiss any prisoner civil action and all other IFP complaints, or any portions thereof,
24 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who
25 are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-
26 27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir.
27 2000) (§ 1915A).

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1 First, Plaintiff names Defendant Gore as a Defendant but fails to allege any specific
2 factual allegations pertaining to Defendant Gore in his role as San Diego County Sheriff. There
3 is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433,
4 1437-38 (9th Cir. 1993). Instead, “[t]he inquiry into causation must be individualized and focus
5 on the duties and responsibilities of each individual defendant whose acts or omissions are
6 alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th
7 Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the
8 respondeat superior bar, Plaintiff must allege personal acts by each individual Defendant which
9 have a direct causal connection to the constitutional violation at issue. *See Sanders v. Kennedy*,
10 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

11 Supervisory prison officials may only be held liable for the allegedly unconstitutional
12 violations of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what
13 extent they personally participated in or directed a subordinate’s actions, and (2) in either acting
14 or failing to act, they were an actual and proximate cause of the deprivation of Plaintiff’s
15 constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded,
16 however, Plaintiff’s Complaint fails to set forth facts which might be liberally construed to
17 support an individualized constitutional claim against Defendant Gore.

18 Second, Plaintiff seeks the return of his “canteen property” which he claims was taken
19 by Defendant Cardoza. (*See Compl.* at 5.) Where an inmate alleges the deprivation of a liberty
20 or property interest caused by the unauthorized negligent or intentional action of a prison
21 official, the prisoner cannot state a constitutional claim where the state provides an adequate
22 post-deprivation remedy. *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v.*
23 *Palmer*, 468 U.S. 517, 533 (1984). The California Tort Claims Act (“CTCA”) provides an
24 adequate post-deprivation state remedy for the random and unauthorized taking of property.
25 *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Thus, Plaintiff has an adequate state
26 post-deprivation remedy and his claims relating to the taking of his property are not cognizable
27 in this § 1983 action, and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and
28 1915A(b)(1).

1 For all these reasons, the Court finds that Plaintiff’s Complaint must be dismissed sua
2 sponte for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C.
3 §§ 1915(e)(2)(B) and 1915A(b).

4 **III CONCLUSION AND ORDER**

5 Good cause appearing, **IT IS HEREBY ORDERED:**.

6 1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2] is
7 **GRANTED.**

8 2. The Secretary of California Department of Corrections and Rehabilitation, or his
9 designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee
10 owed in this case by collecting monthly payments from the account in an amount equal to twenty
11 percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court
12 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
13 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**
14 **ASSIGNED TO THIS ACTION.**

15 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
16 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
17 Sacramento, California 95814.

18 **IT IS FURTHER ORDERED** that:

19 4. The case is **DISMISSED** without prejudice for failing to state a claim upon which
20 relief may be granted. *See* 28 U.S.C. § 1915(e)(2) & § 1915A(b).

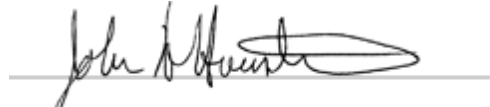
21 5. Plaintiff is granted forty five (45) days from the date this Order is “Filed” in which
22 to file an amended complaint which addresses each deficiency of pleading noted above.
23 Plaintiff’s Amended Complaint must be complete in itself without reference to the superseded
24 pleading. *See* S.D. CA. CIV.LR. 15.1. Defendants not named and all claims not re-alleged in the
25 Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565,
26 567 (9th Cir. 1987).

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6. The Clerk of Court is directed to mail a court approved form § 1983 complaint to Plaintiff.

DATED: November 5, 2010



JOHN A. HOUSTON
United States District Judge