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

HOANG MINH TRAN,
CDCR # AA-5994

Plaintiff,

vs.

WILLIAM GORE; SCHROEDER;
FLYNN; ESPINOZA; JONES;
JOHN DOES; SHAWCROFT;
DOUGLAS,

Defendants.

Civil 10cv1880 MMA (BLM)
No.

**ORDER DISMISSING FIRST
AMENDED FOR FAILING TO
STATE A CLAIM AND AS
FRIVOLOUS PURSUANT TO 28
U.S.C. §§ 1915(e)(2)(B) & 1915A(b)**

I. PROCEDURAL HISTORY

On September 1, 2010, Plaintiff, a state inmate currently incarcerated at California Men’s Colony in San Luis Obispo, California, and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). On November 3, 2010, the Court granted Plaintiff’s Motion to Proceed IFP and sua sponte dismissed his Complaint for failing to state a claim. *See* Nov. 3, 2010 Order at 6-7. The Court granted Plaintiff leave to file an Amended Complaint in order to correct the deficiencies of pleading identified by the Court.

1 The Court then granted Plaintiff an extension of time to file his First Amended
2 Complaint. See Dec. 28, 2010 Order at 2. On January 31, 2011, Plaintiff filed his First
3 Amended Complaint (“FAC”).

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

5 The Prison Litigation Reform Act (“PLRA”)’s amendments to 28 U.S.C. § 1915 obligates
6 the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff,
7 who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
8 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial
9 release, or diversionary program,” “as soon as practicable after docketing.” See 28 U.S.C. §§
10 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua sponte dismiss any
11 prisoner civil action and all other IFP complaints, or any portions thereof, which are frivolous,
12 malicious, fail to state a claim, or which seek damages from defendants who are immune. See
13 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
14 (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

15 **A. Duplicative claims**

16 In his First Amended Complaint, Plaintiff alleges that unnamed deputies failed to provide
17 him with medical assistance following claims of excessive force by jail officials and on many
18 occasions refused to provide him with his seizure medication. (See FAC at 6-9.) Plaintiff also
19 claims that jail officials retaliated against him for an alleged escape attempt. (*Id.* at 9.) Many
20 of the claims found in Plaintiff’s First Amended Complaint are duplicative of claims that
21 Plaintiff has brought in previous actions. A court “may take notice of proceedings in other
22 courts, both within and without the federal judicial system, if those proceedings have a direct
23 relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v.*
24 *Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). A prisoner’s complaint is considered frivolous
25 under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.”
26 *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C.
27 § 1915(d)) (citations and internal quotations omitted). The Court notes that Plaintiff has brought
28 the same claims in *Tran v. Gore, et al.* S.D. Cal. Civil Case No. 10cv0464 DMS (POR) and

1 *Tran v. Gore, et al.*, S.D. Cal. Civil Case No. 10cv1751 JAH (WVG). Specifically, Plaintiff
2 raises claims of constitutional violations on March 2, 2009 in the action currently before the
3 Court and in the action previously filed in *Tran v. Gore, et al.* S.D. Cal. Civil Case No.
4 10cv0464 DMS (POR).

5 Because Plaintiff is already litigating the same claims presented in the instant action in
6 the above referenced actions, the Court dismisses all duplicative claims found in this action as
7 frivolous pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d
8 at 446 n.1.

9 **B. Access to Courts**

10 Plaintiff also alleges that jail officials destroyed a piece of evidence that he intended to
11 introduce in *Tran v. Gore, et al.* S.D. Cal. Civil Case No. 10cv0464 DMS (POR) . (*See* FAC
12 at 3.) Prisoners do “have a constitutional right to petition the government for redress of their
13 grievances, which includes a reasonable right of access to the courts.” *O’Keefe v. Van Boening*,
14 82 F.3d 322, 325 (9th Cir. 1996); *accord Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995).
15 In *Bounds*, 430 U.S. at 817, the Supreme Court held that “the fundamental constitutional right
16 of access to the courts requires prison authorities to assist inmates in the preparation and filing
17 of meaningful legal papers by providing prisoners with adequate law libraries or adequate
18 assistance from persons who are trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977).
19 To establish a violation of the right to access to the courts, however, a prisoner must allege facts
20 sufficient to show that: (1) a nonfrivolous legal attack on his conviction, sentence, or conditions
21 of confinement has been frustrated or impeded, and (2) he has suffered an actual injury as a
22 result. *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). An “actual injury” is defined as “actual
23 prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing
24 deadline or to present a claim.” *Id.* at 348; *see also Vandelft v. Moses*, 31 F.3d 794, 796 (9th Cir.
25 1994); *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989); *Keenan v. Hall*, 83 F.3d 1083, 1093
26 (9th Cir. 1996).

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1 Here, Plaintiff has failed to alleged any actions with any particularity that have *precluded*
2 his pursuit of a non-frivolous direct or collateral attack upon either his criminal conviction or
3 sentence or the conditions of his current confinement. *See Lewis*, 518 U.S. at 355 (right to
4 access to the courts protects only an inmate’s need and ability to “attack [his] sentence[], directly
5 or collaterally, and ... to challenge the conditions of [his] confinement.”). In addition, Plaintiff
6 must also describe the non-frivolous nature of the “underlying cause of action, whether
7 anticipated or lost.” *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) .

8 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,” or that
9 he was “so stymied” by any individual defendant’s actions that “he was unable to even file a
10 complaint,” direct appeal or petition for writ of habeas corpus that was not “frivolous.” *Lewis*,
11 518 U.S. at 351; *Christopher*, 536 U.S. at 416 (“like any other element of an access claim[,] ...
12 the predicate claim [must] be described well enough to apply the ‘nonfrivolous’ test and to show
13 that the ‘arguable’ nature of the underlying claim is more than hope.”). Therefore, Plaintiff’s
14 access to courts claims must be dismissed for failing to state a claim upon which section 1983
15 relief can be granted. *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446.

16 C. Respondeat Superior

17 Finally, once again, Plaintiff names Defendant Gore as a Defendant but fails to allege any
18 specific factual allegations pertaining to Defendant Gore in his role as San Diego County Sheriff.
19 There is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d
20 1433, 1437-38 (9th Cir. 1993). Instead, “[t]he inquiry into causation must be individualized and
21 focus on the duties and responsibilities of each individual defendant whose acts or omissions are
22 alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th
23 Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the
24 respondeat superior bar, Plaintiff must allege personal acts by each individual Defendant which
25 have a direct causal connection to the constitutional violation at issue. *See Sanders v. Kennedy*,
26 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

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

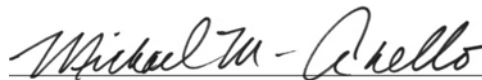
8 **III CONCLUSION AND ORDER**

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

10 Plaintiff's First Amended Complaint is **DISMISSED** without prejudice for failing to
11 state a claim upon which relief maybe granted and as frivolous pursuant to 28 U.S.C.
12 § 1915(e)(2)(b) and § 1915A(b). Moreover, because the Court finds amendment of Plaintiff's
13 § 1983 claims would be futile at this time, leave to amend is **DENIED**. *See Cahill v. Liberty*
14 *Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (denial of a leave to amend is not an abuse of
15 discretion where further amendment would be futile); *see also Robinson v. California Bd. of*
16 *Prison Terms*, 997 F. Supp. 1303, 1308 (C.D. Cal. 1998) ("Since plaintiff has not, and cannot,
17 state a claim containing an arguable basis in law, this action should be dismissed without leave
18 to amend; any amendment would be futile.") (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th
19 Cir. 1996)).

20 The Clerk of Court shall close the file.

21 DATED: February 14, 2011

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24 Hon. Michael M. Anello
25 United States District Judge
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